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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

May 12, 2017

Pennsylvania Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

2017 MAY 12 PM 3:50

RECEIVED
IRRC

Re: Pennsylvania State Civil Service Commission
Proposed Regulation #61-6
Implementation of Act 69 of 2016 and Act 167 of 2016
IRRC Identification Number 3167

Dear Commissioners:

On April 22, the Pennsylvania State Civil Service Commission (SCSC) published proposed regulations for Act 69 of 2016 and Act 167 of 2016. The Pennsylvania Department of Education (PDE) has several concerns regarding the impact the proposed regulations would have on the work of the agency and the services the Department provides to the education community. Please note that SCSC did not contact the Department to solicit its input on these proposed regulations.

Last year, the General Assembly passed and Governor Wolf signed into law Acts 69 and 167 of 2016. These laws made significant and important changes to the Pennsylvania Civil Service Act (the Act). In short, these statutory amendments were enacted to modernize SCSC hiring and improve service delivery. The changes would make it easier for candidates to apply for positions, create a larger pool of candidates from which agencies could choose, as well as give agencies important discretion in setting fair and appropriate candidate evaluations.

Instead of implementing the law as written, SCSC has issued proposed regulations which will undermine the intended purpose of the laws and give SCSC the ability to thwart their implementation.

The vast majority (approximately 87 percent) of PDE positions are covered by the SCSC. Therefore, the Department has a very significant stake in ensuring the laws are implemented as written and intended. The Department is providing this letter to detail how the legislative changes will allow PDE to improve services, and how the proposed regulations will negatively impact its ability to recruit, hire, and promote qualified candidates who can help advance the agency's work.

Section 95.1. Application requirements.

Act 167 amended Section 212 (d) of the Act to provide: "The commission shall enter into an agreement to utilize the form and method of an employment application that is standard across departments and agencies that are under the Governor's jurisdiction for the purpose of entrance to, or promotion in, the classified service." 71 P.S. §741.212(d).

This change to the law was designed to ease the employment application process by having a single site for both non-Civil Service and Civil Service positions. For Civil Service positions at PDE, this change would help address a number of challenges.

First, vacancy-based posting would allow PDE to post jobs immediately when needed, and allow PDE to tailor its search for individuals with the right skills and professional backgrounds, such as individuals who have experience in school settings or have specific areas of expertise (developing curriculum, designing and implementing assessments, delivering instruction, etc.).

In addition, candidates could apply, saving PDE time and money by not having to survey applicants on the list to determine their interest in the posted job. The current process for Civil Service educational exams is burdensome and inconsistent, creating significant challenges for agencies – including PDE – to recruit the right candidates for job openings. Under the current system of approvals, postings, and exam openings, most positions cannot be filled by candidates for at least two months, during which time those individuals may have already found other employment opportunities.

Section 95.20. Authority to Select Method of Examination.

Act 167 amended Section 502 of the Act to allow the appointing authority, and not SCSC, to determine the method of the “examinations” for candidate screening. The proposed regulations erode this authority, and *conditionally* allow appointing authorities to make such determinations. SCSC currently uses written tests or experience and training (“E&T”) to evaluate candidates for positions. However, PDE is in a better position to know how candidates can best be evaluated for its specific positions. By co-opting decision-making authority from the agency to the Commission, the proposed regulations would significantly limit agency discretion, which is vital for hiring truly qualified individuals in an efficient manner.

In addition, with written tests, candidates must take time off work and drive to one of the six SCSC test sites. In its past hiring practices, PDE has found that this process may deter qualified candidates from making application, and that the tests themselves are not an adequate indicator of a candidate’s quality; indeed, these exams do not capture other attributes and skills that PDE values, such as past work in school settings; experience with curriculum, assessment, and instruction; and other skills and competencies. The Commission is also inconsistent in its evaluation of candidates’ qualifications, leading to lags in recruiting and hiring otherwise qualified candidates.

Section 97.11. Appointment Process – Use of Alternative to Rule-of-Three.

Act 69 amended Section 601 to allow expansion of hiring-eligible lists other than the standard “Rule-of-Three.” With the standard Rule-of-Three, PDE had difficulty filling certain positions. For example, the Department recently had a Senior Application Developer job to fill. Using the Rule-of-Three, there were no viable candidates; however, moving down the list, we believed there was a viable candidate. The Commission denied the agency’s request to move forward with this lower-ranked, but still qualified candidate, and the position is still vacant. The proposed regulations fail to provide needed relief, and include onerous requirements that were not in the Act 69 amendment to Section 601.

First, the regulation requires specification of the job classification or classification series to which the alternative rule will apply. This language ignores the concept of “vacancy-based” hiring. The Act precludes PDE from seeking an alternative to the Rule-of Three on an as-needed, vacancy-based basis. As an example of the impact of this limitation, there are more than 20 Basic Education Associates (BEAs) in the organization, each with unique duties and assignments; some positions are easier to fill than others due to these varied duties. A requirement to use an

alternative Rule-of-Three for all BEAs would limit PDE's ability to thoughtfully seek an alternative when needed, while using the standard rule when possible.

The regulation exacerbates the problem described above by requiring an appointing authority to keep the alternative to the Rule-of-Three in place for at least 12 months. This will dissuade PDE from using an alternative to the Rule-of Three given that there will be uncertainty as to how effective the alternative Rule is for these positions until it is implemented. This time constraint creates a clear disincentive that is contrary to the spirit of the legislation.

Section 98.1 and 98.2. Vacancy-Based Hiring.

Act 69 was intended to allow agencies to fill vacant positions as they occur through "vacancy-based" job postings. This process is similar to how jobs are posted in the private sector, and would ensure that state government can be competitive with the private sector in making the best possible hires. PDE would like to use vacancy-based postings for a multitude of positions that require professional education experience and other sector-specific skills.

Moreover, PDE is best positioned to know which jobs should be filled through vacancy-based posting. For example, with non-Civil Service positions (e.g., Education Executive 1), PDE can recruit candidates with specific experience in the area, such as charter schools, school improvement, subsidy and administration, assessments, and curriculum to ensure appropriate specialization. As one of the leanest state education agencies in the nation, it is crucial that the Department fill every position with careful attention to specialized knowledge and skill.

Conclusion

PDE appreciates the Commission's review of our comments to the proposed regulations and your consideration of the many negative effects of the proposed regulations on this agency if they are adopted as written. The Department believes that Acts 69 and 107 of 2016 represent an important first step in prioritizing agency-level decision-making, and that the proposed regulations contemplated by the Commission would unnecessarily slow Pennsylvania's progress in promoting "Government That Works" through more modernized and effective recruitment, hiring, and promotion practices.

Please contact me if you need any additional information on the matters addressed in this letter.

Sincerely,



Pedro A. Rivera
Secretary of Education