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Agency of Education

October 16, 2017

Comments on legislative council draft 18-0118 – draft 3 (8/30/2017)
Financial Capacity language drafted by Jim DeMarais and presented by Senator Baruth
Rebecca Holcombe, Ed.D.
Friday, October 13, 2017

As stated in the draft, the purpose of requirements related to Financial Capacity is to protect taxpayers by ensuring that a publicly funded school has the resources required to meet its stated objectives.

The Agency of Education (AOE) notes that Rules are how it plans for both the best and worst case scenarios. When programs close precipitously, as was the case with the Augustine School and Burlington College, the AOE is forced to spend taxpayer dollars and time managing any failure.

The AOE consulted the Department of Financial Regulation (DFR), because the AOE doesn't have the capacity to do fiscal reviews of private entities. Our staff is trained on and operates on GASBE, and understands risks as it relates to public entities, not private entities.

DFR reviewed the first proposal forwarded by Senator Baruth. The AOE received feedback that the draft financial capacity language is very weak, in that it provides little to assure the State Board of Education of the financial capacity of an independent school.

Summary of conversation with Michael Pieciak, Commissioner of DFR, and his staff regarding legislative council draft 18-0118 – draft 3 (8/30/2017).

The draft does not accomplish much in terms of financial assurances. It provides a menu of options for independent schools to demonstrate “financial capacity”, one of which is a statement issued by a peer review team, another is a Form 990. These are not sufficient.

He recommends that the school would have to provide its most recent historical audited financials (to verify accuracy) and its quarterly unaudited financials (to verify current position). The latter are necessary in order to see where the school is trending. Otherwise, the state may learn too late to act to protect the public interest.

Pieciak suggested the financials should include a balance sheet, a cash flow statement and an income statement. The documents need to be sufficient to show reserves compared to income in order to determine risk, i.e., at what rate is the school going through cash (the burn rate) in comparison to reserves/income. He noted the student profile could be significant in determining whether enrollment is going up or down and redirecting future stability.

The purpose of this review is not only for an initial approval or renewal but to trigger at which point it is no longer prudent to spend more state tuition dollars. In other words, there needs to be a point between approval and insolvency where the State discontinues paying tuition.

DFR statute clearly sets out what actions DFR can take at different stages of financial health. For example, DFR has these tools:
(1) Annual and ongoing monitoring through quarterly financial statements
(2) Requiring addition of capital
(3) Ordering company not to write more business
(4) Requiring a bond
(5) Access to a Guarantee Fund – funded by industry
(6) Reserve requirement
(7) Require merger

The AOE recommends the committee consider which of those tools translates to the independent school approval process, but it seems that at least the reserve or bond requirements are worthy requirements. These could be steps before State funding is withdrawn.