



INDIANA STATE BOARD OF EDUCATION

BEFORE THE INDIANA STATE BOARD OF EDUCATION

PROPOSED DETERMINATION

In Re the Matter of:)
Delaware Christian Academy,) Cause No.: 03-072019

PROPOSED COMBINED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED DETERMINATION

RECOMMENDATION: Delaware Christian Academy's ("DCA") accreditation should be revoked effective June 30, 2019, after the 2018-19 school year, for deficiencies in facility and assessment accreditation requirements. DCA could participate in a one-year observation period with the Indiana Department of Education ("IDOE") for the 2019-20 school year and seek accreditation again after that period.

I. Introduction

In March of 2019 IDOE's assessment team conducted an onsite visit at DCA and raised concerns about the administration of the statewide assessment, the physical condition of the facility at 1901 N. Walnut Street in Muncie, Indiana, and a violation of DCA's freeway petition because DCA integrates virtual learning in instruction and DCA's 2013 petition did not mention virtual learning, per se. The Indiana State Fire Marshal, the Indiana State Department of Health, and the Delaware County Health Department were notified of the situation and these agencies generated reports. The Indiana State Board of Education ("SBOE") was also notified of the developments and the undersigned conducted a hearing with DCA representatives Mr. Baur and Dr. Sonnenberg on March 25, 2019.

II. Findings of Fact and Conclusions of Law

DCA is a K-12 freeway accredited nonpublic school located in Muncie, Indiana, serving six students. Its freeway accreditation began with the 2013-14 school year, and DCA is subject to the legal requirements of ILEARN administration, state safety and health requirements, and the 2013 freeway petition approved by the Board.¹

The issue is whether DCA is in violation of accreditation requirements, and if so, what should be done about it. The hearing yielded the following findings.

¹ 511 IAC 6.1-1-4(F), IC 20-32-1-1, (assessment requirements); 511 IAC 6.1-1-4(A), 511 IAC 6.1-2 (health and safety requirements); 511 IAC 6.1-1-1, IC 20-26-15 (freeway accreditation requirements).

Facility

i. State Fire Marshal Report

On March 15, 2019, the Indiana State Fire Marshall deployed inspectors from the Muncie Fire Marshall's office to DCA's facility at 1901 North Walnut Street to review the premises in response to the complaint filed by IDOE that students were in the school without heat and standing water was present in the building. Upon entering the building, the inspectors noted students "huddled around a kerosene heater in blankets trying to stay warm" and that there were kerosene containers in the room next to heaters. The inspectors noted the heat was out for the entire building. The inspectors also noted standing water and water leaking through the ceiling. Further, the inspectors discovered the plumbing was inoperable and there was only one operational restroom on the other side of the building from the one occupied classroom. The inspectors informed the school administrator that the school must be vacated immediately and would not be allowed to reopen until the heating, roofing, and plumbing issues were corrected.

ii. Indiana State Department of Health Report

The Indiana State Department of Health report was written by Mr. Ron Clark, dated March 20, 2019. In it he noted that the school was temporarily located at a church on March 20th and there were no air quality concerns there. However, Mr. Clark also visited the unoccupied Walnut Street building on March 18, 2019, and identified the following concerns (he conducted a visual inspection because the building was not in use. He did not test for temperature, humidity, or carbon dioxide):

- Outdoor air needs to be supplied to classrooms when occupied.
- With no outdoor air, carbon dioxide concentrations in the breathing zone likely exceeded the maximum 700 ppm over the outdoor concentration.
- Heating facilities must be capable of and operated to maintain a temperature during periods of student occupancy not less than 68 degrees Fahrenheit.
- Air-conditioning systems must be capable of providing and operated to maintain a temperature not to exceed 78 degrees Fahrenheit and 65% relative humidity during periods of student occupancy.
- Corrective action must be taken within 48 hours when there is a water leak or intrusion identified.
- Corrective action must be taken within 48 hours when mold or mold-contaminated material is discovered.
- Carpet vacuums meet HEPA filtration levels.
- Schools must establish and maintain written maintenance logs covering cleaning and filter changes of the HVAC systems for a minimum of 3 years.
- An individual at DCA must be designated Indoor Air Coordinator, contact information must be published, and certain air quality policies must be adopted.

This report stated that DCA must respond within 60 days.

iii. Delaware County Health Department Findings

The Delaware County Health Department also visited the DCA facilities for an inspection on March 18, 2019. The report stated in pertinent part:

You are hereby notified that the Delaware County Health Officer and their designated representative(s) have determined that a condition currently exists on this property which may transmit, generate, or promote disease, pursuant to IC 16-20-1-25.

- DCHD Inspectors observed extensive water intrusion issues resulting from multiple leaks in the building. Standing water was observed in the hallways; the gymnasium roof was observed to be actively dripping; residual water damage was observed throughout the building in the form of degraded and collapsing ceiling coverings, damaged floor tiling, and a musty smell throughout the building.
- DCHD Inspectors observed multiple unused/bare electrical wiring bunches protruding from various areas of the building.
- DCHD Inspectors observed various temporary electrical heating appliances; Dr. Baur admitted to the use of temporary kerosene heating appliances in lieu of the use of the acceptable, permanent boiler-heat fixture.

The report went on to say “You are hereby ordered to clean and purify the property by addressing the above issues within thirty (30) days.”

Further, a hearing on an order for demolition based on some of the issues identified in the reports is set for May 9, 2019, before the Unsafe Building Hearing Authority. This order could result in several different outcomes and the undersigned makes no assumptions based on the initiation of these proceedings.

During the hearing conducted by the undersigned, DCA produced evidence that the room occupied by the school was blocked off from the rest of the building and in much better condition than the rest of the building. There is an egress directly to and from that room to the outside, and the room has its own bathroom. The day the fire marshal was present the classroom toilet was clogged but it was usually in working order.

DCA stated that the room had adequate heating without use of the boiler, which was not used to heat the building because of its low occupancy rate. The classroom was heated by electric heaters and kerosene heaters.

DCA disputes that there were any kerosene containers in the classroom, and although there is a photo in the Fire Marshal’s report of two enclosed kerosene containers next to a kerosene heater outside of the room in the hallway, there does not appear to be any kerosene containers in the classroom based on the pictures in the Fire Marshal’s report. DCA also disputes that there were children huddled around a heater and disputes that the room was too cold. None of the photos in the Marshal’s report depict children huddled around a heater. DCA stated that sometimes kerosene heaters were used to keep the building warm but not when students were present.

Moreover, it does not appear that there were any leaks in the classroom, nor any mold in the classroom. Students were also not supposed to leave the classroom except for the time when the classroom bathroom toilet was not working.

After due consideration of the three agency reports and the factual disputes DCA raised, the totality of the evidence shows that DCA failed to meet minimum health and safety standards required by 511 IAC 6.1-1-4(A) and 511 IAC 6.1-2, which apply to the entire building; this resulted in the Fire Marshal's evacuation order. DCA found a new location for the students for the time being, and is working to fix the problems identified in the three agency reports, but the Walnut Street building remains unoccupied until all health and safety code issues are remediated.

Assessment

State-accredited nonpublic schools must comply with assessment requirements, which includes the proper administration of the ILEARN program. IDOE's Office of Assessment conducted a monitoring visit of DCA in the spring of 2019. As a result of the monitoring visit, the following issues were identified by IDOE representatives:

- Although attendance documentation was provided, documentation of test administration training was not provided to the Department.
- Although documentation of the spring 2019 Test Security refresher training was provided, the school did not provide documentation of fall 2018 Test Security Training.
- All schools are required to maintain secure storage of test materials and to confirm that only the testing coordinator or administrator can access the materials. The school could not describe or demonstrate that test materials were stored in a location that was locked or secured. The test coordinator alluded to keeping other "important" documents at the test coordinator's personal residence. The test coordinator was unaware that there are materials to be securely stored with online testing.
- All schools are required to maintain controlled and limited access to secure materials, including chain of custody documentation with signatures, times, and dates that materials were removed or returned. The test coordinator could not describe or demonstrate that access to secure materials is controlled, materials are inventoried or counted prior to the examiners receipt of materials, or after examiners return materials at the end of each testing day.
- All schools are required to ensure local monitoring of testing rooms during testing. No testing rooms were monitored at the school.
- All required staff must sign Testing Security and Integrity Agreements prior to testing. Although Testing Security & Integrity Agreements were provided, they were not signed until after January 2019.

DCA's failure to properly administer the statewide assessment is a violation of state accreditation requirements. IC 20-32-1-1; 511 IAC 6.1-1-4(F). It should be noted that DCA is working with IDOE to fix these issues through a corrective action plan outlined by IDOE; further, IDOE stated that the scores will not be invalidated as a result.

Freeway Contract

IDOE raised concerns with DCA's use of virtual instruction and curriculum during its assessment visit. Two freeway petitions have been filed with the state, one approved by the SBOE in April of 2013 and an amendment submitted in 2018 to IDOE. In its 2013 petition, DCA indicated it was in the process of developing its curriculum and would ensure alignment to Indiana standards. The 2013 petition also mentioned integration of technology in instruction. In its 2018 petition, Delaware Christian Academy indicated that the school's curriculum was adjusted to align with new Indiana standards. The textbooks used would be produced by Alpha Omega publishing, and the school would use the Alpha Omega Online Academy. DCA stated at the hearing that it uses a blended model of instruction.

The undersigned does not address this issue for reasons stated in footnote two of this document.

III. Proposed Determination

Due to testing and facility issues,² the undersigned recommends SBOE revoke DCA's freeway accreditation. Because the school found another location for the remainder of this school year, and to mitigate further disruption to the students, the recommendation is that the revocation take effect at the end of the 2018-19 school year on June 30, 2019. For the 2019-20 school year, DCA may submit a request to IDOE for a one-year observation period and, if the facility and testing issues are resolved, SBOE could consider accreditation at the end of the observation period.

² The issue raised regarding violation of the freeway contract due to the use of virtual learning warrants no further action. If DCA opts to continue operation for a year under IDOE observation it can submit updated information in its paperwork to IDOE.

NOTICE OF POST-PREHEARING RIGHTS

This Proposed Determination will be submitted to SBOE for consideration and to make a final determination during the Board's monthly business meeting on April 10, 2019. This meeting will also be considered an administrative hearing for purposes of considering DCA's accreditation status. Representatives from DCA may attend the meeting/hearing and directly address the Board members.

Dated: April 1, 2019



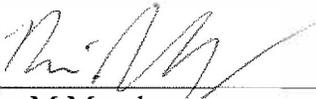
Brian M Murphy
Administrative Law Judge, Chief of Staff
Indiana State Board of Education

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent to the following via electronic mail:

Dr. Michael N. Baur
mbaur@dcauncie.net

Dated: April 1, 2019



Brian M Murphy
Administrative Law Judge, Chief of Staff
Indiana State Board of Education