

MEMORANDUM

DATE: June 16, 2008

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell
Chairperson
State Council for Persons with Disabilities

RE: H.B. 242 [Child Victim Redress]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 242 which is designed to expand and clarify the availability of redress against public employees and agencies, including school districts. The bill would waive sovereign immunity and waive the protections of the State Tort Claims Act, allowing child victims of sex abuse to obtain redress from public employers. A finding of gross negligence would ostensibly still be required to impose any liability on public employers. See Title 10 Del.C. §8145(b) and H.A. 2 to H.B. 242. SCPD endorses the proposed legislation since it would provide public employers with a legal incentive to be vigilant and responsive to evidence of sex abuse of students. Moreover, sex abuse within public settings appears to be a pervasive problem justifying redress if public agencies are determined to have been grossly negligent in protecting students.

As background, in 2007, legislation (S.B. 29) was enacted which removed the statute of limitations for child victims of sexual abuse by adults. The bill also established a 2 year window after date of enactment (July 20, 2007) for victims to sue perpetrators if the pre-existing statute of limitations had already expired. Employers of perpetrators could be held liable only upon a finding of gross negligence.

As the May 28 article indicates (attached), it is anomalous for the Delaware Child Victim's Act to only apply to private entities since more (125,000+) children are subject to sex abuse within public settings. The article provides some examples of victimization within Delaware public school settings. Consistent with the attached June 10, 2002 News Journal article, sex abuse of children by public school employees has historically received "little attention beyond a few sensational cases" despite the scope of the problem. The article cites an Education Week national study which documented 244 cases of teacher-student sex abuse in a 6 month period.

Thank you for your consideration and please contact SCPD if you have any questions regarding our

position on the proposed legislation.

cc: The Honorable Ruth Ann Minner
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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