

# MEMO

To: SCPD P&L Committee  
From: Brian Hartman  
Subject: S.B. No. 245 (Student Teacher Criminal Background Checks)  
Date: 11/16/2010

I am providing this critique of S.B. No. 245 as a supplement to my May 11 memo. Given time constraints, this analysis should be considered preliminary and non-exhaustive.

This bill was introduced on May 6, 2010. As of May 12, it remained in the Senate Education Committee.

As background, the Department of Education published a regulation in 2008 establishing a procedure for conducting criminal backgrounds checks for student teachers. See attached 12 DE Reg. 329 (September 1, 2008). The Department later determined that State legislation would be necessary to implement the procedure and the effective date of the regulation was first deferred until January 2010 and later deferred to January, 2011. See attached 13 DE Reg. 445 (October 1, 2009) and 13 DE Reg. 843 (December 1, 2009). The SCPD and GACEC submitted comments to the DOE expressing concern that the delay was compromising student safety and requesting that the DOE prioritize facilitation of the necessary State legislation. The October 29, 2009 GACEC letter is attached for facilitated reference. The Councils also suggested that the DOE develop a model standard for colleges and public schools. The DOE agreed with these suggestions. See 13 DE Reg. at 844. The introduction of H.B. No. 245 is therefore a very welcome development and I recommend endorsement of the bill subject to consideration of two (2) amendments.

First, the bill appears to create a new crime (lines 64-65) and a “civil penalty” of up to \$5,000 for each violation with jurisdiction given to JP Courts for adjudication (lines 60-62). The Delaware Constitution (Art. IV, §28) contemplates a 2/3 vote for bills extending JP Court jurisdiction over crimes. Title 10 Del.C. §9202 extends criminal jurisdiction of JP courts to any matter “conferred upon them by law”. Out of an abundance of caution, the prime sponsors may wish to consult Legislative Counsel to confirm that the bill does not require a “supermajority” vote.

Second, in their commentary on the 2008 version of the DOE regulation, the Councils observed that there was no provision addressing student teachers placed in

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Delaware public schools by out-of-state colleges (e.g. West Chester University; Salisbury University). The DOE responded as follows:

A comment was received related to the issue of how non-Delaware student teachers are regulated related to criminal background checks. The Department appreciates the observation and has taken this comment under advisement for future revision.

12 DE Reg. 329, 330 (September 1, 2008)

Unfortunately, H.B. 245 is limited to Delaware institutions of higher education (lines 9-10). It would be preferable to include some “enabling” language in the bill authorizing the DOE to issue regulations covering out-of-state colleges placing student teachers in Delaware public schools. For example, the following could be added at line 56:

The Department is also authorized, through regulation, to establish procedures for placement of student teachers in Delaware public schools by out-of-state institutions of higher education if criminal background checks or equivalent safeguards can be implemented.

I recommend sharing the above observations and recommendations with the prime sponsors and the DOE.

Attachments