DISABILITIES LAW PROGRAM
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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Legislative & Regulatory Initiatives

Date: March 2, 2015

I am providing my analysis of eight (8) legislative and regulatory initiatives in anticipation of the March 11 meeting. Given time constraints, the commentary should be considered preliminary and non-exhaustive. I deferred analysis of H.B. 36, which addresses solitary confinement, to provide time for some additional research.

1. DSS Final Child Care Subsidy Program Regulation [18 DE Reg. 697 (3/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in January, 2015. A copy of the SCPD's January 30, 2015 memo is attached for facilitated reference.

In a nutshell, the Division of Social Services proposed to delete regulations requiring participants in the Child Care Subsidy Program to cooperate with the Division of Child Support Enforcement as a condition of eligibility. The Councils endorsed the proposal subject to an inquiry concerning a "6-month report".

In adopting a final regulation, the Division has acknowledged the endorsements and revised the "6-month report" reference by adding a citation and substituting "require" for "receive" as suggested by the Councils. Since the regulation is final, and DSS amended the reference to the "6-month report", I recommend no further action.

2. DMMA Final Certification & Regulation of Medicaid MCOs Reg. [18 DE Reg. 693 (3/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in January, 2015. A copy of the GACEC's January 26, 2015 letter is attached for facilitated reference.

The Division of Medicaid & Medical Assistance has now adopted a final regulation which incorporates some amendments prompted by the commentary.

First, the Councils identified some incorrect citations to federal regulations. DMMA corrected the references.

Second, the Councils suggested that MCO demonstration of net equity in excess of $10 million was too low. The Councils also suggested deletion of the brackets surrounding $10. DMMA removed the brackets but opined that the $10 million figure is sufficient.

Third, the Councils recommended review of §5.0 to ensure consistency. The Division revised the section based on the comment.

Fourth, the Councils recommended a 6-month data report on costs and unpaid claims rather than an annual report. No change was made. The Division is comfortable with annual reporting.

Fifth, the Councils questioned when the performance bond lapses since an MCO terminating participation in the DSHP/DSHP+ could default on unpaid bills. DMMA clarified that this is addressed in the MCO contracts and unpaid invoices can be paid from the performance bond.

Sixth, the GACEC noted that use of the acronyms "GAAP" and "STAT" without explanation could be confusing. The Division substituted "generally accepted accounting principles" for "GAAP" and deleted the reference to "STAT".

Since the regulation is final, and the Division addressed each comment proffered by the Councils, I recommend no further action.

3. DMMA Prop. HCBS "Settings" Transition Plan [18 DE Reg. 681 (3/1/15)]

The Centers for Medicare and Medicaid Services (CMS) issued regulations in January, 2014 outlining what settings qualify as "home and community-based" for purposes of Medicaid waivers. The regulations contain few "bright lines". In many instances, the determination of whether a setting qualifies for waiver coverage will be based on consideration of multiple factors.

Each state is required to submit a plan no later than March 17, 2015 to CMS describing how it will transition its system to achieve conformity with the CMS regulations. In early February, 2015 the Division published its draft plan for comment. The DLP submitted written comments dated February 10 and February 23. The SCPD Policy & Law Committee endorsed the February 10 comments at its February 12 meeting. The GACEC endorsed the February 10 and February 23 comments at its February 17 meeting.

The Division is now formally soliciting comments on the same initiative in the Register of Regulations. I recommend that the SCPD and GACEC submit comments responsive to the solicitation in the Register based on the February 10 and 23 DLP analysis.

4. H.B. No. 12 (School Nurse Funding)

This legislation was introduced on January 7, 2015. As of March 1, it awaited action by the House Education Committee. It is earmarked with an incomplete fiscal note.

As background, the attached Title 14 Del.C. §1310 currently authorizes school nurse funding for districts based on 1 nurse per 40 state units of pupils. Districts are also required to have "at least 1 school nurse per facility". If the "1-40" funding formula is insufficient to provide for 1 nurse per facility, the districts are directed to use either Division III equalization funds (§1707), academic excellence funds (§1716), or discretionary local operating expense funds to make up the shortfall.

The implication of the synopsis to H.B. No. 263 is that some public schools lack a nurse despite the statutory requirement. The bill authorizes public schools to apply for supplemental State funds subject to annual appropriations. The bill also authorizes a district which receives the supplemental State funds to increase its local tax to pay for the local share of employment costs without referendum. See line 11 and Title 14 Del.C. §1902(b).

Identical legislation (H.B. No. 263) was introduced in 2014. It was released from the House Appropriations and Education Committees but did not receive a vote by the full House. H.B. No. 263 had the attached fiscal note reflecting a State share of approximately $1.2 million annually. The SCPD endorsed the predecessor bill. See attached April 30, 2014 memo.

I recommend endorsement. The availability of school nurses has several salutary effects. First, it promotes inclusion of students with disabilities who may require some nursing services to be successful in integrated settings. Second, it facilitates screening of students for health problems. Third, it facilitates quick response in the event of a student injury or emergency (e.g. seizure). However, the sponsors may wish to consider an amendment. The attached §1310(b) only applies the requirement of a nurse in each facility to school districts, not charter schools. Therefore, it is somewhat anomalous for H.B. No. 12 to refer to the requirement that only applies to districts and then authorize supplemental funding for both districts and charter schools. It would be preferable to require both district and charter schools to have a school nurse in each facility.

5. S.B. No. 28 (Office of Defense Services)

This legislation was introduced on January 29, 2015. As of March 1, it awaited action by the Senate Judiciary Committee.

The legislation would streamline the operation of the system for providing counsel to indigent defendants in criminal proceedings. Currently, the Public Defender's Office represents approximately 83% of indigent defendants. The balance are provided with a contract attorney through the Office of Conflict Counsel. The bill would consolidate the administrative functions of the Public Defender and Office of Conflict Counsel while still protecting clients from conflicts of interest.

I have the following observations.

First, while the bill changes the "Office of the Public Defender" to "Office of Defense Services" (lines 3-5) and the chapter is designated the "Office of Defense Services Act" (line 82), the bill does not amend the title to Chapter 46 which will still read "Chapter 46. Public Defender". The sponsors may wish to add an amendment to change the chapter title.

Second, in line 8, the word "appointed" should be stricken. It is not part of the current statute.

Third, the legislation (lines 37-41) contains limits on salaried attorneys "engaging in the practice of law outside the duties of the Office of Defense Services." In the same section, the limitation is arguably narrower, i.e., barring "engaging in private law practice". The sponsors may wish to clarify the scope of the restriction. For example, could a salaried lawyer receive compensation for serving as a part-time adjunct Law School Professor, writing a legal treatise or article, teaching a seminar, serving as a legislative attorney in the House or Senate, serving as a mediator or arbitrator, or serving as a State administrative hearing officer? Even judges are allowed to teach, lecture, and write. Compare attached Delaware Judges' Code of Judicial Conduct, Canon 3.

Fourth, lines 49-51 merit revision. Literally, the sentence reads that the court may appoint an attorney other than a qualified counsel. This makes no sense. It suggests that the court would appoint someone who is not with the Office of Conflicts Counsel and not a qualified counsel.

Fifth, there are many references to the Office of the Public Defender or Public Defender throughout the Code. See, e.g., Title 11 Del.C. §§8701(b)(6) and 9502; Title 13 Del.C. §2102; and Title 29 Del.C. §3303(a) . Under the bill, there is no longer a "Public Defender". There is a "Chief Defender" (line 7) and a "Public Defender's Office" (line 5). Ideally, the other references throughout the Code should be amended to conform to the new language.

I recommend sharing the above observations with policymakers, including the Public Defender.

6. H.B. No. 45 Epilog: DOE Flexible Funding Pilot

As background, the Department of Education promoted development of a pilot "flexible funding" initiative in 2014. An authorization was included in the attached §367 of the FY15 budget epilog establishing a working group to develop a pilot plan for submission to the Governor and Joint Finance Committee by December 1, 2014. The working group had no representatives of parent organizations, student organizations, or agencies (e.g. PIC; GACEC) which focus on special education. The initiative was advertised as not affecting special education funding. See attached June 20, 2014 News Journal article which recites as follows: "The group's plan would not change how special education funding is distributed and would not alter salary schedules."

The final report was issued in December. The GACEC subsequently obtained a briefing on the report from the Deputy Secretary of Education and submitted the attached January 21, 2015 letter outlining concerns and recommendations.

The pilot is included in the proposed FY16 budget bill. See attached §353 of H.B. No. 45. The DSEA asked the JFC to "not accept" the pilot proposal in its comments in the DOE JFC budget hearing. See attachment.

Consistent with the January 21, 2015 GACEC letter, I have the following observations.

First, as promoted by the GACEC, the epilog does include an assurance that the pilot would not "trump" the existing statutory requirement of a school nurse in each facility. This merits endorsement.

Second, as promoted by the GACEC, the epilog exempts Pre-K units. However, it does not exempt 4-12 Basic Special Education units as defined in 14 Del.C. §1703(a). Since the majority of special education students are included in the "Basic" unit, funding for most special education students is subject to conversion and/or diversion. This could have unfortunate results for such students. It would preferable to exempt the special education "Basic" funding on the same basis as the exemption for "Intensive" and "Complex" units.

Third, H.B. No. 30 (with 32 sponsors) is currently pending. It would expand the "4-12 Basic Special Education unit" to a "K-12 Basic Special Education unit". Enactment would cut the unit count for the covered K-3 special education students almost in half ,i,e. from 16.2 to 8.4. It is somewhat anomalous to specifically focus additional resources on this population while contemporaneously authorizing a pilot to divert or reallocate the same funds.

Third, current law [14 Del.C. §1321(e)(13)] provides the following protection of funding for special education students, including those counted under the "Basic" unit: "All earned units generated by students receiving special education services shall be used to support these students." This protection is reinforced for students generating Basic Special Education units [14 Del.C. §1703(d)(4)b7]. The pilot program would allow districts to circumvent this protection since the epilog recites that it is "(n)otwithstanding any sections of the Delaware Code to the contrary" (lines 14-15). Parenthetically, epilog language (lines 24-26) purporting to protect special education funding will have little effect since IEPs and §504 plans rarely include staff composition or staff-pupil ratios.

Fourth, the epilog contemplates reporting by participating districts (lines 6-8 and 24-27). The epilog could be improved by including the equivalent of the following excerpt from Title 14 Del.C. §4112F: "(2) To facilitate data collection and analysis, the Department of Education may adopt a uniform reporting document and may require reporting of data in a standardized electronic or non-electronic format." It would assist the Department in aggregating data if it were submitted in a uniform format. It would also be preferable to require each participating district to post its annual report (line 24) on its website to facilitate public review.

I recommend sharing the above analysis with policymakers, including the Attorney General and DSEA

7. H.B. No. 30 (Basic Special Education Unit)

This bill was introduced on January 28, 2015. As of March 1, it awaited action by the House Education Committee. It is earmarked with an incomplete fiscal note. It lists 25 House and 7 Senate sponsors.

Background is provided in the attached January 29, 2015 News Journal article. There are currently some anomalies in the unit count system for students who qualify for special education.

First, special education students of all ages (Pre-K to 12) with "deep-end" needs are funded through "Intensive" or "Complex" units (lines 12-13). In contrast, special education students with "basic" needs are funded through the following units: Preschool (pre-kindergarten) and Basic Special Education (grades 4-12). There is an obvious gap, i.e, there is no distinct special education unit for students with basic needs in grades K-3. The K-3 special education students with basic needs are merged into a K-3 unit with all other students (line 10).

Second, the result of the above system is reduced funding for K-3 special education students with basic needs. The aberration is illustrated in the following table:

"BASIC NEEDS" SPECIAL EDUCATION STUDENT FUNDING

GRADE	UNIT COUNT (number of students needed to generate a unit)
Preschool (pre-K)	12.8
K-3	16.2
4-12	8.4

It is "odd" to have "richer" unit counts for very young (pre-K) students and students in higher (4-12) grades. Moreover, the difference in funding is dramatic. Identical K-3 students generate roughly half of the funding of the 4-12 students (16.2 versus 8.4).

The impact of the anomaly is difficult to measure. A district's duty to identify students with disabilities and provide a free, appropriate public education is not statutorily diminished by lower funding for the K-3 special education population (14 Del.C. §§3101, 3120, and 3122). However, it is logical to assume that reduced funding may influence the availability of services and supports for this cadre of students.

I recommend endorsement subject to one amendment. Line 57 should be corrected as follows: "and not ~~counted in the intensive unit or complex unit described later in this section~~ identified as eligible for special education and related services." This is the approach adopted for the comparable 4-12 regular education unit at line 70.

In their discretion, the sponsors may also wish to consider renaming the "K-3" unit as "K-3 Regular Education" (lines 10) for equivalence to the "4-12 Regular Education" unit (line 11). However, all subsequent references to the K-3 unit throughout Title 14 would then have to be changed as well, including references at lines 56 and 58. This could be addressed in subsequent legislation.

I recommend sharing the above analysis with policymakers.

8. S.B. No. 33 (IEP Process)

This legislation was introduced on January 29, 2015. There are 16 House sponsors and 8 Senate sponsors. As of March 1, 2015, it awaited action by the Senate Education Committee.

Background is provided in the attached February 2, 2015 article. In a nutshell, the Legislature established an IEP task force in 2014 through SCR 63. The task force issued its final report in January, 2015 with several recommendations. S.B. No. 33 is intended to implement some of the task force recommendations. For easy reference, the attached article (p. 2) lists the 9 task force recommendations embodied in the bill.

Overall, the legislation should improve the IEP development process and content. However, the sponsors may wish to consider some amendments to address multiple concerns.

First, there are two references to "LEAs" (lines 24 and 80). This is a federal acronym for "local educational agency" which is used in the federal Individuals with Disabilities Education Act ("IDEA"). See 20 U.S.C. 1401(19). The term is not defined in the bill and the term is not used in Title 14 Del.C. Ch. 31. In line 24, I recommend substituting "School districts and charter schools" for "The LEAs". In line 80, I recommend substituting "school districts and charter schools" for "the LEAs".

Second, it is unclear if §3131(a) applies to charter schools. It literally applies to a "school or school district" (line 33). Elsewhere, the bill generally refers to charter schools and school districts (e.g. lines 21, 50-51). It would be preferable to amend line 33 as follows: "No charter school or school district, or any person acting under the authority of a charter school or school district, shall..."

Third, lines 82-83 is similarly unclear. It refers to "data in the school or school district's possession". I recommend amending the reference as follows: "...the charter school's or school district's possession..."

Fourth, the bill (lines 14-17) includes the following charter school obligation:

> (g) By August 1, 20115, each charter school shall have designated a responsible person at the school to receive training from the Department of Education regarding the legal responsibilities of charter schools with respect to preparation of individualized education programs for students with disabilities and resources available to charter schools to assist in preparation of such programs.

Literally, this could be interpreted as a 1-time obligation for a single staff member to receive 1-time DOE training. There would be no "on-going" requirement that the charter school maintain a staff member who has been trained. There is also no expectation of refresher training. Consider the following substitute for lines 14-17:

> (g) Effective January 1, 2016, each charter school will designate and maintain at least one professional staff member who has completed training approved by the Department of Education regarding the legal responsibilities of charter schools with respect to preparation of individualized education programs for students with disabilities and resources available to charter schools to assist in preparation of such programs. The Department of Education, by regulation, shall define the scope and timetable of initial and refresher training.

Fifth, lines 37-39 include the following enforcement provision to protect employees and contractors who make statements in an IEP meeting resulting in adverse action by the public school:

> Entities or persons with violate this subsection shall be subject to the same injunctive and monetary sanctions as persons or entities that engage in unlawful practices pursuant to Title 19, Chapter 7 of the Delaware Code.

There are a few concerns with this approach.

A. The protections in the statute apply not only to employees, but independent contractors as well (line 34). Speech, occupational, and physical therapists often work in schools as contractors. Title 19, Chapter 7 is limited to employment discrimination involving employees. Contractors are not covered. See, e.g., Title 19 Del.C. §710(5).

B. Simply reciting that violators are subject to the same injunctive and monetary sanctions as violators of Title 16 Del.C .Ch. 7 results in ambiguity. For example, does this provision in Title 14 give the Department of Labor jurisdiction to process administrative complaints under Title 19 involving IEP-related violations?

I recommend consideration of a different approach.

The "Whistleblower" statute, Title 19 Del.C. Ch. 17, defines "employee" as covering both employees and independent contractors. See Title 19 Del.C. §1702(1). Moreover, the targeted conduct involves public agencies trying to "silence" personnel and disallow honest statements in IEP meetings. Therefore, it provides an "apt" option to cross reference to facilitate enforcement. Consider the following amendment to the bill:

A. Amend the last sentence in lines 37-39 as follows:

~~Entities or persons who violate this subsection shall be subject to the same injunctive and monetary sanctions as persons or entities that engage in unlawful employment practices pursuant to Title 19, Chapter 7 of the Delaware Code.~~ In addition to any other remedies available under law or contract, a person aggrieved by conduct proscribed by this section may apply for redress as authorized by Chapter 17 of Title 19 of the Delaware Code.

B. Amend §1703 of Title 19 by adding a new paragraph (6) as follows:

(6) Because an employee makes statements protected by §3131 of Title 14 in connection with an individualized education program, including statements made in preparation for or at a meeting, review or conference concerning a child with a disability's free, appropriate public education.

I recommend sharing the above observations and recommendations with policymakers.

Attachments

E:leg/315bils
F:pub/bjh/legis/2015p&l/315bils

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STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: January 30, 2015

TO: Ms. Sharon L. Summers, DSS
Policy, Program & Development Unit

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

RE: 18 DE Reg. 514 (DSS Proposed Child Care Subsidy Program Regulation)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its regulations regarding the Child Care Subsidy Program. The proposed regulation was published as 18 DE Reg. 514 in the January 1, 2015 issue of the Register of Regulations. SCPD has the following observations.

Historically, participants have been required to cooperate with the Division of Child Support Enforcement as a condition of eligibility. The Division is proposing to delete all regulations requiring such cooperation. Justification includes the following: 1) elimination of delays in accessing child care services; 2) undermining informal arrangements in which non-custodial parents provide supports; and 3) fear of retribution in domestic violence situations.

SCPD endorses the proposed regulation. The Child Care Subsidy Program is an important support service for individuals enrolled in vocational training or engaging in employment. Council has only one minor recommendation. Section 11004.11 refers to a six month interim report. SCPD did not identify any other references to a 6-month report within Chapter 11000. DSS may wish to assess whether the 6-month report is still current practice. If it is, the Division may wish to revise the following sentence: "Only child care/food benefit cases will receive an interim report." SCPD suspects that the word "receive" should be "require".

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or comments on the proposed regulation.

cc: Ms. Elaine Archangelo
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

18reg514 dss-child subsidy 1-30-15

STATE OF DELAWARE

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS
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January 26, 2015

Sharon Summers
Planning & Policy Development Unit
Division of Medicaid & Medical Assistance
1901 N. DuPont Hwy.
P.O. Box 906
New Castle, DE 19720-0906

RE: DMMA Proposed Certification and Regulation of Medicaid MCOs Regulation [18 DE Reg. 504 (01/01/15)]

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Medicaid and Medical Assistance (DMMA) proposal to adopt standards for fiscal solvency of Medicaid managed care organizations (MCOs).

DMMA contracts with MCOs to administer the Diamond State Health Plan and Diamond State Health Plan Plus programs. At pp. 504-505. Federal regulation [42 C.F.R. §438.116] requires MCOs to either meet state solvency standards for private health maintenance organizations or be licensed or certified by the state as a risk-bearing entity. Delaware DMMA is adopting the second option, i.e., it will certify MCOs which meet certain standards contained in the proposed regulation.

The GACEC would like to share the following concerns.

First, on p. 504, the references to 42 C.F.R. §483.1 and 42 C.F.R. §483.116 are incorrect. The correct citations are 42 C.F.R. §438.1 and 42 C.F.R. §438.116 respectively.

Second, §3.1.2 requires an MCO to demonstrate "net equity in excess of $[10] million." At a minimum, the brackets should be deleted. On a substantive level, Council questions whether net equity of $10 million is sufficient. The Medicaid population in Delaware has grown to approximately 230,000 individuals. Most of the Medicaid population in Delaware is served by two MCOs (Highmark; United Health Care). Assuming equal enrollment, each MCO would serve 115,000 individuals and have approximately $86 in equity for each participant. Some of the $10

million in equity could be in fixed or non-liquid assets out-of state or out of the country. Council recognizes that the managed care system is intended to not tap equity, i.e., monthly State capitation payments (§5.2) should ideally cover MCO outlays. Moreover, DMMA enjoys the protection of a performance bond equal to one month's capitation payment. In reality, an MCO could suffer huge losses if an epidemic or natural disaster resulted in unanticipated health costs. An MCO with only $10 million in net equity may be unable to absorb such costs.

Third, §5.0 may merit further review to ensure consistency. On the one hand, an MCO is required to submit a performance bond equal to the projected first month's capitation payment "up front". See §§5.1 and 5.2. On the other hand, §5.4 requires MCO supplementation of the bond "if the performance bond falls below 90% of the first month's capitation in any month". Literally, this could never occur since the performance bond based on 100% of the first month's capitation amount was already submitted to DMMA up front. If DMMA intends that the MCO increase the bond based on later increases in monthly capitation amounts, the regulation should be reworded.

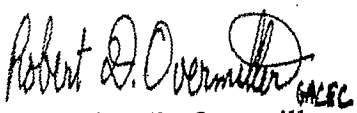
Fourth, §9.1 contemplates MCO maintenance of a system for tracking incurred but unreported costs and unpaid claims by category (e.g. hospital; nursing facility). The MCO is expected to review its system annually and DHSS can prompt adjustments. DMMA may wish to consider requiring a six-month report of data under this section. If a year passes and the system/methodology has resulted in grossly inadequate reservation of funds, it may be too late to intervene in the face of huge unpaid bills.

Fifth, it is unclear when the performance bond required by §5.0 lapses. Obviously, an MCO which terminates its participation as an MCO will still have to cover bills incurred during the contract period. It is possible that the DMMA-MCO contract addresses the duration of the performance bond. If it does not, the regulation could be revised to include some standards.

Sixth, Council would also recommend that GAAP and STAT be spelled out in sections 3.1.2 and 4.1.1.

If you have any questions on our comments, please contact me or Wendy Strauss at the GACEC office.

Sincerely,



Robert D. Overmiller
Chairperson

RDO:kpc

§ 1310 Salary schedules for school nurses.

(a) All nurses who hold appropriate certificates shall be paid in accordance with § 1305 of this title effective July 1, 1979.

(b) A reorganized school district may employ personnel to be paid for 10 months per year from state funds pursuant to this section in a number equal to 1 for each 40 state units of pupils, except that in schools for the physically handicapped within the district the allocation shall be in accordance with the rules and regulations adopted by the Department with the approval of the State Board of Education; provided further, that each reorganized school district shall ensure that it has at least 1 school nurse per facility. To the extent that the funding formula outlined above does not provide for 1 school nurse per facility, each reorganized school district shall meet this requirement out of funding provided under § 1707 or § 1716 of the title, or out of discretionary local current operating expense funds. Districts shall qualify for partial funding at the rate of 30% of the fractional part of 40 state units of pupils.

46 Del. Laws, c. 48, § 3; 47 Del. Laws, c. 195, § 1; 48 Del. Laws, Sp. Sess., c. 489, § 3; 14 Del. C. 1953, § 1310; 50 Del. Laws, c. 261, § 4; 50 Del. Laws, c. 602, § 1; 52 Del. Laws, c. 344, § 8; 54 Del. Laws, c. 43, § 6; 55 Del. Laws, c. 409, § 4; 56 Del. Laws, c. 143, § 3; 56 Del. Laws, c. 292, § 13; 56 Del. Laws, c. 470, § 3; 57 Del. Laws, c. 333, § 8; 58 Del. Laws, c. 189, § 3; 58 Del. Laws, c. 305, §§ 3, 8, 9; 58 Del. Laws, c. 553; 59 Del. Laws, c. 34; 60 Del. Laws, c. 31, § 1; 61 Del. Laws, c. 407, § 3; 61 Del. Laws, c. 409, § 106; 62 Del. Laws, c. 36, § 1; 62 Del. Laws, c. 68, §§ 42(e), 105; 62 Del. Laws, c. 86, § 39; 70 Del. Laws, c. 118, § 317; 70 Del. Laws, c. 210, § 90; 70 Del. Laws, c. 290, §§ 38, 39; 71 Del. Laws, c. 180, § 68; 75 Del. Laws, c. 350, § 382.;

147TH GENERAL ASSEMBLY

FISCAL NOTE

BILL:	HOUSE BILL NO. 263
SPONSOR:	Representative Jaques
DESCRIPTION:	AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL NURSES.

ASSUMPTIONS:

1. Effective upon signature of the Governor.
2. Delaware Code requires at least one school nurse per facility where state funding is provided at a rate equal to 1 nurse for each 40 state units of pupils. School districts and charter schools also qualify for partial funding for nurses at the rate of 30% of the fractional part of 40 state units of pupils. This formula does not sufficiently provide the full state share of funding to support at least one school nurse per facility, and when this occurs, districts are directed to meet the requirement through discretionary local operating funds or state equalization or academic excellence funds.
3. This legislation will provide the appropriate state share of funding for school districts and charter schools when the existing state funding formula does not provide for the requirement of one school nurse per facility. School districts that receive such state funding will be able to provide the local funding through the match tax pursuant to 14 Del. C. §1902(b).
4. This legislation will generate an additional 17.73 state units of funding for nurses at an average state share of salary of $41,835 and an average local share of salary of $24,268. Other employment costs are equal to 30.44% and health insurance costs at $11,400 per employee.
5. Overall salary and employment costs are assumed to grow 3% annually.

Cost:

	State Share	Local Share
Fiscal Year 2015:	$1,169,647	$561,243
Fiscal Year 2016:	$1,204,737	$578,080
Fiscal Year 2017:	$1,240,880	$595,423

(Amounts are shown in whole dollars)

Office of Controller General
March 19, 2014
MJ:MJ
0271470015

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: April 30, 2014

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. 263 (School District Nurse Funding)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 263, which authorizes districts to apply for supplemental State funds subject to annual appropriations. The bill also authorizes a district which receives the supplemental State funds to increase its local tax to pay for the local share of employment costs without referendum. See line 11 and Title 14 Del.C. §1902(b).

This legislation was introduced on March 18, 2014. As of April 3 it remained in the House Appropriations Committee. The attached fiscal note reflects a State cost of $1,169, 647 in FY15.

As background, the attached Title 14 Del.C. §1310 currently authorizes school nurse funding for districts based on 1 nurse per 40 state units of pupils. Districts are also required to have "at least 1 school nurse per facility". If the "1-40" funding formula is insufficient to provide for 1 nurse per facility, the districts are directed to use either Division III equalization funds (§1707), academic excellence funds (§1716), or discretionary local operating expense funds to make up the shortfall. The implication of the synopsis to H.B. No. 263 is that some public schools lack a nurse despite the statutory requirement.

SCPD endorses the proposed legislation. The availability of school nurses has several salutary effects. First, it promotes inclusion of students with disabilities who may require some nursing services to be successful in integrated settings. Second, it facilitates screening of students for health problems. Third, it facilitates quick response in the event of a student injury or emergency (e.g. seizure).

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council
HB 263 school district nurse funding 4-30-14

CANON 3

A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties.

RULE 3.1 Extra-judicial Activities in General.

A judge, subject to the proper performance of judicial duties, may engage in the following law-related activities if in doing so the judge does not cast reasonable doubt on the capacity to decide impartially, independently and with integrity any issue that may come before the judge:

(A) A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice (including projects directed to the drafting of legislation).

Comment:

In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

(B) A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties.

Comment:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives.

(C) A judge may engage in activities to improve the law, the legal system, and the administration of justice.

(D) A judge should not use judicial chambers, resources, or staff to engage in activities permitted by this Canon 3, except for uses that are *de minimis*.

RULE 3.2 Appearances before Governmental Bodies and Consultation with Government Officials.

(A) A judge may appear at a public hearing before or otherwise consult with an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice to the extent that it would generally be perceived that a judge's knowledge or experience as acquired in the course of the judge's judicial duties provides special expertise in the area.

Comment:

A judge may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship.

(B) A judge acting *pro se* may also appear before or consult with such officials or bodies in a matter involving the judge or the judge's legal or economic interest or when the judge is acting in a fiduciary capacity.

RULE 3.3 Testifying as a Character Witness.

A judge should not testify voluntarily as a character witness.

Comment:

The testimony of a judge as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Rule, however, does not afford the judge a privilege against testifying in response to an official summons. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

RULE 3.4 Appointments to Governmental Positions.

(A) A judge should not accept appointment to a governmental committee, commission, board, agency or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent the judge's country,

and reduced priced lunch. The use of an alternative measure shall not affect any student's eligibility to receive free or reduced meals.

Section 367. The Department of Education is authorized to establish a working group to develop a pilot plan for education funding flexibility for consideration to be implemented through the Fiscal Year 2016 budget process. Said working group shall consist of the Secretary of Education (or designee), Director of the Office of Management and Budget (or designee), the Controller General (or designee), two members of the Joint Finance Committee appointed by the Co-Chairs, a representative from the Delaware State Education Association, a representative from the Delaware Association of School Administrators, a member of the Delaware School Chiefs Officers Association, and three members of the school business managers in which one of these members must represent a vocational-technical school district. The following parameters shall apply to said pilot plan:

(a) Division I units and associated Related Services units earned in Intensive and Complex categories shall be excluded;

(b) All relevant salary schedules and supplemental compensation pursuant to 14 Del. C., c. 13 and the Annual Appropriations Act shall continue to be used for the purposes of salaries of employees;

(c) Participating school districts and/or vocational-technical school districts shall be limited to no more than 5 statewide, receive an affirmative vote of their local board of education to participate in the pilot program, and shall continue to be subject to financial reporting requirements pursuant to 14 Del. C. §1507 and §1509; and

(d) State appropriations for public education shall continue to be earned pursuant to 14 Del. C. c. 13 and c. 17 and the Annual Appropriations Act in which said working group shall have the option to review and make recommendations on updating how units of funding are generated.

The pilot plan for education funding flexibility shall be submitted to the Governor and the Joint Finance Committee by December 1, 2014.

SYNOPSIS

This Bill is the Fiscal Year 2015 Appropriation Act

Author: Joint Finance Committee

6-20-1405

Delaware devising a public school funding overhaul

By Matthew Albright
The News Journal

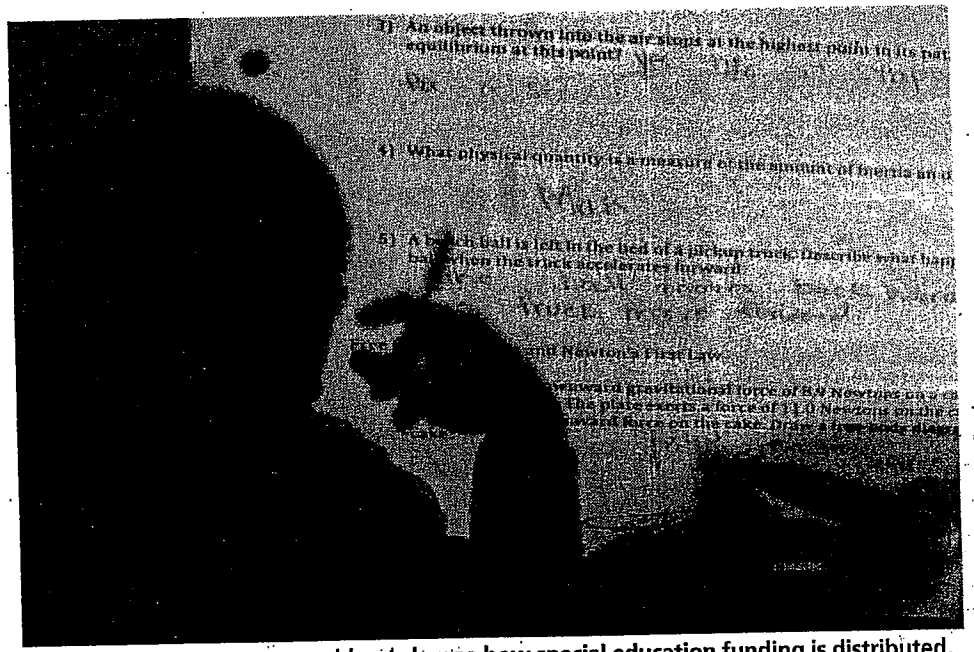
Delaware's state-centric model for funding schools could be headed for a change, as Gov. Jack Markell's administration plans to pilot a new system in two years.

Markell's administration has added to its proposed budget for next year a plan that would create a working group tasked with finding a different way to distribute money that would give districts and schools more spending flexibility.

The current system is highly prescriptive. Based on the number of students enrolled each year, districts get a certain number of "units" that can only be spent on specific things, like teachers, principals or specialists.

School leaders have long complained that this system is outdated and too restrictive, preventing schools from reacting quickly and creatively to challenges they face. Markell said in his State of the State speech this year that the process needed to change.

"We're currently trying to build world class schools with a funding system built in the 1940s, which gives school leaders little discretion in how they use their resources," Markell said in a statement. "We need to give our educators and administrators the flexibility to come up with innovative ways to best serve their students in 21st century classrooms."



The new funding system would not change how special education funding is distributed, nor would it alter salary schedules. A draft is due Dec. 1 THE NEWS JOURNAL

The proposed working group would include representatives of the state Department of Education, Office of Management and Budget, and Controller General, along with the Delaware State Education Association union and school administrators, superintendents and budget officers.

State Rep. Debra Heffernan, D-Brandywine South and a member of the Joint Finance Committee, said there's "pretty strong consensus" that the system needs an update.

"This funding system has been in place for a very long time," Heffernan said. "I think most people agree we need to take a serious look at ways to change it, and that's what this pilot will do."

The group's plan would not change how special education funding is distributed and would not alter salary schedules. It would be due by Dec. 1.

Once the group drafts a new system, it would be implemented in five pilot school districts in the school year that starts in 2015. Those districts have not been chosen.

Red Clay School District Superintendent Merv Daugherty said some districts, especially smaller ones downstate, have expressed interest in joining the pilot. But at a meeting of school chiefs, most said they want to wait to see what specific plans are worked out.

"There's not a lot of detailed information at this time," Daugherty said. "We tend to be very cautious of our budgets, so there are a lot of questions we have to go through before we get on board with this."

Put broadly, though, the idea of more flexibility in spending is appealing to school officials. Schools have asked the state to allow them to do things like reroute money to fund "intervention" teachers that specifically target struggling students, even though those positions are not funded by unit count.

Daugherty cautions that flexibility will not in itself work miracles.

"If you've only got $1,000 to spend, you can do some creative things with it, but in the end it's still only $1,000," he said.

Contact Matthew Albright at malbright@delawareonline.com, 324-2428 or on Twitter @TNJ_malbright.

Governor's Advisory Council for Exceptional Citizens (GACEC)
516 West Loockerman St., Dover, DE 19904
302-739-4553 (voice) 302-739-6126 (fax) http://www.gacec.delaware.gov

January 21, 2015

Dave Blowman, Deputy Secretary of Education
Delaware Department of Education
John G. Townsend Building
401 Federal Street
Dover, DE 19901

Dear Mr. Blowman:

On behalf of the Governor's Advisory Council for Exceptional Citizens (GACEC), I would like to thank you for taking time from your busy schedule to present information to us on the Funding Flexibility Final Report. Council appreciates your taking time to share information on the proposed pilot program and would like to reiterate the following concerns with you.

The GACEC is concerned that allowing special education units designated as "Basic" to be included in the flexibility could mean a decrease in services to those students who represent the largest percentage of beneficiaries of special education services in Delaware. While Council acknowledges that the pilot clearly indicates that special education funds for Intensive and Complex units are exempt from the aggregation, it would be far more prudent to exempt **ALL** special education funds (including Basic) as these funds are already clearly and separately ascribed through needs based funding. As we agreed during our meeting on January 12, this exemption should clearly include Pre-K as well.

Since annual reporting is anticipated, Council recommends that any epilog language include the equivalent of the following excerpt from 14 Del.C. Sec. 4112F: "(2) To facilitate data collection and analysis, the Department of Education may adopt a uniform reporting document and may require reporting of data in a standardized electronic or non-electronic format." It would assist the Department in aggregating data if it were submitted in a uniform format.

There are statutes that require either 98% or 100% of earned funding to benefit the students who generated the funds. See, e.g., 14 Del.C. Sec. 1704. During our meeting, it was pointed out that page 6 of the report states the following" ...the percentage of units that must remain in the building that generates them remain unchanged." Council endorses this approach.

The GACEC further addressed concern that the pilot would allow schools to eliminate school nursing positions. Existing law contemplates a minimum of one school nurse per facility. Council appreciates your willingness to add an assurance that funds for school nurses will not be affected by the pilot. The

GACEC would support language that stated the following: "Participating school districts shall continue to be subject to provisions of 14 Del.C. Sec. 1310(b) regarding school nurses."

Council would like to reiterate the importance of making parents aware of the implementation of any such pilot in a district. While you assured us that the proposals submitted by each district would be approved by both the local board and the Citizens Budget Oversight Committee and be made public on the Department of Education's website, Council maintains that parents need to be made aware of any implementation by other means to ensure the broadest dissemination of information. You agreed with Council that publication of the data and report(s) for public access would be made available.

During our meeting, we also asked that the GACEC be included in discussions with the Citizens Budget Oversight Committee on recommendations prior to their being released to the public.

Again, thank you for your time. As always, we look forward to working with you and the Department. Please feel free to call me or Wendy Strauss at 302-739-4553 should you have any questions or concerns.

Sincerely,

Robert D. Overmiller GACEC

Robert D. Overmiller, Chair
GACEC

RDO:kpc

CC: The honorable Jack Markell, Governor
The honorable Brian Bushweller, Senate
The honorable Debra Heffernan, House of Representatives
The honorable Joseph Miro, House of Representatives
The honorable Matthew Denn, Attorney General
The honorable Mark Murphy, Secretary of Education
The honorable Ann Visalli, Office of Management and Budget
The honorable Michael Morton, Controller General
Lindsay O'Mara, Office of the Governor
Kristin Dwyer, Delaware State Education Association
Kevin Carson, Delaware Association of School Administrators
Matt Burrows, Delaware School Chiefs Officers Association
Jan Steele, Delmar School District
Jason Hale, Wilmington University
Jill Floore, Red Clay Consolidated School District

HB 45 : EPILOG S 353

use, without limitation, the combining of similar unit funded positions to pay for a shared position to perform the services agreed to and payments between the districts for such shared services, provided that the memorandum of understanding is also approved by the Secretary of the Department of Education, with the concurrence of the Director of the Office of Management and Budget and the Controller General.

Section 350. To ensure that districts and charter schools are implementing the needs based funding system appropriately, the Department of Education shall, in cooperation with the Governor's Advisory Council for Exceptional Citizens, create a Certification of Earned Staff Units protocol. The results of all monitoring shall be reported at least annually on the department's website.

Section 351. The provisions of 14 Del. C. c.1, and any implementing regulations in 14 DE Admin Code that the Delaware Department of Education determines to be inconsistent with the Department's ESEA Flexibility Request as approved by the U.S. Department of Education shall not be applicable to Delaware Public Schools and School Districts during the flexibility waiver period, and the department is authorized to promulgate interim regulations consistent with said application and approval which shall be effective during the flexibility waiver period.

Section 352. Notwithstanding any language to contrary, for any appropriate purpose, the Department of Education may use an alternative measure to determine low socio-economic status in lieu of the eligibility for free and reduced priced lunch. The use of an alternative measure shall not affect any student's eligibility to receive free or reduced meals.

Section 353. ~~The Department of Education is authorized to establish a working group to develop a pilot plan for education funding flexibility for consideration to be implemented through the Fiscal Year 2016 budget process. Said working group shall consist of the Secretary of Education (or designee), Director of the Office of Management and Budget (or designee), the Controller General (or designee), two members of the Joint Finance Committee appointed by the Co-Chairs, a representative from the Delaware State Education Association, a representative from the Delaware Association of School Administrators, a member of the Delaware School Chiefs Officers Association, and three members of the school business managers in which one of these members must represent a vocational-technical school district. The following parameters shall apply to said pilot plan:~~

~~(a) Division I units and associated Related Services units earned in Intensive and Complex categories shall be excluded;~~

~~(b) All relevant salary schedules and supplemental compensation pursuant to 14 Del. C., c. 13 and the Annual Appropriations Act shall continue to be used for the purposes of salaries of employees;~~

~~(c) Participating school districts and/or vocational technical school districts shall be limited to no more than 5 statewide, receive an affirmative vote of their local board of education to participate in the pilot program, and shall continue to be subject to financial reporting requirements pursuant to 14 Del. C. § 1507 and § 1509; and~~

~~(d) State appropriations for public education shall continue to be earned pursuant to 14 Del. C. c. 13 and c. 17 and the Annual Appropriations Act in which said working group shall have the option to review and make recommendations on updating how units of funding are generated.~~

~~The pilot plan for education funding flexibility shall be submitted to the Governor and the Joint Finance Committee by December 1, 2014.~~

The Department of Education is authorized and directed to implement the pilot plan of flexible funding outlined in the report submitted December 1, 2014, by the Flexibly Funding Working Group. The pilot may include up to five school districts beginning July 1, 2015. Notwithstanding any sections of the Delaware Code to the contrary, the intent of such flexible funding plan shall be to provide participating school districts with the ability to better coordinate resource allocation decisions with strategic planning and community input, build a system focused on outcomes, foster a climate more conducive to innovation and creativity, increase student performance by allowing the focus of resources on identified student needs, enable staffing decisions to occur at the earliest possible time, promote collaborative procurement practices and allow decision making closest to the student.

The Department of Education shall establish written criteria for participation in the pilot program, using the following basis for the flexible funding model:

(a) The flexible funding pilot shall exclude Division I units and associated Related Services units earned in Pre-K, Intensive and Complex categories. Participating school districts are required to ensure compliance with levels of special education and related services in all approved Individualized Education Programs for all students receiving special education regardless of category and maintain compliance with levels of service required for students with approved 504 plans.

(b) School districts participating in the flexible funding pilot shall continue to earn State appropriations supporting public education, according to the provisions of 14 Del. C. c. 13 and c. 17 and the Annual Appropriations Act.

(c) All relevant salary schedules and supplemental compensation contained in 14 Del. C. c. 13 and the Annual Appropriations Act shall continue to be used for purposes of salaries of employees.

(d) Participating school districts shall continue to be subject to financial reporting requirements of 14 Del. C. § 1507 and § 1509. The Department may coordinate with participating school districts to implement additional reporting requirements as is deemed necessary and appropriate.

(e) Participating school districts shall continue to be subject to provisions of 14 Del. C. § 1310(b) regarding school nurses.

(f) The Department shall establish an index value that is relative to that of a 1.0 teaching unit, for each unit-generating, employee group earned according to 14 Del. C. c. 13. Participating school districts may utilize positions among entitlement areas within their total weighted, earned unit entitlement for the school year.

(g) Participating school districts are authorized to receive cash for up to 10 percent of the total weighted, earned unit entitlement. This option shall only apply if the district has not filled the position at any time during the fiscal year in which it was earned, and if the district makes application to the Department of Education no later than January 31st of the current fiscal year. This cash option value shall be the corresponding amount of a master's degree plus 10 years of experience, as calculated in accordance with 14 Del. C. § 1305, inclusive of the appropriate other employment costs.

(h) For a flexible funding management plan, State entitlement appropriations shall be consolidated into a single appropriation line provided that the following line items are excluded from such consolidation: Unique Alternatives, Division I - Personnel Costs and Cafeteria Funds, Minor Capital Improvement and Equipment, Pupil Transportation and/or cycled funding, such as stipends and competitive grants.

(i) No later than December 31st of each year, school districts participating in the pilot shall provide the Secretary of Education with a report identifying district expenditures and revenues, delineated by federal, state and local funds, and an identification of the number and type of positions supported with state funding during the school year as compared to the positions entitled for funding.

(j) The Department of Education shall annually review the academic progress of each participating district, to ensure that achievement levels are maintained or improved, and to make a determination whether to continue the flexible funding pilot at each district.

SYNOPSIS

This Bill is the Fiscal Year 2016 Appropriation Act.

Delaware State Education Association
Moving Education Forward

2015 Joint Finance Committee
Comments by Frederika Jenner
President, Delaware Education Association

Good afternoon. As President of the Delaware State Education Association, I am honored to appear today on behalf of our more than 12,000 active and retired members. I want to thank you, members of this esteemed committee, for your past support for Delaware educators and community public schools across the state. DSEA members stand strong for student success.

Meeting the state's financial commitments to education is essential. At the same time, we recognize the continued challenges that this presents. Funding for annual step increases, as well as for additional units to support student growth, demonstrates confidence in the work educators do in support of Delaware's students.

There are many proposals that compete for state budget monies. Over the past four years, raising para-educator salaries to the federal poverty level has been one of our priorities. The days when para-educators served as teacher aides are gone. These individuals make it possible for disadvantaged students to succeed and for special needs students to even attend public school. We urge you to consider bringing this initiative to fulfillment.

In past testimony, I have spoken about the need to support education for the "whole child." We have yet to hear from districts, parents, and educators what they value and want to sustain from RTTT.

I was disappointed by the proposal for $7.4 million dollars in RTT sustainability funds, primarily for administrative costs, while at the same time, allotting only $2 million for academic excellence units which fund programs that directly impact kids and classrooms. I believe there needs to be additional funding available to support critical programs for RTI, ELL, and the implementation of CCSS.

Issues related to school funding are on everyone's mind, including Gov. Markell who, in his State-of-the-State address, announced the formation of a committee to examine ways to improve current funding, as well as explore other models. This is long overdue, and we look forward to participating.

Flexible funding is one remedy that has gained some traction. We foresee a number of potential dangers in this approach, including the privatization of critical services, loss of jobs for support personnel currently serving Delaware students, and impacts on arts education and programs like talented & gifted. DSEA is urging JFC to **not accept this pilot proposal but rather to directly address the districts' concerns regarding fractional units and flexibility in cashing in units** in Epilogue and to allow the Governor's committee to discuss how flexibility can play a role in an improved funding system for Delaware schools.

You and I believe that every student deserves a well-rounded and rich education—that every student deserves a fair shot regardless of zip code or socio-economic status. And I know we both believe students and educators deserve safe, secure, and supportive schools. Unfortunately, today's education policy and planning is not responsive to the recommendations of Delaware's district and school leaders. It does not value or recognize the experience of Delaware educators. We need a new path, one charted by educators who know best what it takes to help students succeed.

THE NEWS JOURNAL delawareonline.com

DELAWARE

1-29-UNS

Lawmakers seek $11M to improve special ed

MATTHEW ALBRIGHT
THE NEWS JOURNAL

A group of lawmakers wants to expand services for special needs students to the tune of $11 million, saying it would be a smart investment even in a time when the state isn't flush with cash.

The bill specifically targets students with "basic" special needs in kindergarten through third grade, and could lead to the hiring of as many as 130 new teachers.

"We know how important it is to start early so that kids are on track," said Rep. Kim Williams, D-Newport. "We want to make sure these students' needs are being met early so they do not fall behind the curve."

The lawmakers say the bill targets a major gap in state services.

There are three categories of special needs under state rules: basic, intensive and complex. Currently, the state offers special education services in Pre-K through grade 12 for intensive and complex students, but it only offers services in grades 4-12 for students in the basic category.

Students in the basic category include those with developmental delays, ADHD and similar conditions, among many others.

House Bill 148 would expand special education services to "basic" students in Pre-K through third grade.

"Right now, we're are saying until you reach fourth grade we're not acknowledging their disability," said Nichole Poore, D-New Castle. "This fixes that."

Rep. Kim Williams, D-Newport, said "We know how important it is to start early so that kids are on track. We want to make sure these students' needs are being met early so they do not fall behind the curve."

To do that, the state would hire more teachers so class sizes could shrink and teachers could give more attention to students.

The lawmakers say the investment isn't just smart, it's required. Federal law requires that schools meet the needs of disabled students, and last year the U.S. Department of Education named Delaware as one of only three states that "needed intervention" on fulfilling those duties.

Still, $11 million is a big ask during a time when new spending will be hard to come by.

"It is a tough year to do it, but every year we don't do it is another grade passed up," said Harris McDowell, D-Wilmington North, a co-sponsor of the bill who sits on the budget-writing Joint Finance Committee.

McDowell argues the up-front costs would be offset in the long run because the state will need to take less drastic actions to catch up children in the future.

A spokesman for Gov. Jack Markell said he had not yet had a chance to review the proposal. Markell is set to unveil his proposed budget tomorrow.

Contact Matthew Albright at malbright@delawareonline.com, 324-2428 or on Twitter @TNJ_malbright.

(http://news.delaware.gov)

NEWS.DELAWARE.GOV (HTTP://NEWS.DELAWARE.GOV)

Article

Legislation Introduced to Change Education Plan Process for Students with Disabilities

Date Posted: *Monday, February 2nd, 2015*

Categories: Department of Justice (http://news.delaware.gov/category/justice/)

News (http://news.delaware.gov/category/news/)

Lawmakers, parents, educators, and advocates look to improve education planning for students with disabilities

(http://news.delaware.gov/files/2015/02/IEP-Improvement-Task-Force-Representatives.jpg)
Representatives of the IEP Improvement Task Force at the press conference announcing SB 33 (left to right): Diane Eastburn – Kent County Parent Representative, Patricia Maichle – Director, Developmental Disabilities Council, Rep. Debra Heffernan, Attorney General Matt Denn – Task Force Chair, Sen. Nicole Poore, Dafne Carnright – Governor's Advisory Council on Exceptional Citizens, Bill Doolittle – DE PTA President-Elect.

WILMINGTON – Senators Nicole Poore and David Lawson, Representatives Debra Heffernan, Joseph Miro, and Deborah Hudson, and Attorney General Matt Denn have announced legislation aimed to improve the education of students with special needs, making changes to their educational planning process and providing better resources for their families.

Senate Bill 33 implements the recommendations of the IEP Improvement Task Force, a group of educators, advocates and parents created by the General Assembly to study Delaware's process for creating the individualized education programs to which these students are entitled by federal law and how to make the process less adversarial and intimidating for parents.

"One of the criticisms often levied against education policy is that bureaucrats approach everything from a one-size-fits-all mindset – that we don't consider the individual needs of students or the individual talents of their teachers or paraprofessionals when we make laws. That we don't listen to parents, said Senator Nicole Poore, the lead sponsor of SB 33. "This legislation answers all of those critiques. This brings schools to the table for a conversation about what's right for a particular student, and it holds all our public schools, including charters, accountable for making that happen. The result of this legislation will be more informed parents, educators who are freer to make recommendations and observations during the IEP process and most importantly, children who get an educational experience that's right for them."

Task Force recommendations included in Senate Bill 33, introduced Jan. 29, are designed to:

1. Provide more detailed and helpful information to parents about their rights and resources in the IEP process;

2. Solicit the input of parents and children regarding the IEP process before IEP meetings occur;

3. Provide advance notice to parents and children of documents that will be discussed at IEP meetings;

4. Require the facilitation of parent councils to provide peer support for the parents of students with disabilities;

5. Ensure that teachers, staff, and contract employees do not suffer retaliation for offering their candid opinions during the IEP process;

6. Ensure that employment planning during the IEP process is consistent with Delaware's employment first policy;

7. Require a robust annual survey of parents and children to ensure that school districts and charter schools are adhering to state and federal law with respect to the IEP process;

8. Ensure that charter schools are attentive to their responsibilities and available resources with respect to students with disabilities;

9. Require that the Department of Education report to the General Assembly on the status of and possible alternatives to the IEP Plus computer system, which has been an impediment to the preparation of IEPs by teachers, staff, and contractors.

"I'm happy to have been a member of the IEP Improvement Task Force," said Rep. Debra Heffernan, D-Brandywine Hundred South. "Now the focus needs to shift to the more important task of IEP implementation with high expectations and improving outcomes for Delaware students with special needs. This bill will help move us in the right direction and ensure that all students have the opportunity to succeed."

"This is a bipartisan initiative," House Minority Whip Deborah Hudson said. "Legislators from both parties and both chambers are working together to improve the IEP process because we all recognize the key role it can potentially play in improving student performance."

"As a former educator, I know the challenges of addressing the needs of each individual student," said bill co-sponsor, State Rep. Joe Miro. "These reforms will give the parents a more direct role and a louder voice in the IEP process, better ensuring that their children are receiving what they require."

"I applaud the effort of the committee members who were all truly concerned about making the IEP process better," said Senator David Lawson. "I think the biggest thing to come out of it is the need for standardization in the programs, getting everybody on the same page. And we need to make sure that parents are, at all times, kept aware of exactly what's going on and that they're not intimidated by the IEP process."

"I'd like to take this opportunity to thank Attorney General Matt Denn and all of the representatives that were part of making sure that we were able to have our voices heard as parents," said Diane Eastburn, a parent from Kent County who served on the Task Force. "To be able to be a part of a system that most people think is broken, and to actually be able to put pieces together and come up with a body of work that I think every parent who has a child with a special need will be able to sit back when this gets passed and say 'my life is a little easier today.'"

"This legislation will improve the ability of parents and students to have input and assert themselves in the IEP process," said Attorney General Matt Denn, who participated in the task force as Lieutenant Governor as part of his focus on children with disabilities. "Too many parents are unprepared to advocate effectively for their children; they need to know what their rights are, what services will benefit their child, and have the ability to include their own, and their child's goals in the IEP."

The final report of the task force, which includes recommendations beyond those to be accomplished through SB 33, can be found at http://ltgov.delaware.gov/taskforces/ieptf/IEP_Task_Force_Report_Final.pdf (http://ltgov.delaware.gov/taskforces/ieptf/IEP_Task_Force_Report_Final.pdf)

(http://attorneygeneral.delaware.gov)

Department of Justice, Attorney General's Website (http://attorneygeneral.delaware.gov)

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