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To: GACEC Policy and Law

Cc: SCPD Policy and Law; DDC

From: Disabilities Law Program

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Consistent with council requests, DLP is providing an analysis of certain proposed regulations appearing in the **November 2019** issue of the Delaware Register of Regulations.

Proposed Regulations

1. **Proposed DDOE Regulation on Federal Programs General Complaint Procedures, 23 Del. Register of Regulations 343 (Nov. 1, 2019)**

The Delaware Department of Education ("DDOE") proposes to amend 14 DE Admin. Code 258, which outlines the complaint process for violations of certain federal laws. The changes made are non-substantive, including updating the name of a federal law, capitalization changes, and re-numbering the regulation. Councils may not wish to comment or may wish to support this amendment.

2. **Proposed DDOE Regulation on Student Rights and Responsibilities, 23 Del. Register of Regulations 345 (Nov. 1, 2019)**

The Delaware Department of Education is required to review regulations every four years. 14 DE Admin. Code 605 requires school districts and charter schools to have, distribute and report a policy on student rights and responsibilities. DDOE proposes to reauthorize this regulation without making any changes. Councils may not wish to comment or may wish to support this reauthorization.

3. **Proposed DDOE Regulation on School Attendance, 23 Del. Register of Regulations 347 (Nov. 1, 2019)**

The Delaware Department of Education ("DDOE") proposes to amend 14 DE Admin. Code 615, which requires each school district to adopt a school attendance policy, distribute it as outlined in the regulation, and make certain reports about its policy to the Delaware Department of Education.

The current regulation only states that school districts must have, distribute and report attendance policies. The proposed amendment adds "charter schools." Charter schools are public

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schools, but are not part of school districts. This amendment will ensure that all public schools, including charter schools, are required to have, distribute and report attendance policies. Councils may not wish to comment or may wish to support this amendment.

4. **Proposed DDOE Regulation on K to 12 Comprehensive Health Education Program, 23 Del. Register of Regulations 353 (Nov. 1, 2019)**

The Delaware Department of Education ("DDOE") proposes to amend 14 DE Admin. Code 851 which requires school districts and charter schools [hereinafter: school districts] to establish a comprehensive health education program and outlines the requirements for such program. The regulation is being amended to include definitions related to drug use prevention and sexual consent to align with Senate Bill 78 of the 150th General Assembly [hereinafter SB 78], and to indicate that the hours of health education included within are minimum requirements.

Many of the proposed changes are strictly correcting grammatical errors throughout the regulation. These changes are small and do not require comment.

The first notable change occurs in the new first section of the proposed regulation, where definitions are included to define "Consent" using the language found in SB 78; "Department" as DDOE; "Evidence-based or Evidence-informed" as those approaches which have been proven to be effective at delaying negative outcomes; and "Promising Practices" as those strategies with strong data showing positive outcomes, but which lacks enough data to support generalizable outcomes.

Promising Practices encompasses programs and strategies that are not yet evidence-based because there is not yet enough research, data, or replication to show that the particular program can have those positive outcomes generally. However, in amended sections 2.1.7 and 2.1.8, "evidence-based" and "evidence-informed" is further defined to include "*Promising Practices* and components such as guest speakers, those with lived experience and may be taught through other subjects." (*emphasis added*). Because Promising Practices does not include programs that are evidence-based or evidence-informed as defined in amended section 1.0, DDOE should not include "Promising Practices" in the definition of evidence-based or evidence-informed practices.

The Every Student Succeeds Act ("ESSA") requires that school districts shall "develop, implement, and evaluate comprehensive programs and activities that may include… drug and violence prevention activities and programs that are *evidence-based*[.]" 20 U.S.C. § 7118(5) (*emphasis added*). This can include such programs as those outlined in the proposed amended regulation sections 2.1.7 and 2.1.8. In addition to ESSA, the Individuals with Disabilities Education Act ("IDEA") references nearly 30 years of research and experience demonstrating that "educating children with disabilities can be made more effective by…including the use of scientifically based instructional practices, to the maximum extent possible." 42 U.S.C. § 1400(c)(5)(E). Arguably, the same would hold true for those students in the regular education classroom as well.

As described above, because Promising Practices is *not* an evidence-based program and therefore runs counter to the spirit of both ESSA and IDEA. Councils may wish to recommend DDOE strike the references to "Promising Practices" from the proposed amendment. The duplicative sentence in 2.1.7 and 2.1.8 would then read:

"Evidence-based may include components such as guest speakers, those with lived experience, and may be taught through other subjects."

In the alternative, the above sentence could be included in the definition for evidence-based or evidence-informed, since having guest speakers, especially those with lived experiences, is an evidence-based practice. The definition for evidence-based or evidence-informed would then read:

"'**Evidence-based**' or '**Evidence-informed**' means strategies, activities, or approaches, which have been shown through scientific research and evaluation to be effective at preventing or delaying a negative outcome. Examples include guest speakers, inclusive of those with lived experiences."

Although there are currently a smaller number of evidence-based programs available to teach students about consent, they *do* exist and should be used by Delaware school districts. One example is Illinois-based Rape, Advocacy, Counseling & Education Services (RACES). RACES is an organization that has developed evidence-informed sexual violence and prevention programs that are accessible to students in grades K-12 (cu-races.org/education). For violence and drug prevention, there are many evidence-based programs available to schools. As an example, LifeSkills® Training is a classroom based prevention program for ages 11-18 which has been rated as "effective" based on several studies (https://www.crimesolutions.gov/ProgramDetails.aspx?ID=186. youth.gov). A directory of more than 200 programs, a majority of which have been rated as "effective" or "promising" can be found at https://youth.gov/evidence-innovation/program-directory. DDOE should consider using programs that are evidence-based or evidence-informed to the maximum extent possible.

The second major change and point of clarification involves amended section 2.1.8, which requires that "[i]nclusion of Evidence-informed, age- and developmentally-appropriate instruction on the meaning of Consent and respecting others' personal boundaries shall be provided by each school district and charter school serving one (1) or more of the grades 7 through 12 no later than the 2020-2021 school year." This language is in line with § 4167(a) of SB 78. It is unclear from the proposed amendment (and SB 78) whether instruction about consent will be provided in grades below seventh.

As demonstrated by the program through RACES, consent is a topic that can be taught to and understood by students in grades below seventh. Although those discussions in the younger grades do not typically involve the topic of *sexual* consent, children are capable of understanding the concept of giving permission. Beginning in the younger grades can teach students "about personal boundaries, how to say no, and how to respect no—and in the unfortunate case that students do experience sexual abuse of harassment, how to ask for help." https://www.edutopia.org/article/teaching-consent-elementary-students.

In addition to understand the concept of consent, it is important to instruct students below seventh grade on this crucial topic because approximately 35% of survivors of sexual assault are between the ages of 0 and 11. Howard Snyder, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, Bureau of Justice Statistics, U.S. Dep't of Justice (July 2000) (https://www.bjs.gov/content/pub/pdf/saycrle.pdf). Furthermore, nearly 50% of all forcible and unwanted fondling is done to survivors between ages 0 and 11. *Id.*

Alarmingly, the rate of nonfatal violent crime and rape or sexual assault against individuals with disabilities was 1.5 times higher and 2 times higher, respectively, than the rate for persons without disabilities. Michael R. Rand and Erika Harrell, *Crimes Against People with Disabilities, 2007*, Bureau of Justice Statistics, U.S. Dep't of Justice (October 2009) (https://www.bjs.gov/content/pub/pdf/capd07.pdf). Although the 2009 report does not include rates for children below the age of 12, a probable assumption could be made that children with disabilities below the age of 12 are experiencing instances of sexual violence at an exceedingly high rate.

Councils should consider recommending that DDOE explicitly include evidence-based and evidence-informed, age- and developmentally-appropriate consent education for grades below seventh. Modifications to the amended 2.1.8 could read as follows:

"Beginning in the 2020-2021 school year, each school district and charter school shall provide Evidence-informed, age- and developmentally-appropriate instruction on the meaning of Consent and respecting others' personal boundaries as part of its comprehensive health education program. Instruction on consent and personal boundaries shall be sequential and be provided in grades K-12."

Councils may wish to support this proposed amendment, but ask that DDOE make the above changes, including recommending that DDOE:

- Remove "Promising Practices" from the regulation, or at minimum, strike or modify the references to "Promising Practices" from the proposed amendment in 2.1.7 and 2.1.8 related to the definitions of evidence based or evidence informed practices.
- Explicitly include evidence-based and evidence-informed, age- and developmentally-appropriate consent education for grades below seventh in subsection 2.1.8.

5. **Proposed DDOE Regulation on Educational Programs for English Language Learners (ELLs), 23 Del. Register of Regulations 357 (Nov. 1, 2019)**

DDOE proposes to amend 14 DE Admin. Code 920, which establishes procedures for identification, education, and evaluation of English Language Learners. This regulation is being amended to make minor corrections, update definitions and terminology, and to comply with 29 Del. C. § 10407, which requires regulations to be reviewed every four years.

Several of the initial notable changes occur within the Definitions section of the proposed amendment. The definitions for "Bilingual Programs" and "English as a Second Language (ESL) Programs" are completely stricken. The latter is now referred to as "Language Instruction Education Program (LIEP)," however the former was removed completely with no replacement.

The removal of "bilingual programs" is concerning due to the proven efficacy of bilingual education on students whose first language is not English. W. Thomas and V. Collier, *A national study of school effectiveness for language minority students' long-term academic achievement*, Center for Research on Education, Diversity & Excellence (2002). It seems as though DDOE is removing bilingual programs and moving toward *only* providing LIEP, which provides instruction only in English. DDOE should reconsider removing bilingual programs from this proposed amendment given its proven positive effect on the long-term achievement of students whose first language is not English. In addition to the positive effect on those whose first language is not English, dual-language and immersion programs have also been shown to be beneficial to students whose first language *is* English; dual-language programs are the norm in many countries.

The second definitional change that poses a concern is that of English Language Learners themselves. First, DDOE proposes to change "English Language Learners" to "English Learners," which is, arguably, not an issue because the two terms can be interchangeable. The biggest issue is with the change in definition itself. The proposed amended definition reads:

"'**English Learners (ELs)**' means individuals who, among other things, have English language speaking, reading, writing, or understanding difficulties sufficient to deny the individual the ability to meet challenging state academic standards as defined using Delaware's standardized entrance and exit procedures"

The proposed change poses two issues. First, the inclusion of "among other things" leads to a vague definition. What does "among other things" mean? That clause adds nothing to the definition of ELs and, if nothing else, should be removed. Second, the new proposed definition moves away from who the student *is* and toward how the student performs on standardized tests. This is most concerning because it is as if DDOE is attempting to return to the era of No Child Left Behind (NCLB) and the focus on standardized tests. If the mention of "standardized entrance and exit procedures" is referring to the WIDA assessment in the English Learner Guidebook, that is unclear from the language above. Third, the definition is vague in terms of whether DDOE intends to apply this definition to students with disabilities whose impairments impact their abilities to speak, read, write or understand.

It seems as though DDOE is attempting to take bits and pieces of the ESSA definition of English Language Learners, which also includes the following language:

English learner means "an individual whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the challenging State academic standards[.]" 20 U.S.C. § 7801 20(D)(i).

What DDOE fails to include or, arguably, consider is the rest of 20 U.S.C. § 7801 20(D), which notes that the difficulty mentioned above may be sufficient to deny the individual "the ability to successfully achieve in classrooms where the language of instruction is in English; or the opportunity to participate fully in society." 20 U.S.C. § 7801 20(D)(ii)-(iii).

Councils should consider recommending that DDOE redefine "English Learner" to remove the mention of state assessments and include more references to how the individual's lack of English proficiency hinders their participation in society and academic success in areas other than the state standardized test. A suggested definition is as follows:

"**English Learner (EL)** means an individual who is linguistically diverse and who is identified by the Home Language Survey as having a level of English language proficiency that requires language support to fully participate in the school setting and to achieve academic standards in grade-level content."

This definition removes the focus on standardized tests and focuses on acknowledging the benefits of speaking more than one tongue, acknowledging that being an English learner is not a "difficulty," but that supports are needed to ensure success. This definition includes mention of the Home Language Survey but does not include mention of the "standardized entrance and exit procedures" because it is, arguably, unnecessary because that information is included in 2.2.2.

The final major change is under the Programs of Instruction for ELs. Under 3.1, DDOE proposes to remove the requirement that programs selected for the education of ELs be research-based. Both the IDEA and ESSA require that schools use programs, curricula, and practices based on "scientifically-based research" "to the maximum extent possible." 42 U.S.C. § 1400(c)(5)(E). Removing this requirement goes against the spirit of the IDEA and ESSA and therefore DDOE should not remove this requirement.

Councils may wish to consider supporting this amendment, but request that the above changes be made.

6. **Proposed DDOE Regulation on School Transportation, 23 Del. Register of Regulations 361 (Nov. 1, 2019)**

The Delaware Department of Education ("DDOE") proposes to amend 14 DE Admin. Code 1150, related to school transportation. The regulation is being amended to clarify safety procedures and protocols and to align with federal and state requirements motor vehicle requirements. Due to the length and mostly technical nature of the proposed changes, this analysis will focus only on a handful of discrete amendments.

First, subsection 3.1.23 requires districts to ensure that training is provided to bus drivers and aides who "perform duties on buses that transport wheelchairs and students using safety seats." Such trainings must include proper securement of wheelchairs, safety seats and safety equipment. Councils should consider commending DDOE for requiring such training. However, Councils should consider urging DDOE to go a step further and require that all Bus

Drivers, Aides, and supervisors receive such training, rather than only those who perform duties on buses with wheelchair/safety seat users. This will help ensure the safety of students with disabilities, regardless of last minute or urgent staffing changes on their bus.

Second, subsection 8.3.13 specifies that "Aides should remain in close proximity of the bus and should not cross students farther than the front drivers cross view mirror or escort students to their houses." However, a child may require additional or different escorts, such as door-to-door transportation, pursuant to an IEP or Section 504 plan. Councils should request that this be clarified in the regulation either explicitly or by cross referencing proposed subsection 12.10 ("Additional transportation benefits are determined based upon the Pupil's individual needs as specified in a 504 or IEP…"). The same comments apply to 10.8.1.

Next, while a substantive change was not made to subsection 10.16, Councils may wish to encourage DDOE to consider amending subsection 10.16, with respect to service animals, to ensure compliance with the ADA. Presently this provision requires a physician certification or inclusion in an IEP or 504 Plan.

Fourth, subsection 10.25, states: "No Pupil shall be carried up or down the bus steps during normal loading and unloading, and safety protocols shall be put in place to safely load and unload the Pupil." However, it is unclear what DDOE by "and safety protocols shall be put in place to safely load and unload the Pupil". For example, DDOE may mean that if a pupil exits the bus other than during "normal loading and unloading", such as due to a disability, they may be carried up or down steps with proper safety protocols. The Councils may wish to request clarification on this subsection.

The next change of note is subsection 12.10 which clarifies that "Additional transportation benefits are determined based upon the Pupil's individual needs as specified in a 504 or IEP…" Councils may wish to encourage DDOE to add "or modified" to this subsection to clarify that not only may some students require additional transportation benefits, such as a 1:1 Aide during transit, some will require modifications to transportation, e.g. moving the bus stop to an accessible location or door to door transport. Councils may also wish to advocate that the ADA should be referenced in this provision as well, as a student may need accessible transportation without necessarily needing an IEP or 504 plan.

DDOE also adds to this subsection 12.10 that such additional needs "are not arranged upon the parent or guardians needs." This is problematic for parents with disabilities who may have difficulty accessing traditional bus locations. In defining a "qualified individual with a disability," courts have ruled that the provisions of the Rehabilitation Act and accompanying U.S. Department of Education regulations extend to parents seeking services related to their children's education. See Rothschild v. Grottenthaler, 907 F.2d 286 (2d Cir. 1990). Further, the federal government clearly intended for the protections of Title II of the ADA to extend to "any qualified individual with a disability involved in any capacity in a public entity's programs,

activities, or services," which in the school context would cover not only a student but "a visitor, spectator, **family member**, or associate of a program participant." Americans with Disabilities Act Title II Technical Assistance Manual, available at http://www.ada.gov/taman2.html#II-2.0000 (emphasis added). The U.S. Department of Education's Office of Civil Rights has also clearly stated that Title II of the ADA applies to "students, **parents**, and other program participants" in schools. Russlyn Ali, Assistant Secretary for Civil Rights, U.S. Department of Education, "Dear Colleague" letter, Jan. 19, 2012, available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.pdf (emphasis added). Councils may wish to encourage DDOE to add a clarification to 12.10 such as: additional needs "are not arranged upon the parent or guardians needs unless necessary for compliance with the Americans with Disabilities Act or Section 504 of the Rehabilitation Act."

Councils may wish to consider making the following recommendations with respect to this proposed regulation as follows:

- Commending the DDOE for requiring wheelchair and safety equipment training, but recommending that the DDOE modify subsection 3.1.23 to require such training for all Bus Drivers, Aides, and supervisors.
- Request that subsection 8.3.13 be clarified either explicitly or by cross referencing proposed subsection 12.10 ("Additional transportation benefits are determined based upon the Pupil's individual needs as specified in a 504 or IEP…"). The same recommendation applies to 10.8.1.
- Councils may wish to encourage DDOE to amend subsection 10.16, with respect to service animals, to ensure compliance with the ADA.
- Recommend clarification of subsection 10.25.
- Councils may wish to encourage DDOE to add "or modified" as well as a reference to the ADA to subsection 12.10, to clarify that not only may some students require additional transportation benefits, some will require modifications to existing transportation, and that such requirements may be pursuant to the ADA.
- Finally, Councils may wish to request that the DDOE modify the second provision of subsection 12.10, with respect to parents and guardians, to clarify that their needs may need to be considered if related to the parent/guardian's disability.

Final Regulations

1. **Final DDOE Regulation on Compliance with the Gun Free Schools Act, 23 Del. Register of Regulations 368 (Nov. 1, 2019)**

The Department of Education (DDOE) finalized the proposed amendment to 14 DE Admin. Code 603. The amendment clarifies that every school district and charter school, not just those applying for assistance under the Elementary and Secondary Education Act (ESEA), must have a policy implementing the federal Gun-Free Schools Act, 20 U.S.C. § 7961. The other

substantial change was the removal of the requirement that school districts provide an annual assurance that their policies comply with the regulation and 11 *Del. C.* § 1457(j), which is State law on possession of deadly weapons in schools.

The Gun-Free Schools Act requires school districts to include in their applications for ESEA funding an assurance that they are complying with the law and also requires the State to report assurance and expulsion information to the United States Secretary of Education. 20 U.S.C. § 7961(d); 20 U.S.C. § 7961(e); 20 U.S.C. § 7801(46). The Councils supported DDOE's proposed amendment to 14 DE Admin. Code 603, but asked for clarification on how DDOE will ensure it complies with the federal requirement to report compliance assurances to the federal government. DDOE responded that it "electronically collects codes of conduct from the local education agencies [LEA], which include compliance with the Gun-Free Schools Act. Additionally, each LEA is required to follow mandatory reporting that includes reports under the Gun-Free Schools Act. LEAs are audited periodically for mandatory reporting."

School district and Charter schools are required to adopt Student Rights and Responsibility guidelines that comply with federal law. 14 DE Admin Code 275.4.5.1.1; 14 DE Admin Code 605.1.1. The Gun-Free Schools Act requires each LEA applying for ESEA funds to provide an assurance to the State that it is in compliance. 20 U.S.C. § 7961(d)(1). Since the Gun-Free Schools Act requires LEAs to report assurances to the State, and DDOE has represented that the LEAs are following the reporting requirements in the Gun-Free Schools Act, and that it is auditing the LEAs to ensure compliance, Councils could infer DDOE will be collecting the federally mandated assurances despite the change in regulation.

2. Final DDOE Regulation on Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems, 23 Del. Register of Regulations 370 (Nov. 1, 2019)

The Delaware Department of Education (DDOE) finalized the proposed amendment to 14 DE Admin. Code 611. Section 611 outlines eligibility requirements for student placement in the Consortium Discipline Alternative Programs (CDAP), which are alternative schools for students with severe discipline problems. Students who are expelled or suspended pending expulsion for behavior equal to or greater than certain enumerated criminal offenses are ineligible for CDAP. The amendment updated the list of criminal offenses that make a student ineligible for placement in CDAP; it eliminated 16 *Del. C.* § 4753A, trafficking in marijuana, cocaine, etc., which was repealed. It added drug dealing offenses (16 *Del. C.* §§ 4752 – 4754) to the list of disqualifying behaviors. Additionally, the amendment added that a school district must consider a student's educational and behavioral modification needs when deciding whether CDAP is an appropriate placement.

Councils supported the proposed amendment, but requested additional information on how it is decided whether an incident is "equivalent to or greater than" a listed criminal offense. Councils also requested more information on how inclusion of 16 *Del. C.* §4754 on the list of

offenses might impact a student's eligibility for CDAP placement if they are expelled or suspended pending expulsion for selling a small amount of a controlled substance; Councils also asked how considerations of a student's educational and behavioral modification needs might impact students' with disabilities access to CDAP.

DDOE provided the following analysis of how it decides whether an incident is equivalent to or greater than a criminal offense:

> Regulation 611's enumerated offenses are a non-exhaustive list of behaviors that would prohibit an expelled or suspended pending expulsion student from placement in a Consortium Discipline Alternative Program (CDAP). In keeping with standard practice in reaching its decision, the local school district will look to the nature of the behavior, the degree of the criminal offense type, i.e. misdemeanor or felony, and the potential risk the student poses to facilitators and/or participants in the CDAP.

Councils may wish express concern that the list of offenses is being characterized as non-exhaustive. If there are certain behaviors that will render a student ineligible for a program, Councils may wish to recommend that these be published so that way everyone is on notice of what criminal offenses will cause ineligibility.

In response to the Councils' inquiry about whether a student who sells a small amount of drugs would be ineligible for CDAP now that 16 *Del. C.* §4754 is an enumerated offense, DDOE stated that "the local school district will look to the nature of the behavior, the degree of the criminal offense type, i.e. misdemeanor or felony, and the potential risk the student poses to facilitators and/or participants in the CDAP. The proposed amendment does not change the applicable Uniform Due Process Procedures pursuant to Regulation 616."

Under 16 *Del. C.* §4754, it is a class D felony to manufacture, deliver or possess with the intent to manufacture or deliver a controlled substance. The Uniform Due Process Procedures in Section 616 provide important protections for a student when they are being investigated for a violation and when a school district is considering whether to suspend/ expel them. However, once the hearing officer has made conclusions about what behaviors a student committed, there is a risk that students who sold small amount of drugs may be ineligible for CDAP.

Finally, DDOE stated that the addition of educational and behavioral modification needs as eligibility requirements are being included to "memorialize[] a standard practice" to prevent students from being placed in an inappropriate setting that does not have the educational and behavioral modification services that they need. Importantly, DDOE recognizes the amendments do not alter a school district or charter school's duties to serve students with disabilities. While it is positive that students not be placed in a setting that does not have needed educational or behavioral modifications, the question becomes at what point the setting must be changed to include these modifications.

3. **DSS Regulations on TANF School Attendance Requirement, 23 Del. Register of Regulations 384 (November 1, 2019)**

DSS is amending the sections of the DSS Manual regarding school attendance requirements for Temporary Assistance for Needy Families (TANF) recipients. Parents who receive TANF cash assistance are expected to help their children maintain satisfactory school attendance – otherwise, DSS imposes financial sanctions on the TANF household by reducing the TANF benefit amount. The new regulations do not substantively change the way these sanctions are currently applied, but they do include a new rule on bonus payments for TANF children who graduate from high school by age 19.

Councils requested that DSS provide clarification on "satisfactory school attendance." DSS responded that a "school's response to attendance is what DSS relies on as the primary verification to determine if attendance is satisfactory. When the school does not respond then DSS would default to the 85% rate. "With respect to attendance, DSS responded that when there are a "high number of absences DSS will contact the school to verify if the parent is cooperating with the school. DSS will also offer the family supportive services and case management when the family is facing numerous challenges. DSS will explore issues with families to determine when barriers exist that prevent compliance with attendance laws. Good Cause encapsulates a broad range of issues and circumstances our families experience daily."

Next, Councils requested that DSS accommodate TANF children with disabilities before imposing sanctions due to unsatisfactory school attendance. DSS responded that:

> [w]hen there are a high number of absences DSS will contact the school to verify if the parent is cooperating with the school. DSS will also offer the family supportive services and case management when the family is facing numerous challenges. DSS will explore issues with families to determine when barriers exist that prevent compliance with attendance laws. Good Cause encapsulates a broad range of issues and circumstances our families experience daily, this could include absences related to health issues.

While this response is not entirely satisfactory it does demonstrate a basis for which students with disabilities may be able to request a Good Cause exception based on disability.

The agency also clarified that DSS will publish the amounts of bonus payments and that such actions can be appealed.

Next, Councils suggested that DSS amend its policy so that TANF children with disabilities are eligible to receive a bonus payment if they graduate from high school by age 21. DSS responded that if a child has not graduated by the age of 19 they are no longer eligible for TANF and that DSS does not have any high school students 19 and up on TANF. This policy effectively excludes children with disabilities from the possibility of bonus payments. Councils should consider continuing to advocate with DSS on this issue.

4. **DSS Regulation Regarding Purchase of Care – Determining and Reviewing Child Care, 23 Del. Register of Regulations 388 (November 1, 2019)**

DSS is amending the DSS manual regarding Purchase of Care (POC), specifically, amending 16 DE Admin. Code § 11004.11 to align with federal requirements mandated by the Child Care Development Block Grant (45 CFR § 98.21). The proposed changes regulating eligibility and recipients of child care assistance are consistent with the new federal requirements. Each of the changes are consistent with federal requirements. Councils endorsed the additional protections provided by the policy amendment.