

Memo

To: GACEC; SCPD; DDC Policy and Law
From: Disabilities Law Program, CLASI
Re: Policy and Law Memo April 2021

Pursuant to request, please find below analysis of regulations and proposed legislation of interest to the councils.

Regulations:

1. Proposed DDOE Regulation on 1574 Teacher of Students Who Are Deaf or Hard of Hearing, 24 Del. Register of Regulations 931 (April 1, 2021)

The Delaware Department of Education (“DDOE”) proposes to amend 14 Del. Admin. C. § 1574, which describes the requirements for obtaining the Teacher of Students Who Are Deaf or Hard of Hearing standard certificate (hereinafter “Certificate”) pursuant to 14 Del. C. § 1220. DDOE, in cooperation with the Professional Standards Board (hereinafter “The Board”), is proposing to amend this regulation to add definitions to Section 2.0, clarify the requirements for issuing a Certificate, specify application requirements, and add Sections 6.0-9.0 which concern the validity of the Certificate, disciplinary actions, requests for the Secretary of Education to review applications and, recognizing past certifications, respectively.

DDOE, in partnership with the Board, has been systematically reviewing and updating the requirements for the different Standard Certificates since approximately April of 2020. Councils have previously submitted comments to several of these proposed regulations with little to no effect. Of the recommendations put forth by Councils, DDOE and the Board have adopted only one – clarifying the language of subsection 3.2, which was ambiguous in the proposed regulation for the Special Education Teacher of Students with Disabilities (found at 14 Del. Admin. C. § 1571). This change has been adopted in the proposed regulations which have followed.

The proposed regulation is nearly identical to the previous except for the amendments made to current 14 Del. Admin. C. § 1574.4, which lists the additional requirements for obtaining the Certificate. The current language requires that an educator, in addition to the requirements enumerated under § 1574.3, must also satisfy one of two requirements specific to educating students who are deaf. The two requirements are either (1) hold a master’s degree from a regionally accredited college or university in Deaf education from a program approved by the Council for Education of the Deaf; or (2) complete twenty-one (21) credits from a regionally accredited college or university or their equivalent in professional development as approved by the DDOE in several areas related Deaf and Hard of Hearing individuals.

Proposed 14 Del. Admin. C. § 1574.4 would list the prescribed education, knowledge, and skill requirements for obtaining the Certificate and expand the current options from two (2) to

five (5). An applicant would need to satisfy at least one of five additional education requirements. They are:

- 4.1.1 Obtained and currently maintain an Exceptional Needs Specialist certificate in the specialty area of Deaf/Hard of Hearing from the National Board for Professional Teaching Standards;
- 4.1.2 Earned a master's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in deaf education from an educator preparation program approved or recognized by the CED; or
- 4.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach students who are deaf or hard of hearing as provided in 14 Del.C. §§1260 - 1266; or
- 4.1.4 Satisfactorily completed a Department-approved educator preparation program in deaf education; or
- 4.1.5 Earned a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 21 college credits or the equivalent number of hours with one credit equating to 15 hours taken as part of or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department with a focus in deaf education that are guided by and include [several enumerated] CED Initial Preparation Standards.

Proposed §§ 1574.4.1.2 and 1574.4.1.5 are virtually identical to the current §§ 1574.4.1.1 and 1574.4.1.2. With this proposed change, DDOE would expand these additional prescribed requirements to allow an applicant to obtain the Certificate if they (1) currently hold a specialist certificate in the area of Deaf or Hard of Hearing from the National Board for Professional Teaching Standards; (2) satisfactorily complete an alternate route for licensure to teach students who are Deaf or Hard of Hearing; or (3) satisfactorily complete a Department-approved educator preparation program in deaf education.

Delaware law requires that when developing an individualized education plan (“IEP”) for children who are Deaf or Hard of Hearing, the local education agency (“LEA”) must consider “[t]he provision of optimal, direct, and ongoing language access to teachers of the deaf and hard of hearing...who are knowledgeable due to specific training and who are proficient in the child’s primary communication mode or language[.]” as well as “[t]he provision of communication-accessible academic instruction, school services, and direct access to all components of the educational process[.]” 14 Del. C. § 3112.

As long as the proposed changes to § 1574.4.1 comport with the Bill of Rights for Children Who Are Deaf or Hard of Hearing (14 Del. C. § 3112) as well as other applicable laws and regulations, Councils may wish to support the proposed regulation as it is written. Under the impact criteria, DDOE states that the “The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.” If desired, Councils may wish to ask DDOE to explain *how* these changes will help improve student achievement.

2. Proposed DDOE Regulation on 1220 Teacher of English Learners, 24 Del Register of Reg. 926 (April 1, 2021)

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1562 Teacher of English Learners. The regulation concerns the requirements for a Teacher of English Learners Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Teacher of English Learners Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Teacher of English Learners Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Teacher of English Learners Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Proposed § 1220.1 introduces content included in 14 Del. Admin. C. § § 1220. The language "standard certificate has been replaced with "Teacher of English Learners Standard Certificate". Those are the only notable changes.

Proposed § 1220.2 introduces definitions largely included in 14 Del. Admin. C. § § 1220. The following definition were added:

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration, or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

"License" means a credential that authorizes the holder to engage in the practice for which the license is issued.

"Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions

of higher education it accredits, including Middle States Commission on Higher Education.

“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill, or education to practice in a particular area, teach a particular subject, or teach a category of students.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.

“Valid and Current License or Certificate” means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

The definitions were added to clarify the issuance of a Teacher of English Learners Standard Certificate.

Additionally, proposed § 1220.4 has revised the requirements for the issuance of a Teacher of English Learners Standard Certificate. The proposed language clarifies in subsections 4.1.1 through 4.1.3. The language found in 14 DE Admin. C. 1562. Proposed § 1220.4.1.2 added language for an applicant to satisfy the requirements “the applicant shall have demonstrated oral and written proficiency in English by earning a bachelor’s, master’s, or doctoral degree “or “achieved a minimum level of Advanced Mid based on the American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines on the ACTFL Oral Proficiency Interview (OPI) in English and the ACTFL Writing Proficiency Test (WPT) in English.” The language differs from prior regulations.

Proposed § 1220.5 adds application requirements if an applicant is applying for an initial license and all of the required documentation for the license.

Proposed § 1220.6 adds language that clarifies the validity of the standards which states the certificate is valid regardless of the assignment or employment status. The proposed language adds that “a Teacher of English Learners Standard Certificate is not subject to renewal.”

Proposed § 1220.7 adds language that refers to disciplinary action and ways that a certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin.C. 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits. The certificate may be revoked if the educator made “a materially false or misleading statement in the Educator’s application in accordance with 14 Del.C. §1222.” The proposed language adds that the educator is entitled to a full and fair hearing before the standard board in accordance with 14 DE Admin. C. 1515.

Proposed § 1220.8 adds language that refers to the Secretary of Education Review “The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Teacher of English Learners Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Teacher of English Learners Standard Certificate but whose effectiveness is documented by the local school district or charter school district.”

Proposed § 1220.9 recognizes past certificates issued by the Department before January 1, 2017. The proposed language adds “an educator holding an ESOL Teacher Standard Certificate issued before January 1, 2017, or a Teacher of English Learners Standard Certificate issued prior to the effective date of this regulation shall be considered certified to instruct English learners.”

The DLP suggests that the Councils support the proposed amendments as it *ensures* transparency for an educator applying for the Teacher of English Learners Standard Certificate.

Legislation:

House Substitute No. 1 for House Bill 54 (S1 for HB 54, Mid-Year Unit Count)

This bill amends Title 14 of the Delaware Code to introduce an optional mid-year unit count of the student populations in all school districts and charter schools.

§1704 of Title 14 currently requires a count of the total enrollment of students in each school on the last school day in September of every school year (known as the “actual unit¹ count.”) An “estimated unit count” is required to be completed every April 15 of every school year, estimating student population for the following September’s actual unit count. The estimated and unit counts are critical to determining school funding designated to each school district and charter school.

S1 for HB 54 amends Title 14 to add §1704a, which introduces an optional mid-year count of students within district public and charter schools. The count would be held on the last school day of January. The stated goal of the “optional mid-year unit count” would be to “identify school districts and charter schools that experience unit growth during the school year but after the actual unit count” that is held annually in September. Units would be calculated in the same way that units are typically determined during the regular count.² S1 for HB 54 proposes that “[s]chool districts and charter schools that elect to participate in the optional mid-year unit count shall receive state financial support for each additional unit or fraction thereof in an amount determined by the annual Appropriations Act.” School districts and charter schools

1 14 Del C. §1703 defines “unit of pupils.” The number of students in a unit depends on factors such as grade level, special education eligibility, and half-time/ full-time kindergarten status. Youth receiving special education services are counted in separate units, with different numbers of students included in these separate units depending on the nature of services provided (for example, there are 20 students in a Grade 4-12 regular education unit, 8.4 students in a basic Grade 4-12 intensive special education unit, 6 students in a PreK-12 intensive special education unit, and 2.6 students in a PreK- complex special education unit. ‘

2 See Footnote 1.

may use the additional funding to pay for any “Division I, II, or III purpose” (which includes school personnel, school costs and energy, and educational advancement). Schools that opt-in to the mid-year count will not have their funding decreased from the amount determined by the previous September annual actual count.

Additionally, S1 for HB 54 proposes that “[f]unding associated with the additional units generated by the optional mid-year unit count shall be utilized only in schools which experienced unit growth between the last school day in September and the last school day in January.”

Councils should support this proposed legislation. The proposal acknowledges the difficulties schools can face in providing adequate staffing and resources if school populations fluctuate throughout the year. Schools that have substantial increases in the number students in their school building mid-year will be able to adequately fund additional teachers, support staff, or other needs associated student population growth that would otherwise not be included in their funding determined by the September annual count. School districts and charter schools will not be penalized for participating in the mid-year count because they only have the potential to increase their funding without risk of losing funding. The proposed legislation also ensures that increases to school district funding as a result of the mid-year count will only be used by schools that experienced growth between September and January, ensuring that funds are designated to the schools within a district that may be under-resourced as a result of mid-year population growth.

The introduction of a mid-year count may offset some of the impact charter schools may have on public school districts, addressing arguments made by charter school critics throughout the country that charter school disciplinary practices and standards can lead to high rates of expulsion or “push-out,” in turn leading to a greater of students entering traditional public schools from charter schools mid-year,³ which may also disproportionately impact students of color and students with disabilities.⁴ While debates surrounding charter schools are complex, this

3 Valerie Strauss, *Problems with charter schools that you won't hear Betsy DeVos talk about*, WASH. POST. (June 22, 2017), <https://www.washingtonpost.com/news/answer-sheet/wp/2017/06/22/problems-with-charter-schools-that-you-wont-hear-betsy-devos-talk-about/>; George Joseph & Citylab, *Where Charter-School Suspensions are Concentrated*, ATLANTIC (Sept. 16, 2016), <https://www.theatlantic.com/education/archive/2016/09/the-racism-of-charter-school-discipline/500240/>; Elizabeth A. Harris, *Report Faults Charter School Rules on Discipline of Students*, N.Y. TIMES (Feb. 11, 2015), <https://www.nytimes.com/2015/02/12/nyregion/report-faults-charter-school-rules-on-discipline-of-students.html>; Rosa K. Hirji, *Are Charter Schools Upholding Student Rights?*, Am. Bar Assoc. (January 14, 2014), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2014/are-charter-schools-upholding-student-rights/>; Emma Brown, *D.C. charter schools expel students at far higher rates than traditional public schools*, WASH. POST (January 5, 2013), https://www.washingtonpost.com/local/education/dc-charter-schools-expel-students-at-far-higher-rates-than-traditional-public-schools/2013/01/05/e155e4bc-44a9-11e2-8061-253bccfc7532_story.html?utm_term=.6f6cab5f654b&itid=lk_inline_manual_65; Jaclyn Zubrzycki, Sean Cavanagh, & Michele McNeil, *Charter Schools' Discipline Policies Face Scrutiny*, ED. WEEK (Feb. 19, 2013, corr. Feb. 21, 2019), <https://www.edweek.org/leadership/charter-schools-discipline-policies-face-scrutiny/2013/02/>; Victor Leung, Roxanne H. Alejandre, & Angelica Jongco, *Unequal Access: How Some California Charter Schools Illegally Restrict Enrollment*, ACLU SOUTH. CA. & PUB. ADV., https://www.aclusocal.org/sites/default/files/field_documents/report-unequal-access-080116.pdf.

4 Daniel J. Lowen, Michael A. Keith II, Cheri L. Hodson, Tia F. Martinez, *Charter Schools, Civil Rights, & School Discipline: A Comprehensive Review*, Civ. Rights Proj., UCLA (Mar. 15, 2016), <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal->

proposed legislation addresses one area of possible tension between traditional public school districts and charter schools. The proposed legislation ensures that any school that accepts a substantial number of transferring students mid-year would be provided with accompanying financial support.

HB 115: An Act to Amend Title 10 Of the Delaware Code Relating To Juvenile Prosecution.⁵

House Bill 115 (“HB 115”) seeks to amend Chapter 9, Title 10 of the Delaware Code relating to Juvenile Prosecution by amending §§ 921, 1002, 1004A, and 1010 to set a minimum age at which a child may be prosecuted (except for the most extreme offenses) and bars the transfer of juvenile prosecution to the Superior Court unless the child is at least 16 years of age. The bill was introduced in the Delaware House of Representatives on March 16, 2021, sponsored by Rep. Chukwuocha, Sen. Townsend, and Reps. Dorsey Walker and Heffernan.⁶

It was subsequently assigned to the House Judiciary Committee, which met on March 23, 2021 and voted the bill out of committee with four (4) Favorable⁷ votes and five (5) Votes On its Merits⁸. A few of the committee members expressed concern that rather than being tailored to Delaware-specific issues, the bill was more of an effort to follow national trends. The bill is currently placed on the “Ready List,” meaning if it is required to go through committee, it is available to be placed on an agenda for its third and final reading.

Specifically, HB 115:

1. prohibits the prosecution of children under the age of twelve (12), except for the most extreme offenses⁹;¹⁰
2. bars the transfer of juvenile prosecution to the Superior Court unless the child is at least sixteen (16) years of age, except for the most extreme offenses¹¹; and
3. allows for the prosecution of children under the age of 12 for Title 11 violent felonies and misdemeanor crimes of violence until January 1, 2022, when prosecution of such children will expire and thereafter such children will be referred to the Juvenile Offender Civil Citation Program under 10 Del. C. § 1004A.

[reports/charter-schools-civil-rights-and-school-discipline-a-comprehensive-review](#) ; Joseph & Citylab, *supra* note 3; Hirja, *supra* note 3.

⁵ <https://legis.delaware.gov/BillDetail?LegislationId=48463>

⁶ HB 115 is co-sponsored by Sens. Brown, S. McBride, Paradee, and Sokola and Reps. Cooke, Griffith, K. Johnson, Kowalko, Lambert, Longhurst, Lynn, Morrison, and Wilson-Anton.

⁷ A favorable vote means the legislator recommends the full Chamber pass the legislation.

⁸ A Vote On its Merits means the legislator recommends the full Chamber take action on the legislation, but the legislator does not take a position on what action should be taken.

⁹ Extreme offenses include first degree murder, second degree murder, first degree rape, second degree rape, and using, displaying, or discharging a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in 11 Del. C. § 4201 (c).

¹⁰ A child under the age of twelve (12) accused of committing an extreme offense *may* be prosecuted if found competent by the Family Court.

¹¹ Extreme offenses include first degree murder, second degree murder, first degree rape, second degree rape, and using, displaying, or discharging a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in 11 Del. C. § 4201 (c).

Over the course of the late 20th century, there has been a push to rethink how we, as a country, have considered and dealt with juvenile delinquency. The bill's authors note this by referencing the 2012 U.S. Supreme Court case *Miller v. Alabama*¹² which was a landmark U.S. Supreme Court case dealing with juvenile justice, in which the Court recognized that young people are inherently different than adults. The Court in *Miller* held that young people cannot be sentenced to life without the possibility of parole (“LWOP”) for homicide crimes where LWOP is the only option for sentencing. Further, mitigating factors must be considered before a young person can be sentenced to juvenile LWOP (“JLWOP”), such as their age, age-related characteristics, background, and mental and emotional development. *Miller* was the third in a line of landmark U.S. Supreme Court cases in which the Court recognized the age-related characteristics of young people.

The first case was *Roper v. Simmons*, where the U.S. Supreme Court held that sentencing a young person to death for a crime committed when they were under the age of eighteen (18) was unconstitutional.¹³ Considering the social and neuroscience literature at the time, the Court recognized three general characteristics that separated young people from adults: (1) lack of maturity and possession of an underdeveloped sense of responsibility, which result in impetuous and ill-considered actions and decisions; (2) more vulnerable and susceptible to negative influences and outside pressures; and (3) early stages of character development. In 2010, the Court expanded upon its *Roper* analysis when it decided *Graham v. Florida*, holding that it was unconstitutional for a young person to be sentenced to JLWOP for a crime not involving homicide.¹⁴

These, and other similar cases, stand on scientific literature differentiating a child's developing brain from an adult's developed brain.

As previously mentioned, some of the members of the House Judiciary Committee expressed concern over whether the bill is tailored to Delaware-specific issues and not just a move to follow national trends. In consideration of this concern, it should be noted that this bill follows a slew of other bills in Delaware signed into law in 2017 which were aimed at diverting young people from the juvenile and criminal justice systems.¹⁵

HB 115 seems to be an expansion of this and aligns with the recommendations of Delaware's Juvenile Justice Advisory Group (“JJAG”), a specialized committee with knowledge and expertise in juvenile justice. In March of 2019, JJAG released its annual report and recommendations to the Governor and the Delaware State Legislature.¹⁶ JJAG puts forth nine (9) policy recommendations including, but not limited to, investing in prevention-based services for young people, potentially establishing a mentoring program, and allocating state and local resources to fund programs aimed at strengthening family units. Furthermore, JJAG intends to support.

12 567 U.S. 460 (2012).

13 543 U.S. 551 (2005).

14 560 U.S. 48 (2010).

15 <https://why.org/articles/delaware-juvenile-justice-reforms-signed-law/>

16 <https://cjc.delaware.gov/wp-content/uploads/sites/61/2019/06/Delaware-2018-JJAG-ReportvPRINTER.pdf>

all legislation aimed at increasing identity security of youth that have not been adjudicated delinquent of a crime; establishes a minimum age for prosecution; extends the post-disposition jurisdiction of DSCYF for youth found delinquent of a crime; establishes that the age of offense and not the age of arrest determines the jurisdiction for a person facing charges; and making underage possession/consumption of alcohol or marijuana a civil violation.¹⁷

Although children with disabilities are not specifically mentioned in the bill, data shows that such children will likely be impacted by its passage (or failure). According to a 2015 white paper, 65-70 percent of justice-involved youth have a disability.¹⁸ The number is likely similar in Delaware.

As written, HB 115 will continue Delaware's trend toward recognizing young people, including those with disabilities, as separate and distinct from adults. Therefore, Councils may wish to support the bill as written. However, Councils may wish to recommend that the age of prosecution be raised from the proposed twelve (12) years of age to fourteen (14), which would comport with the standard set forth by the United Nations Convention on the Rights of the Child.¹⁹

HB 117 – Delaware Autism Program

HB 117 proposes to amend existing legislation relating to the Delaware Autism Program (“DAP”). The bill was introduced on March 16, 2021.

DAP is a statewide educational program serving students with autism spectrum disorder (ASD). The primary purpose of HB 117 is to make changes that had been piloted under existing legislation permanent. Those changes had been based on recommendations of the Autism Educational Task Force's report in 2015 (the full report is available for download at <https://legis.delaware.gov/TaskForceDetail?taskForceId=55>). The General Assembly created the Task Force to examine both the role of DAP and other steps the state should take to meet the educational needs of the growing number of children with ASD in Delaware. According to the Task Force's report, the number of students with an educational classification of autism in Delaware had increased from 152 in 1991 to 1,512 in 2015, in other words, “an 895% increase over 23 years” (see Task Force Report at p. 4). Department of Education data indicates that this number has since increased to 2,145 students aged 6-21 during the 2019-2020 school year (see <https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/78/2020%206-21%20Suppressed%20Subtotal%20by%20Disability%20Category%20Table%2011.pdf>).

Historically, DAP primarily managed separate educational programs for students with ASD from around the state, however this model has shifted over time to focus on more

¹⁷ *Id.*

¹⁸ The Arc's National Center on Criminal Justice and Disability. “Justice Involved Youth with Intellectual and Developmental Disabilities: A Call to Action for the Juvenile Justice Community.” (2015). https://thearc.org/wp-content/uploads/forchapters/15-037-Juvenile-Justice-White-Paper_2016.pdf.

¹⁹ <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2f5F0vEnG3QGKUxFivhToQfjGxYjV05tUAIgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2bf0RPR9UMtGkA4>

integrated educational options in partnership with school districts. Prior to the Task Force's report and resulting legislation, in addition to administering DAP's own programs the DAP Director was tasked with providing training and technical assistance to school districts statewide to assist them with serving students with ASD outside of DAP. As demand for this support had grown significantly with the increasing number of students with ASD in schools throughout the state, the Task Force recommended that DAP employ training specialists to share this responsibility with the Director to ensure the same resources would be available to all students with ASD. The legislature subsequently enacted legislation to pilot these changes in accordance with the report's recommendations. Without further legislation, the piloted changes would otherwise end of June 30, 2021. The Task Force had also recommended the creation of a Parent Advisory Committee, and this was included in the subsequent statutory updates.

In addition to making the piloted changes to DAP's model permanent, HB 117 proposes some minor changes to the existing statute. First, the bill would revise the suggested qualifications for the DAP Director to specifically include the fields of ASD and educational leadership as areas in which the Director might hold a doctorate or other advanced degree. The bill also would require DAP to employ five training specialists (a set number) to work with students with autism in schools around the state. The existing legislation, following the Task Force's recommendations, had required the incremental hiring of training specialists until the program had reached with a ratio of one training specialist per 100 students with an educational classification of autism. Additionally, the bill broadens the responsibilities of the Peer Review Committee by clarifying that its regular activities reviewing "procedures and programming students with an educational classification of ASD" do not require a request by the Department of Education, however the Committee may also review information pertaining to students with other educational classifications at the request of the Department. The bill would also add the word "Statewide" to the name of the Parent Advisory Committee to clarify the nature of the Committee. The bill suggests some other minor wording changes to the existing statute to conform to current drafting standards that would not result in any substantive changes.

One note of concern is that while the Task Force had previously recommended the eventual staffing of one training specialist per 100 students with ASD, the bill would require employing a set number of 5, which would result in much larger specialist to student ratio than was originally envisioned. While this may reflect the reality of agency funding constraints, it may make sense to clarify that while the Department must employ at least 5 training specialists, more may be employed as funding allows, at the discretion of the Department and DAP Director, even if a certain ratio will not be required. It is not otherwise clear why the bill would specifically limit the number of training specialists to 5, particularly as the number of students with ASD in Delaware appears to continue to increase.

As the shift in DAP's model may encourage the provision of educational services for students with ASD in more integrated settings, the Councils should support the changes proposed in HB 117, however the Councils may wish to encourage modifying the language regarding training specialist staffing to allow for potential expansion as funding permits.

HB 128 – Extension of Special Education Past age 21 (this year only)

House Bill 128 "HB 128" seeks to amend Chapter 14 of the Delaware Code relating to Exceptional Children by adding § 3101 subsection (2)(c) which permits the extension of special

education and related services to those students with a disability who turned turn 21 during the 2020-2021 school year. The bill refers to the COVID-19 Declaration of a State of Emergency for Public education. The proposed language will add “A child with a disability who attains the age of 21 during the 2020-2021 school year is eligible for services until the end of the 2021-2022 school year if an extension of special education and related services is necessary to address unfinished learning caused by the COVID-19 coronavirus pandemic which gave rise to the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat issued by the Governor on March 12, 2020.”

The bill proposes that the “individualized education program team responsible for a child with a disability whose education has been interrupted or otherwise adversely affected by the State of Emergency shall review and revise the child’s Individualized Education Program to enumerate the specific basis for extension of services and the special education and related services to be and the special education and related services to be provided.”

The DLP suggests that the Councils support this bill, as it *ensures* compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act. The extension passed the age of 21 will benefit individuals that special education services and supports cannot be delivered virtually or part-time with the same effectiveness as in-person. Councils may wish to ask for clarify that all procedural rights attach to the assessment by the IEP Team.

HB 129 – School-Based Health Centers

HB 129 proposes to amend existing legislation to expand the requirements for state funding of school-based health centers to include high needs elementary schools. The bill was introduced on March 23, 2021 and was voted out of the House Education Committee on March 31, 2021. A similar bill had been introduced in March of 2019 but did not go to a vote before the end of session.

School-based health centers are medical clinics, usually operated by private healthcare providers, located in or near a school facility. School-based health centers have generally been found to improve access to primary care as well as overall health for students from disadvantaged communities; they can also serve as a critical access point for behavioral health treatment and other specialized care (a more thorough discussion of the research supporting school-based health centers and the history of school-based health centers in Delaware can be found in “A Landscape of School-Based Health Centers in Delaware” by Margaret Culpepper Chesser, available at <https://udspace.udel.edu/bitstream/handle/19716/24912/School-Based-Health-Centers-Brief-2019.pdf>).

In 2016 Delaware enacted legislation, codified at 14 Del. C. § 4126, requiring all secondary schools in the state to have school-based health centers. HB 129 would expand this requirement to “high needs elementary schools,” including charter schools. High needs elementary schools would be defined to include any elementary school in the top quartile in at least three of four categories (percentage of low-income students, percentage of English learners,

percentage of students with disabilities, or percentage of minority students), or that has “90% of its students classified as low-income, English learners, or minority.”

The bill would obligate the state to pay “the start-up costs” for a school-based health center in any remaining high schools lacking school-based health centers and at least two high needs elementary schools per fiscal year until all covered schools have school-based health centers. While the bill does not specifically address ongoing funding, according to the fiscal impact statement accompanying the bill the State is currently contributing \$5,000 per school for “start-up costs” for school-based health centers in high schools, as well as annual funding of “\$170,000 per [center] (based on a 1,000-student high school) with an additional allowance of \$100 per student over the 1,000-student threshold.”

Under the proposed language of the bill, elementary schools with existing school-based health centers that are in full compliance with requirements for school-based health centers under state insurance laws and regulations would have the option to apply to the Department of Education for reimbursement, subject to further rules to be put forth by the Department. According to the Division of Public Health (DPH) website, seven public elementary schools currently operate school-based health centers without state funding; all seven schools are in Colonial and Red Clay Consolidated School Districts (a full list of Delaware public schools with school-based health centers recognized by DPH is available at <https://dhss.delaware.gov/dhss/dph/chca/dphsbhcceninfo01.html>). Additionally, numerous charter schools operate school-based health centers that are not currently state-funded (see <https://dhss.delaware.gov/dhss/dph/chca/files/sbhcnoncontractlocations.pdf>).

While school-based health center operations have been unavoidably impacted by the Covid-19 pandemic, particularly during periods when school buildings have been closed to students, it is important to note that children’s access to primary and preventative care in other settings has also been disrupted over the past year. It is crucial that as schools re-open, students have access to needed care for both physical and mental health, particularly as experts are warning of the potential long-term impact the pandemic may be having on child mental health (see, e.g. Elaine K. Howley, “Children’s Mental Health Crisis Could Be a Next ‘Wave’ in the Pandemic,” U.S. News & World Report (March 4, 2021), <https://www.usnews.com/news/health-news/articles/2021-03-04/childrens-mental-health-crisis-could-be-a-next-wave-in-the-pandemic>). Accessing needed health care is essential not only to children’s wellbeing but also to their success in the classroom.

For these reasons, the Councils should support expanding state funding of school-based health centers.

HB 144: An Act to Amend Title 14 of the Delaware Code Relating to Funding for Prekindergarten Special Education

Per the legislative synopsis, HB 144 is intended to increase the funding for preschool students with disabilities who are not in Intensive or Complex special education units. This is to be accomplished by modifying the ratio of students per preschool unit of pupils. The bill would change the ratio of students from 12.8 to 8.4 over the course of three years as follows:

7/1/2011-6/30/2021	7/1/2021-6/30/2022	7/1/2022 – 6/30/2023	7/1/2023 on
12.8 students/unit	11.3 students/unit	9.8 students/unit	8.4 students/unit

The current ratio of students has been in place since 2011. Additional changes are not substantive and were made to bring the statute in conformity with the Legislative Drafting Manual (inserting “any of the following” followed by the eligibility list, rather than utilizing “or” between each means for eligibility, and modifying punctuation accordingly). Councils should consider endorsing this increase in funding for preschool students.

HB 145: An Act to Amend Title 30 related to ABLE Act Accounts

This bill will amend Title 30 of the Delaware Code and create two (2) new personal income tax deductions. One is for the 529 College Savings Plan and the other is for the Achieving a Better Life Experience Act of 2014 (ABLE or 529A account) Program.

If the bill becomes law, it would take effect on the latter of one of the following events: “The Division of Revenue has implemented the personal tax release of the Integrated Revenue Administration System” or the Secretary of Finance provides a written notice to the Registrar of Regulations that the Division of Revenue has implemented the personal tax release of the Integrated Revenue Administration System. 30 *Del. C.* §1106 Section 2.

By way of background, the 529 plan is named after section 529 of the Internal Revenue Code (IRC) and is designed to encourage saving for future education costs. 26 *U.S.C.* §529. It allows monies in the plan to accumulate earnings on a tax-free basis and distributions are not subject to federal taxation when used for qualified higher education expenses. Simply put, the 529 plan is an investment account that offers tax-free earnings growth and tax-free withdrawals when the funds are used to pay for qualified education expenses. For colleges and universities, these qualified education expenses include tuition, fees, books, supplies, computers, and in some cases room and board. Also, withdrawals of up to \$10,000 per year are permitted to pay for tuition at private, public, and religious schools from kindergarten through grade 12. Student loans, both private and federal, can also be paid with distributions from the account.

In Delaware, the 529 plan is known as the Delaware College Investment Plan and is administered by the Plans Management Board. 14 *Del. C.* §§ 3483-3491. Contributions to a 529 plan, which consist of after-tax monies, are presently not deductible from state income taxes. In addition to Delaware, six (6) states that have a state income tax do not allow a deduction for contributions.²⁰ More than thirty (30) states and the District of Columbia offer either a state income tax deduction or tax credit.²¹ Usually, the taxpayer must contribute to their home state’s plan to qualify for the deduction.²²

20 California, Hawaii, Kentucky, Maine, New Jersey, and North Carolina. *How Much Is Your State’s 529 Plan Tax Deduction Really Worth* by Matthew Toner, March 3, 2021; <https://www.savingforcollege.com/article/how-much-is-your-state-s-529-plan-tax-deduction-really-worth>

21 *Id.*

22 Arizona, Arkansas, Kansas, Minnesota, Missouri, Montana, and Pennsylvania provide for a deduction in state taxes for a contribution to any 529 plan. *Id.*

This bill will allow a deduction from taxable income of up to \$1,000.00 for contributions to the Delaware 529 plan. While it is easy for Councils to support this bill, it would be better if Delaware would offer a state income tax deduction for contributions to any 529 plan (whether Delaware's plan or another state's plan). Further, it would also be better and encourage saving if the deduction were higher; for example, up to \$5000.00 for individual taxpayers and up to \$10,000.00 for married filing jointly. Councils should advocate for both of these recommended changes.

ABLE accounts were created by the Stephen J. Beck, Jr., Achieving a Better Life Experience Act of 2014, which was signed into law by President Obama on December 19, 2014. Pub. L. No. 113-295, 128 Stat. 4056 et seq. The act amends the IRC. 26 U.S.C. §529A. The purpose of the act was to increase the financial independence and improve the quality of life for persons with disabilities while easing the financial hardships faced by these individuals and their families. ABLE accounts are tax-advantaged saving accounts for eligible persons with disabilities (called beneficiaries). Although the beneficiary is the owner of the account, contributions can be made by anyone (including the account beneficiary, family, or friends) using after-tax monies. While contributions are not tax deductible for federal income tax, monies in the plan can accumulate earnings on a tax-free basis and distributions are not subject to federal taxation when used for qualified disability related expenses (QDE). QDEs are broad and expansive, and include "education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section." 26 U.S.C. §529A (e)(5).

In Delaware, the ABLE plan is known as the Delaware Achieving a Better Life Experience Saving Accounts and is administered by the Plans Management Board. 16 *Del. C.* §§ 9601A-9608A. Contributions to an ABLE plan, which consist of after-tax monies, are presently not deductible from state income taxes.

This bill will allow a deduction from taxable income of up to \$5,000.00 for contributions to the Delaware ABLE plan. While it is easy for Councils to support this bill, again, similar to the 529 plan, it would be better if Delaware would offer a state income tax deduction for contributions to any ABLE plan (whether Delaware's plan or another state's plan). There are over forty-four (44) ABLE plans nationwide and most allows individuals to enroll regardless of where they reside.²³ Further, it would also be better and encourage saving if the deduction was higher; for example, up to \$7,500.00 for individual taxpayers and up to \$10,000.00 for married filing jointly. Councils should advocate for both of these recommendations.

This bill is a laudable attempt to encourage saving for qualified education expenses through a 529 plan and saving for QDEs for persons with disabilities through an ABLE account. Councils can and should endorse this bill as written and can advocate for even broader, more impactful and generous coverage for plans, accounts, and deductible limits.

23 ABLE National Resource Center; anrc@ablenrc.org

SB 90- Source of Income Discrimination

SB 90 amends the state fair housing statute and the landlord tenant code to eliminate language that allows landlords to refuse to accept Section 8 vouchers.²⁴ Currently both statutes state that landlords are “not required to participate in any government sponsored rental assistant program.”

The shortage of affordable housing in Delaware is well-known, and many individuals and families rely on housing assistance programs to subsidize their rents. Delaware currently lacks 15000 affordable rental units. The average wait list time for a voucher is 29 months once an applicant is put on a list.²⁵ Allowing landlords to screen out individuals who rely on such subsidies narrows the choices of safe affordable housing for many. Families often must search for several months to find a rental once a voucher has been obtained.

Allowing landlords to refuse vouchers as a payment source also creates a disparate discriminatory impact on people of color and people with disabilities who statistically rely more on rent subsidies than white renters. 31% of non-elderly households and 68% of elderly households using HUD Choice Vouchers in Delaware had a head of household or spouse with a disability. 70% of voucher holders are Black or African American.²⁶ Discrimination based on source of income tends to promote segregated neighborhoods and diminishes choice of housing types and locations.²⁷

There are a number of myths associated with accepting subsidized vouchers. First, landlords can continue to conduct regular screening of prospective tenants. Second, landlords can and do collect security deposits that may be used for damages, the same as with other tenants. Three, landlords do not have to pay for inspections, although their units do have to meet HUD safety standards (which will improve the quality of rental housing available). Finally, landlords can charge market rent and can increase rent annually, although increases over 10% are subject to review for reasonableness by HUD.

Because eliminating source of income discrimination by landlords will improve access to safe affordable housing for many individuals and families, including statistically many with disabilities, councils should consider strongly endorsing this bill, which is out of committee.

Please also note newly introduced bills : SB 106 Related to Special education services for home-schooled students; and SB 109, related to DMMA rate setting for home health services.

24 Currently 18 states and many municipalities limit or prohibit source of income discrimination in housing.

<https://www.prrac.org/pdf/AppendixB.pdf>;

25 <https://static1.squarespace.com/static/59ca9d72268b96cb977e74fd/t/60529a0781ad2b572de3a52a/1616026122624/Housing+and+Homelessness+in+Delaware.2020.pdf>; +

26 See HUD Picture of Subsidized Households (POSH) Data.

<https://www.huduser.gov/portal/datasets/assthsq.html>.

27 <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=4860&context=caselrev>;