

Memo

To: SCPD, GACEC and DDC

From: Disabilities Law Program

Date: 4/14/2023

Re: April 2023 Policy and Law Memo

Please find below, per your request, an analysis of pertinent proposed regulations and proposed legislation identified by councils as being of interest.

Proposed DDOE Regulations on 525 Requirements for Career and Technical Education Programs of Study, 26 Del. Register of Regulations 798 (April 1, 2023)

The Delaware Department of Education (“DDOE”) proposes to amend 14 Del. Admin. C. § 525, which governs the requirements for career and technical education (“CTE”) programs of study. Substantively, DDOE is proposing to amend this regulation to (1) strike defined terms from Section 2.0 and moving one defined term to the body of the regulation; (2) revise the criteria for programs of study by adding language related to social and emotional competencies (“SEL”) in subsection 3.2; and (3) revise the requirements for Local Education Agencies (“LEAs”) in subsections 4.2.1.2, 4.2.2.7, and 5.2.

As background, CTE is “an organized set of educational activities that provide students with rigorous academic content, relevant technical knowledge and skills, and leadership development or provide students with the opportunity to participate in work-based learning and to earn a recognized postsecondary credential as well as advanced postsecondary credit or standing.”¹ The Strengthening Career and Technical Education for the 21st Century Act of 2019 (“Perkins V”), emphasizes the “development of employability skills of all students through CTE programs, including special populations, such as individuals with disabilities.”² Data collected on CTE programs shows that students with disabilities who participate in CTE programs made significant progress academically, are more likely to graduate, and are more likely to attain employment upon graduation.³ Therefore, these regulations (and any changes to them) have a direct impact on students and individuals with disabilities.

The proposed changes in §§ 3.2, 4.2, 5.2.2, and 5.2.3 center around the inclusion of SEL in CTE programs. SEL is the “process through which all young people and adults acquire and apply the knowledge, skills, and attitudes to develop healthy identities, manage emotions and achieve personal and collective goals, feel and show empathy for others, establish and maintain supportive relationships, and make responsible and caring decisions.”⁴ Evidence has shown that

¹ 14 Del. Admin. C. § 525.2.0.

² <https://www.nsba.org/ASBJ/2019/October/CTE-Special-Education>. *See also* <https://files.eric.ed.gov/fulltext/ED608895.pdf>.

³ *Id.*

⁴ <https://casel.org/fundamentals-of-sel/>.

SEL is not a “one size fits all” approach and that an education which promotes SEL, has a positive impact on a range of outcomes including academic performance, healthy relationships, and mental wellbeing.⁵ Moreover, integration of SEL into CTE specifically can help prepare youth to “thrive and succeed in the workplace.”⁶

The proposed change in § 5.2.10 would add a requirement that LEAs award students one hour of instructional time for each hour of “career immersion experience.” This proposed change provides additional support for students with disabilities to meet high school graduation requirements.

The other changes proposed throughout this regulation are non-substantive and therefore not included in this analysis. Because the inclusion of SEL in CTE programs is a benefit for all students, especially students with disabilities, Councils should support this proposed regulation.

SB 50 Advisory Council on Walkability and Pedestrian Awareness

SB 50 codifies this council which has existed by Executive Order in one form or another since 2006. Delaware has a disturbing number of pedestrian fatalities.⁷ Moreover, there is inconsistent compliance with ADA requirements and no clarity about who is responsible for installing curb cuts and other accessible features in unincorporated areas. Of particular relevance to the Councils, the ACWPA includes the following representation from the disability community: SCPD, the DelDOT ADA Coordinator, the Department of State ADA Coordinator and three individuals with disabilities.

Councils may wish to endorse with perhaps the query why a representative from the AAB is not on this Committee.

HB 112: An Act To Amend Title 10 Of The Delaware Code Relating To Juveniles.⁸

House Bill 112 (“HB 112”) seeks to amend Chapter 9, Title 10 of the Delaware Code relating to Family Court proceedings in the interest of a child, specifically delinquency and criminal proceedings. The bill clarifies that children under twelve may not be arrested or held in a detention facility pending adjudication, except where the alleged crime is one of the enumerated exceptions ((1) murder in the first or second degree, (2) rape in the first or second degree, or (3) using, displaying, or discharging a firearm during the commission of a violent felony). The bill was introduced in the Delaware House of Representatives on April 5, 2023, sponsored by Rep. Chukwuocha and Sen. Townsend.⁹

⁵ <https://casel.org/fundamentals-of-sel/what-does-the-research-say/>.

⁶ <https://casel.org/fundamentals-of-sel/how-does-sel-support-your-priorities/sel-and-workforce-preparation/>. See also <https://www.wfyi.org/news/articles/career-technical-educators-call-social-emotional-learning-a-huge-value-in-schools> and <https://www.acteonline.org/tech-imago-transform-cte/>.

⁷ <https://why.org/articles/delawares-traffic-fatalities/#:~:text=%E2%80%9CDelaware%20is%20facing%20challenges%2C%E2%80%9D,pedestrian%20death%20toll%20has%20risen.>

⁸ <https://legis.delaware.gov/BillDetail?LegislationId=130170>.

⁹ HB 112 is co-sponsored by Reps. Baumbach, Bolden, Cooke, Dorsey Walker, Griffith, Heffernan, K. Johnson, Lambert, Longhurst, Lynn, Morrison, and Wilson-Anton and Sens. Brown, S. McBride, Paradee, and Sokola.

The bill was subsequently assigned to the House Judiciary Committee which is next scheduled to meet on April 26, 2023. The current meeting notice does not include any specific bills to be discussed. HB 112 does the following:

1. Amends § 1002 to clarify that a child shall not be arrested or detained in a secure detention facility (as defined in § 1258 of Title 11) for conduct occurring when the child was under the age of twelve (except where the alleged crime is one of the enumerated exceptions noted above);
2. Amends § 1007 to add subsection (l) clarifying that no child under the age of twelve may be placed in a detention facility (as defined by § 1258 of Title 11) except as allowed by § 1002 (where the alleged crime is one of the enumerated exceptions noted above);

In March 2023, DLP provided analysis on HB 79, An Act To Amend Title 10 Of The Delaware Code Relating To Delinquency And Criminal Proceedings Involving Children.¹⁰ HB 112 serves as a de-facto substitute to HB 79, which was tabled in the House Judiciary Committee on March 15, 2023.¹¹ During the March 15 Committee meeting, Rep. Chukwuocha indicated he was working on a substitute to the bill to clarify what was meant by the word “detained.” Community members provided public comment to express concern that the broadness of the term “detained” meant that police officers would not be able to hold or otherwise transport youth under the age of twelve in their vehicles, even if the young person needed to be transported to a psychiatric facility or otherwise. One community member expressed concern about the language in HB 79 which would amend § 1010 of Title 11 to align with limitations on transfer of youth from the jurisdiction of Family Court to Superior Court to those youth between the ages of sixteen and eighteen.

In this de facto substitute bill, the language was changed to refer to the prohibition on placing a youth under the age of twelve (absent one of the enumerated exceptions) in a detention facility pending adjudication rather than merely prohibiting the youth from being detained. In addition, HB 112 removed the change to the limitations on transfer of youth, which currently allows a youth to be transferred to the jurisdiction of Superior Court at the age of fourteen.

As written, HB 112 aligns with Delaware’s continued 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 take this opportunity to encourage the bill’s sponsors to re-include the language limiting transfer to youth aged sixteen and above (rather than fourteen) and revisit the issue of mandatory minimum sentences, which are still in existence for young people in Delaware. This latter recommendation was also included in the March 2023 DLP analysis of HB 79 and is re-included here for ease of review.

In 2022, the DLP provided its analysis on HB 314 of the 151st General Assembly,¹² a clarification to House Amendment 1 (“HA 1”) to HB 307 (“HB 307”) from the 149th General

¹⁰ <https://legis.delaware.gov/BillDetail?LegislationId=130061>.

¹¹ <https://sg001-harmony.sliq.net/00329/Harmony/en/PowerBrowser/PowerBrowserV2/20230412/3/2754>.

¹² <https://legis.delaware.gov/BillDetail?LegislationId=79162>.

Assembly,¹³ which added language to 10 Del.C. § 1009(k)(1) to provide that the mandatory commitment applies only where the youth was over the age of sixteen when they committed the offense of Robbery First Degree or Possession of a Firearm During the Commission of a Felony. In its analysis, the DLP provided the following information about HB 307, its original intent, and a snapshot of the relevant case law, specifically

HB 307 sought to repeal and remove *all* mandatory minimum sentencing scheme for juveniles adjudicated delinquent in Family Court. Recognizing that young people are inherently different than adults, HB 307's sponsors put forth a bill which would allow Family Court judges and commissioners to fashion sentences which are appropriate for each individual youth. This reasoning is in line with several U.S. Supreme Court decisions from the last several decades, including *Miller v. Alabama*¹⁴ (holding that mandatory life without parole for a youth was unconstitutional), *Roper v. Simmons*¹⁵ (holding that a death sentence for a crime committed when the individual was under the age of eighteen (18) was unconstitutional), and *Graham v. Florida* (holding that it was unconstitutional for a young person to be sentenced to JLWOP for a crime not involving homicide).¹⁶

These, and other similar cases, stand on scientific literature differentiating a child's developing brain from an adult's developed brain. So, the original text of HB 307 made *sense* when considering the line of U.S. Supreme Court cases and available science around the development and growth of a youth's brain. The House Judiciary Committee agreed on March 28, 2018 with six (6) Favorable¹⁷ votes and three (3) votes On Its Merits¹⁸. However, on April 19, 2018, Rep. J. Johnson, HB 307's primary sponsor, introduced HA 1, which was placed with the bill immediately prior to a vote by the House. HA 1 retained the mandatory minimum sentences for Robbery First Degree and Possession of a Firearm During the Commission of a Felony.

Retaining the above two (2) mandatory minimum sentences flies in the face of the available literature and U.S. Supreme Court precedent. Although not unconstitutional, it prevents Family Court Judges and Commissioners from adequately considering everything that makes a youth a youth and an individual, including those youth-specific characteristics.

¹³ <https://legis.delaware.gov/BillDetail?LegislationId=26279>.

¹⁴ 567 U.S. 460 (2012). Holding 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.

¹⁵ 543 U.S. 551 (2005). Considering the social and neuroscience literature at the time, the U.S. Supreme 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.

¹⁶ 560 U.S. 48 (2010).

¹⁷ A favorable vote means the legislator recommends the full Chamber pass the legislation.

¹⁸ 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.

Therefore, although HB 314 follows the current trend in Delaware, Councils may wish to provide their support with the recommendation that the Legislature consider revisiting whether retaining the two mandatory minimum sentences for juveniles adjudicated delinquent is necessary or warranted.

Concerning HB 112, Councils may wish to provide their support for the bill with the recommendation that the bill's sponsors consider (1) re-including the language in HB 79 which limited the transfer of youth from Family Court to young people at least sixteen years old and (2) whether they should revisit the two required mandatory minimum sentences for youth that still remain in Delaware code.

HB 114 Certification of Recovery Houses

HB 114 seeks to require certification for Recovery Houses in Delaware that wish to receive referrals from state agencies and who receive state funds. Recovery Houses are residential “sober” houses where individuals in various stages of treatment and recovery reside. Sometimes services are provided in addition to housing. Oxford Houses are a particular type of Recovery House. While stable housing in a substance free environment can be crucial element in substance use disorder treatment, these houses are ripe for abuse and there have certainly been instances of financial exploitation, neglect and abuse of residents who seek out these facilities.¹⁹ Like every other treatment milieu, especially ones that are funded by state or federal dollars, Recovery Houses must be regulated to avoid these abuses. However, this bill does not set up a licensing system, nor does it require all sober living houses to be certified. Entities that choose not to undergo this process can continue to operate with private funds. There is nothing to stop unqualified and sometimes unscrupulous individuals from setting up flop houses under the guise of calling them “sober-living” or recovery houses. Such entities could be fined if they hold themselves out as being a certified recovery house, and state agencies are forbidden from referring people to these locations.

The bill sets up a voluntary certification system and authorizes DSAMH to 1. Contract out the certification process and 2. Develop regulations. The contracted certification organization is responsible for developing and implementing standards. DSAMH's role is markedly minimal in this process. DSAMH is charged with adopting “nationally recognized standards” for the certifying organization and for the operation of recovery homes. These standards are not delineated but one would assume they are contemplating the National Association for Recovery Residences (NARR) standards²⁰. DSAMH must approve the processes and requirements that the certifying entity establishes. However, NARR standards are not subject to federal review and have been developed by private entities who engage in running recovery houses. In a brief review, the author noted that there is no requirement in the NARR standards that these homes

¹⁹ <https://www.burlingtonfreepress.com/story/news/2019/01/08/sober-houses-problems-exploit-patients-drug-addiction-relapse-vermont/2449735002/>; <https://www.justice.gov/usao-sdfl/pr/owner-sentenced-more-27-years-prison-multi-million-dollar-health-care-fraud-and-money>

²⁰ https://narronline.org/wp-content/uploads/2018/11/NARR_Standard_V.3.0_release_11-2018.pdf

provide physical accessibility. It is worth noting that Pennsylvania issues licenses recovery houses and has developed its own regulations²¹ It does not contract this process out.

There are some other concerning aspects of the bill. The bill requires that houses publish in the required online registry (2204A(a)(4)) “whether residents can participate in Medication Assistant Treatment.” MAT is a widely used and supported short term and long term treatment modality.²² United States Department of Health and Human Services has made it clear that it is a violation of the ADA (and very likely a violation of the Fair Housing Act) to prohibit or exclude individuals who are engaged in MAT.²³ This bill is basically sanctioning illegal discrimination.

Second, the bill explicitly exempts Recovery Houses from the Landlord Tenant Code. The resident has no protection from being literally put on the curb, without notice or warning. The House is authorized to establish rules about behavior and termination from the program. The only obligation to the resident is to make a “reasonable effort to connect the resident with appropriate services.” There is no due process, no appeal process, no obligation to refund the resident’s rent or other payments, no obligation to protect the person’s property, and no obligation to consider the person’s safety when terminating services.

While maintaining a sober environment is obviously of key importance, creating these environments should not be done in a vacuum without recognition of the frequency of relapse and also the devastating impact of being rendered homeless and penniless. There is a middle ground where a residence could use the emergency eviction process. There should be written notice, the ability to challenge a decision to terminate someone from the program, and firm guidelines that protect a resident’s resources.

Councils should consider expressing support for the concept, in fact the necessity, of regulating recovery houses while insisting that the bill address protection of all residents in these settings.

Senate Bill No. 70 – Proposed Amendment to § 1041, Title 10 of the Delaware Code Relating to Animals in Protection from Abuse Proceedings.

Senate Bill No. 70 proposes to amend § 1041 of Title 10 of the Delaware Code, adding language to include acts against a person’s companion or service animal to the definition of abuse for protection from abuse proceedings.

First, the amendment adds to Section (1) that abuse will include “[i]ntentionally or recklessly damaging, destroying, or taking the tangible property of another person, *including inflicting physical injury on any companion animal or service animal,*” and “engaging in a course of alarming or distressing conduct in a manner which is likely to cause fear or emotional distress or

²¹ <https://www.ddap.pa.gov/Get%20Help%20Now/Pages/Licensed-Recovery-Houses.aspx>;
<https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol51/51-50/2058.html>

²² https://narronline.org/wp-content/uploads/2019/03/NARR-C4-NCBH_MAR-RH-Brief.pdf

²³ See https://archive.ada.gov/opioid_guidance.pdf; https://archive.ada.gov/ready_work_sa.pdf
Settlement Agreement Between The United States Of America And Ready To Work, Llc Under The Americans With Disabilities Act, Dj # 202-13-342;

to provoke a violent or disorderly response, *including conduct that is directed towards any companion animal or service animal.*”

The amendment then adds that abuse will include “[a]ny of the following acts when used as a method of coercion, control, punishment, or intimidation of a person who has a close bond of affection to the companion animal as defined in paragraph (1)i.2. of this section:

- A. Inflicting or attempting to inflict physical injury on the companion animal.
- B. Engaging in conduct which is likely to cause the person to fear that the companion animal will be physically injured.
- C. Engaging in cruelty to the companion animal under § 1325 of Title 11.”

The amendment then defines a “companion animal” as “an animal kept primarily for companionship instead of as any of the following:

- A. A working animal
- B. A service animal as defined in § 4502 of Title 6.
- C. An animal kept primarily as a source of income, including livestock as defined in § 7700 of Title 3.

Finally, the amendment adds that as relief, the Court may grant the petitioner the “exclusive care, custody, or control of any companion animal owned, possessed, leased, kept, or held by the petitioner, the respondent or a minor child residing in the residence or household of the petitioner or respondent and order the respondent to stay away from the companion animal and forbid the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the companion animal. Any subsequent property division order entered by the Court in any proceeding brought under Title 13 supersedes any relevant provisions regarding companion animals which are included in a protection from abuse order, without the need to modify that protective order.”

The amendment addresses the importance of animal companionship and the protection of both service animals and companion animals. Service animals are vital to disabled individuals; abusers attempting to use control over a partner may target a service animal. This amendment will extend protection to service animals and thus will afford disabled victims of abuse more protection.

Moreover, a 2021 study found that “companion animals played a critical role in reducing feelings of depression, anxiety, isolation, and loneliness.²⁴ Victims of abuse may rely on companion animals to support them through navigating protection from abuse proceedings; extending protection to companion and service animals alike will foster both mental and physical well-being for disabled and non-disabled individuals.

Councils should consider supporting this amendment.

²⁴ Lori R. Kogan, Jennifer Currin-McCulloch, Cori Bussolari, Wendy Packman, & Phyllis Erdman, [The Psychosocial Influence of Companion Animals on Positive and Negative Affect during the COVID-19 Pandemic](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8300185/), Multidisciplinary Digital Publishing Institute (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8300185/>.

House Bill No. 95 – Proposed Amendment to § 1503, Title 13 of the Delaware Code Relating to Companion Animals in the Disposition of Marital Property

House Bill No. 95 proposes to amend § 1503 of Title 13 of the Delaware Code. The amendment requires Family Court to award possession and provide for the care of companion animals when dividing marital property after considering the well-being of the companion animal.

First, the amendment defines a “companion animal” as an animal “kept primarily for companionship instead of as any of the following:

- a. A working animal.
- b. A service animal as defined in § 4502 of Title 6.
- c. An animal kept primarily as a source of income, including livestock as defined in § 7700 of Title 3.”

Moreover, the amendment adds that “[a] companion animal may not be transferred, encumbered, concealed, disposed of, or spayed or neutered without the written agreement of both parties.”

The amendment also adds that if the companion animal is marital property of both parties, the court will award ownership of and responsibility for the companion animal to one or both of the parties and may also include veterinary and other expenses. To determine who will receive ownership of the companion animal, the Court “shall take into consideration the well-being of the companion animal,” considering “the ability of each party to own, support, and provide necessary care for the companion animal, the attachment between the companion animal and each of the parties, [and] the time and effort each party spent with the companion animal during the marriage tending to the companion animal’s needs.”

The amendment then adds that if the Court finds that the parties are awarded a shared interest in the companion animal, the Court “shall limit the subsequent disposition of the companion animal to the following:

- a. The parties may jointly transfer their combined interests to a third party.
- b. One party may in writing irrevocably surrender their interest to the other party.
- c. Upon the death of one party, all interest shall transfer to the surviving party.
- d. Upon a substantial change of circumstances, either party may petition the Family Court to be awarded sole ownership based upon the welfare of the companion and the totality of the circumstances.”

Councils should consider supporting this but query the sponsors why service animals are not expressly included. At a minimum, the statute should indicate that service animals are the property of the person for whom they have been trained to assist.

SB 69-Exempting child care in sectarian settings from state regulation

SB 69 defines “child care” and related terms in Delaware Code. The only substantive proposed change in this bill is the addition of language that would exempt “a facility operated by a sectarian or religious organization” from the definition of “child care.” This exemption is potentially concerning because it could mean that a large percentage of daycares in Delaware

would be exempt from the safety and quality requirements for child care under Delaware law. Nationwide, approximately half of all working families who use center-based child care are using a faith-based programs.²⁵ In Delaware specifically, approximately 52% of all daycares in are religiously affiliated.²⁶ In an environment in which daycare is in high demand and parents and employers are in urgent need of affordable child care, families are often limited in their child care options and should be able to expect that a religiously affiliated center is still meeting safety and quality standards. Parents should be secure in knowing that no matter where they place their child in child care, that child care will be held to basic state standards designed to keep children safe and healthy.

Current Delaware regulations already make exemption for short-term child care provided by religious organizations, or other programming for children sometimes provided by religious organizations, such as religious instruction, school vacation programming, tutoring, or music, sports, or arts instruction.²⁷ The proposed exemptions in this bill far exceed the scope of these types of shorter term or more informal programs, and would instead exempt typical child care programming run by religious organizations filling a similar need, and requiring the same safety and quality standards, as sectarian child care centers. Councils should consider opposing this proposed bill, as it could increase health and safety issues and could lead to more incidents of abuse and neglect, all of which can lead to injuries and potential disabilities. Children and parents deserve to have child care that is provided according to appropriate health and safety regulations.

HB 83- Kindergarten Oral Health Screening

HB 83 modifies Chapter 41, Title 14 of the Delaware Code to require an oral health screening for every kindergarten student “who did not indicate during enrollment that they were seen by a dentist by the last student attendance day of each school year.” § 4123 (b). The proposed amendments provide procedures for notifying parents and IEP teams of failed oral health screenings and connecting families with a dental referrals.

Councils should support this amendment. According to a 2013 report from the Delaware Health and Social Services Bureau of Oral Health and Dental Services, approximately 50% of children

²⁵ Suzann Morris & Linda Smith, *Examining the Role of Faith-Based Child Care*, Bipartisan Policy Center, June 4, 2021, <https://bipartisanpolicy.org/report/faith-based-child-care/>

²⁶ Private Schools Review, *Top 20 Best Delaware Private Daycares & Preschools (2023)*, <https://www.privateschoolreview.com/delaware/daycare-private-schools> (last visited April 12, 2023)

²⁷ Exempt facilities include: “[r]eligion classes conducted by religious institutions during the summer that do not exceed four weeks,” “[p]rograms established in connection with a business, recreation center, or religious institution in which children are provided care for brief periods of time, while a parent/guardian is on the premises and readily accessible at all times,” “[p]rograms that offer activities for school-age children who attend at their own discretion on an ‘open door’ basis, where there is no payment and no agreement, written or implied, between the program and the parent/guardian for the program to be responsible for the care of the child,” “[p]rograms that offer school-age care on a limited basis in order to meet an emergency need or special need, or only during school in-service days, school holidays, or school vacations,” and “[p]rograms that solely provide lessons or classes, such as tutoring, music, dance, sport, or art;” (9 Del. Admin. C. § 4.2)

in Delaware have experienced tooth decay and equity issues continue to be evidence in the rates of dental preventative care received.²⁸ While this report exhibited the substantial need for children’s dental care, it also highlighted notable improvements in child dental health across Delaware following state interventions, including interventions promoting age-one dental visits and elementary age referrals.

This latest amendment should be encouraged to continue the successful work of prior interventions and to promote and improve equitable dental healthcare access for children in Delaware.

HB 82 - Biennial mailing of polling place card and election information

HB 82 requires the Delaware Department of Elections to mail a notice to all registered voters every two years, informing them of their polling place as well as information on:

- All available methods of voting
- Dates and times of general and primary elections
- Deadlines for voter registration for each election and party change before a primary.
- Outline of procedures and requirements, polling places, and early voting sites.

The notices must be mailed out no later than 30 days before the state primary election. When notices are returned as undeliverable, the Department will place the voter into “inactive” status. The voter remains eligible to vote as usual; removal from the voter rolls would occur if they do not vote in two consecutive general elections after becoming “inactive.” Voters may appeal the removal and re-register if eligible.

In 2022, many changes were enacted just three months before the primary and were then reversed before the general election. In addition, some voters’ polling places changed due to the redistricting that took place after the 2020 election. All these factors created a great deal of confusion and many complaints that voters had not been properly informed. This appears to be the primary motivation behind this bill, which has bipartisan support.

The provision of accurate and timely information for voters is undoubtedly a positive development. It will be important to ensure that the development of the new notices includes accessible formats for voters with disabilities. Any legislation that creates a new avenue for the possible removal of voters from the rolls needs careful consideration to avoid unintended consequences that could suppress or disenfranchise voters. There has been no suggestion or evidence that Delaware’s voter rolls are not being maintained properly, or that ineligible persons are voting. It would be useful to obtain the sponsors’ views on both points. Councils may wish to endorse with the caveat that DOE makes these materials available in accessible formats and express concern that the bill may have the unintended consequence of removing more people from voter rolls.

²⁸ DEL. HEALTH AND SOC. SERV., DIV. PUB. HEALTH, BUREAU OF ORAL HEALTH DENTAL SERV., *Delaware Smiles: The Oral Health of Delaware’s Children*, at 5, 8, 11, 13-8, <https://dhss.delaware.gov/dhss/dph/hsm/files/desmlsreport.pdf>

HB 96 – Lower the eligible age to vote in school board races from 18 to 16 years old

HB 96 bill would change the minimum voting age to 16 for school board elections (but not for referendums). Proponents of the bill state these young people are directly affected by board decisions and therefore should have a say in who makes decisions about schools. The bill's sponsor, Rep. Eric Morrison, sees the additional benefit of getting students more involved in civic life.

Common Cause of Delaware is supporting the bill and emphasizes the importance of getting young people in the habit of voting and civic participation. Also supporting the bill are some school board members from Christina and Red Clay school districts, who see value in creating a more diverse and representative electorate, as younger people tend to have different perspectives and priorities than older generations.

Opposing the bill is the Delaware School Boards Association, claiming it is unconstitutional. Supporters argue that the 26th amendment says that states cannot prohibit citizens 18 or older from voting but does not preclude allowing people younger than 18 to vote.

It is worth noting that Delaware already allows 17-year-olds to vote in primaries, if they will turn 18 by the date of the general election. Some other states have already lowered the voting age to 16 for all elections.

This could also provide an opportunity for students with disabilities to bring their perspective and raise awareness about the challenges they face in school, as well as get them in the habit of voting. If passed, it would become effective immediately – in time for the May 9 election. Councils may wish to consider endorsing this legislation.