



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
MARGARET M. O'NEILL BUILDING  
410 FEDERAL STREET, SUITE 1  
DOVER, DE 19901

VOICE: (302) 739-3620  
TTY/TDD: (302) 739-3699  
FAX: (302) 739-6704

**MEMORANDUM**

DATE: June 1, 2010

TO: The Honorable David P. Sokola  
The Honorable Teresa L. Schooley

FROM: Ms. Daniese McMullin-Powell *DMP/KH*  
Chairperson  
State Council for Persons with Disabilities

RE: S.B. 245 [Student Teacher Criminal Background Checks]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 245 which would require that student teacher candidates undergo a criminal background check similar to public school employees before being placed in a student teaching placement within a public school. As background, the Department of Education published a regulation in 2008 establishing a procedure for conducting criminal backgrounds checks for student teachers. See attached 12 DE Reg. 329 (September 1, 2008). The Department later determined that State legislation would be necessary to implement the procedure and the effective date of the regulation was first deferred until January 2010 and later deferred to January 2011. See attached 13 DE Reg. 445 (October 1, 2009) and 13 DE Reg. 843 (December 1, 2009). The SCPD submitted comments to the DOE expressing concern that the delay was compromising student safety and requesting that the DOE prioritize facilitation of the necessary State legislation. The Council also suggested that the DOE develop a model standard for colleges and public schools. The DOE agreed with these suggestions. See 13 DE Reg. at 844. The introduction of H.B. 245 is therefore a very welcome development and SCPD endorses the bill subject to consideration of two (2) amendments.

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

Second, in their commentary on the 2008 version of the DOE regulation, SCPD observed that there was no provision addressing student teachers placed in Delaware public schools by out-of-state colleges (e.g. West Chester University; Salisbury University). The DOE responded as follows:

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

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

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

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

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

cc: Ms. Susan K. Haberstroh  
Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

Sb 245 student teach cbc 6-1-10