



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**

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September 29, 2014

Ms. Tina Shockley, Education Associate  
Department of Education  
401 Federal Street, Suite 2  
Dover, DE 19901

RE: 18 DE Reg. 177 [DOE Proposed Charter School "Impact" Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its Charter School regulations regarding to how "impact" may be used as an element of approval and any conditions upon approval or disapproval of a charter. This regulation is promulgated to comply with S.B. 209 signed by the Governor on June 25, 2014. The proposed regulation was published as 18 DE Reg. 177 in the 1, 2014 issue of the Register of Regulations.

Background to the legislation is compiled in the attached set of Delaware News Journal articles. In a nutshell, many legislators were concerned with the "impact" of new charter schools and expansions of existing charter schools on school districts. A contrary view was adopted by former Mayor James Baker in the April 30 article and the April 9 News Journal editorial which questioned why policymakers were elevating the interests of institutions over the interests of children.

The DOE proposal generally conforms to the statute. However, SCPD has the following observations.

First, in §2.1, the definition of "impact" includes consideration of the charter school's effect on "the education system of the state". Reasonable persons may differ on whether Title 14 DeL.C. §511 authorizes consideration of the effect of the charter school on the entire education system in the state. Section 511(b)(3) authorizes consideration of the effect "on the schools and the community from which the charter school's new students will likely be drawn." Perhaps a specialized charter school (e.g. military; drama/dance) could draw students from across the state and outside the local community. The DOE and SBE may wish to consider whether the reference to "the education system of the state" conforms to the enabling statute.

Second, in §3.10.1.1.2, the regulation allows consideration of “programmatic offerings” which, SCPD assumes, could include non-academic offerings (e.g. clubs; vocational co-op opportunities; specialized arts). To obviate ambiguity that non-academic offerings can be considered, SCPD recommends adding a definition of “programmatic offerings” to §2.0 as follows:

Programmatic offerings means academic, non-academic, and extracurricular components and options identified in the application.

Third, in §3.10.5, there is a plural pronoun (their) with a singular antecedent (“Board”). Consider substituting “its” for “their”.

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

Sincerely,



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

cc: The Honorable Mark Murphy, Secretary of Education  
Mr. Chris Kenton, Professional Standards Board  
Dr. Teri Quinn Gray, State Board of Education  
Ms. Mary Ann Mieczkowski, Department of Education  
Ms. Paula Fontello, Esq., Department of Justice  
Ms. Terry Hickey, Esq., Department of Justice  
Ms. Ilona Kirshon, Esq., Department of Justice  
Mr. Brian Hartman, Esq.  
Developmental Disabilities Council  
Governor’s Advisory Council for Exceptional Citizens

18reg177 doe-charter school impact 9-29-14.doc

# Lawmakers concerned about charter school applications

Matthew Albright, The News Journal 11:07 p.m. EDT April 4, 2014



(Photo: Daniel Sato/The News Journal)

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TWEET

A group of New Castle County lawmakers has written a letter to top state education officials expressing "deep concerns" about proposed new charter schools, fearing the "significant hardship" they could place on traditional school districts.

Red Clay School District alone stands to lose as many as 800 students and \$2.6 million if all the charter applications currently under consideration are approved, the lawmakers write in the letter.

There are five charter schools seeking approval from the state. Four would begin in the 2015-2016 school year and all of them would be in New Castle County.

The letter, sent Thursday night and addressed to Secretary of Education Mark Murphy and the State Board of Education, is signed by three state senators and 17 of the state's 41 representatives. All but one of the legislators who signed it are from New Castle County.

"As members of the General Assembly and representatives of the families and students who will be impacted by these potential new charters, we too have deep concerns about their effects on the Red Clay School District, the other school districts of New Castle County and the community at large," it says.

The letter emphasizes that state law requires charter school authorizers – almost always the State Department of Education – to consider the impact the charter would have on the local schools and community.

"The charters that the state approves must, at the very least, provide our students with a wholly unique and high-quality education," it says. "It is not clear that these five charters, especially those that will impact the public school districts of New Castle County, will meet those expectations."

Kendall Massett, executive director of the Delaware Charter School Network, said the charters looked forward to working out what's best for students.

"Our mission is to promote autonomy and choice in public education as a whole. Growth in itself is not the goal of the charter movement, nor is it to adversely affect district schools," Massett said in a statement. "Last year's legislation struck the right balance, inviting robust public comment like this while also taking the entire picture into account, including the positive impact that it could have on children."

The lawmakers stopped short of explicitly asking Murphy and the board to reject the applications.

Rep. Kim Williams, D-Newport, organized the letter. A former Red Clay Board Member, she said the legislators want to add weight to concerns raised by district administrators about the impact of the new schools.

"I don't want to speak for the other legislators, but we shared the letter with them and asked them to sign on if they agreed with it, and I think the letter speaks for itself," Williams said. "We're trying to make sure that the department and the board know how serious these issues are."

Donna Johnson, executive director of the State Board of Education, said the letter will be added to the public record that is part of the charter school approval process.

Johnson said it would be inappropriate for board members to comment on the issue until they reviewed the entire record for the applications. Murphy and the board will decide at the April 17 board meeting whether to approve the schools.

"It's important that [the lawmakers] concerns are considered as part of a thorough process to determine whether the schools meet the rigorous legal requirements for approval, and, most importantly, if they would have a positive impact on our students," Department of Education spokeswoman Alison May said in a statement.

State law says if a school meets all the requirements for approval, the state must do so. If Murphy or the board were to reject an application, they would need to cite specific reasons to do so.

## Lawmakers concerned about charter school applications

The letter specifically points to Friere Charter School, an established Philadelphia charter seeking to open a school in Delaware. The school's application says it will take a strict no-violence policy, immediately expelling any student who uses physical intimidation or force without any second chances.

While acknowledging traditional schools can choose to expel violent students, the letter says most schools can't be that demanding.

"Friere looks to put the burden back on the districts by employing mechanisms that are not available to the rest of traditional public schools," it says.

The other three proposed charters include: Delaware STEM Academy, which would focus on students interested in science, technology, engineering and math; Great Oaks Charter School, which would specialize in "high-dosage tutoring" using recent college graduates; and Pike Creek Charter Middle School, which would focus on students' health and fitness.

Masset referred to a law passed last year aimed at updating how the state monitors charters, adding things like a prescreening process, more applicant interviews and more opportunities for public input before such schools are improved.

State officials said the bill "raised the bar" for starting charter schools. But some lawmakers worried parts of the bill would lead to more resources flowing away from traditional schools to charters.

Merv Daugherty, Red Clay's superintendent, said he was glad to see strong support from so many legislators.

"We do think there has been an oversaturation of charters in our particular area," Daugherty said. "The question we're asking is, are these charters really needed?"

Daugherty says schools, like the Delaware Military Academy chartered in his district, fit a niche traditional schools can't fill. But he said many of the proposals in charters are things that could be implemented within regular public schools.

"My view of it is, why not come to the districts and see if this is something we can work together on, instead of trying to separate everybody," Daugherty said. "If you come to us and we say no, or don't think it's feasible, then put that application in."

In 2003, there were 13 charter schools serving 6,260 students in Delaware. This year, there are 21 charters serving 11,078 kids. By 2019, even if no other charters are approved and there is no growth in the schools, there could be as many as 31 charter schools serving more than 14,000 students.

Contact Matthew Albright at [malbright@delawareonline.com](mailto:malbright@delawareonline.com) or at (302) 324-2428. Follow him on Twitter @TNJ\_malbright.

### The lawmakers

The lawmakers who signed the letter include: Rep. Kim Williams, Helene Keeley, Deborah Hudson, Michael Barbieri, John Kowalko, Paul Baumbach, Joseph Miro, Andria Bennett, John Mitchell, Stephanie Bolden, Michael Mulrooney, Gerald Brady, Ed Osienski, Earl Jacques, James Johnson, Charles Potter, Dennis E. Williams; and Sen. Patricia Blevins, Karen Peterson and Bryan Townsend.

### By the Numbers

4

Number of charter schools seeking to open in the fall of 2015 in New Castle County.

800

Number of students the Red Clay School District stands to lose if all four open.

\$2.6 M

State aid Red Clay could potentially lose.

31

Potential number of charter schools by 2016.

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April 12, 2014, 1:55 p.m.

# DELAWARE



Philippina Lutero, 14, smiles after answering a question correctly in her English class at Moyer Academy in Wilmington on Thursday. *PHOTO BY RICHARD PETERSON FOR THE NEWS JOURNAL*

## State approves four charters, rejects one

Two other charters placed under scrutiny; Moyer change approved

By Matthew Albright  
The News Journal

State officials approved four new charter schools Thursday, rejected one application, placed two charters set to open this fall under tight scrutiny over enrollment concerns and allowed an existing school to shrink its enrollment targets.

The four charter school proposals approved by Secretary of Education Mark Murphy and the State Board of Education are: Freire Charter School, Delaware STEM Academy, Great Oaks Charter School and the Mapleton Charter School at Whitehall.

All of them are set to open in Fall 2015 except for Whitehall, which would open in 2016, and all are in New Castle County.

"The charters that we are recommending for approval today represent a geographic diversity of locations—two schools in Wilmington, one in southern New Castle County and one in [Appoquinimink]," Murphy said. "They are providing unique instructional models that are not currently available to students."

Murphy rejected an application from Pike Creek Charter School, saying he agreed with the state's Charter School Accountability Committee that the school was not on solid financial footing.

The approvals mean a major expansion of the charter footprint in Delaware. If all four schools meet their enrollment targets, they would add about 2,360 charter seats.

There are currently 11,078 students in charters statewide, a number that was already expected to grow as existing schools expanded.

The approvals come despite worries about the impact they might have on traditional school districts. A group of 20 state lawmakers wrote to Murphy and the board earlier this month expressing "deep concerns," saying Red Clay School District alone stands to lose 800 students and \$2.6 million if the charters were all approved.

Several state board members raised those questions. "At what point do we start looking on the cumulative impact all these schools will have on a district?" asked Randall Hughes. "Does that become something we think about? Can it?"

Department officials said state law does not allow them to reject an application based solely on its impact on other schools. That stirred a heated discussion be-

tween several of the board members. "If next year we were to have 20 charter schools come before this board, and they all use this format, they will all be approved," said Pat Heffernan. "I just want to make that very clear to the public."

Heffernan questioned whether it made sense for the state to approve any charter as long as it met the state's standards. He pointed out that Mapleton is designed to complement the Town of Whitehall, a planned private development.

"Maybe somebody wants to open a clown school, and because they filled out a form right we would have to approve it," Heffernan said. "I think we need to think about whether this process allows us to make productive decisions about public policy."

At the same time as it opened the door to new charters, the state put two schools already approved to open this fall on notice for low enrollment numbers.

Academia's Antonia Alonso had only 107 students fully signed up by Thursday, or only 36 percent of its planned enrollment. Delaware MET had only 93 students fully signed up, or about 34 percent of planned enrollment.

That puts them on shaky financial ground. Murphy and the board placed both schools on formal review, which will spur the accountability committee to scrutinize them. Formal review could lead to a revocation of a school's charter or corrective actions, but Thursday's vote was only a first step in the process.

"We are aware of the many effects this could have on a lot of people," said Jennifer Nsgourney, head of the state's charter school office. "We are trying to take steps as far in advance as possible."

Design Lab Charter High School, another charter set to open in the fall, was also scheduled to face possible review, but the department took it off the board's agenda. Design Lab officials have asked the state to allow it to open a year later.

Delaware MET could also choose to ask for a delay, but Academia has already received one and cannot request another.

Also Thursday, state officials approved New Moyer Academy's request to shrink its enrollment targets by about half, from 455 students to 265 next school year.

Contact Matthew Albright at [malbright@delawareonline.com](mailto:malbright@delawareonline.com) or at 302-324-2428. Follow him on Twitter: [CTNU\\_malbright](https://twitter.com/CTNU_malbright).

# OPINION

Susan D. Leath President and Publisher  
David F. Ledford Executive Editor  
John Sweeney Editorial Page Editor



Online Wednesday: Are we smart to stop drinking diet sodas? [delawareonline.com/opinion](http://delawareonline.com/opinion).

## OUR VIEW

# WHY DO PARENTS PICK CHARTER SCHOOLS?

Twenty legislators have asked the state Board of Education to consider the possible harm five new charter school applications pose to the Red Clay Consolidated School District.

The legislators are worried that too many charter schools will take money and students from Red Clay schools. They argue this would be a detriment to the district and to public school education.

They have a point. Looked at from the institution's point of view, these charter schools do pose a threat. However, what does it look like from the point of view of the parents who would send their children to these schools? What do they see? What is the need they are trying to fill?

The charter school debate, generally has ignored questions like these. Most of the arguments from the legislators and others focus on the concerns of the institutions and those who run them. The viewpoint of the typical parent is missing.

Public schools have been, are and will be the back-

bone of the American education system. However, for generations, people with money could sidestep any faults they saw in the system by sending their children to private schools. However, since the advent of laws allowing charter schools, middle- and low-income parents have had the ability to leave the public school system as well. Most likely, these parents do not see themselves as leaving the system. They are just trying to get a better education for their children. The parents, in other words, are voting with their feet.

Instead of complaining, the public school establishment and their legislative supporters should be asking why.

People who run private businesses study their customers. When the customers stop coming back, the business operators find out why and do something about it. They do not blame the competition. As one businessman recently put it, Pepsi does not try to shut down Coke when the customers stop drinking Pepsi.

Pepsi fights back.

Do the leaders of Red Clay or any other public school district know why parents want to take their children out of the district public schools? The districts cannot blame the growth of charter schools on the flight of middle-class white parents. Many of the charter schools are extremely attractive to lower-income minority parents.

Why? What prompts them to leave? What attracts them to the charter schools? If the school leaders know what the reason is, why isn't it on the table for discussion? Suppose the problem were discipline in the classroom or curriculum. Shouldn't that problem be the topic for discussion? Shouldn't the legislators be trying to assist the school administration to find a solution for the problem, rather than complaining about alleged unfairness?

We applaud the legislators for their concern, but they would have a better argument if they could speak to the parents' concerns as well.

EDUCATION

4-29-14  
MS

# Lawmakers want more consideration of charters' impact

By Matthew Albright  
The News Journal

As Delaware's charter school footprint grows, some lawmakers want state officials to be able to reject new charters based solely on the impacts they would have on existing schools.

"Right now we just have this process where charter after charter after charter is opening, but we're not really looking at what this means for the larger system," said Sen. Bryan Townsend, D-Newark. "This is not about being anti-charter at all. It's just that we've got to have some coordination of our resources, and we've got to make sure we're being as efficient as possible."



State Sen.  
Bryan  
Townsend

Townsend said he is circulating a bill with colleagues in the General Assembly and plans to file it this week. A draft copy of the bill included Rep. Kim Williams, D-Newport, and Sen. Patricia Blevins, D-Elsmere, as sponsors.

A law passed last year allows state officials to consider the impact on existing schools when approving new charters, but explicitly prevents them from rejecting one based solely on that impact.

Two weeks ago, the board and Secretary of Education Mark Murphy approved four new charter

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# Charter: Four new schools approved for New Castle County

Continued from Page A1

schools to open in New Castle County over the next few years, potentially adding 2,360 charter seats in the county. Townsend, Williams and Blevins were among 20 state lawmakers who wrote to the board before that decision voicing "deep concerns" about the amount of money and number of students traditional districts could lose.

As they voted to approve the schools, several state board members voiced frustration that applications had to be approved as long as they met the right criteria, no matter what impact they had on surrounding district schools.

"If next year we were to have 20 charter schools come before this board, and they all use this format, they will all be approved," said member Pat Heffer-

nan. "I just want to make that very clear to the public." The board rejected one charter school at that meeting, and two others did not make it into the full application process.

Townsend said his proposal is a direct result of board members' concerns. He argues the board should be able to make strategic decisions about what schools will fit the existing system and serve currently unmet needs, rather than simply approving any school that meets a regulatory bar.

"We just approved a science, technology, engineering and math high school in Wilmington. But what if a school nearby had just invested tens of thousands of taxpayer dollars into a STEM program?" Townsend said. "We need to be asking ourselves, is this an effective coordination of resources?"

Charter advocates believe the proposal would deny

students and parents the option to enroll in schools they think could better serve their kids.

"It's about giving parents the choice to do what's best for their children, not having somebody tell them what they have to do and where they have to go," said Chuck Taylor, president of the Delaware Charter School Network and former charter school head.

Taylor said this discussion already took place when lawmakers changed the charter law last year, saying he was "disappointed" that it was coming back up again after the law had changed.

"The argument you hear being made isn't about what's good for kids, it's what's good for these districts. It's about politics," he said. "Make your schools competitive and you shouldn't have anything to worry about."

Townsend said he agrees that competition and dynamism in the school system are important, and pointed to charters like Kuumba Academy and Gateway Lab school as places where "great things are happening."

"The problem is that we haven't sat down and had a broader conversation about what we can learn from Kuumba or a school like it and apply it across all our schools," he said. "Instead, we're just opening more and more charters. That's not a sustainable solution."

Department of Education Chief of Staff Mary Kate McLaughlin said in a statement that the department was comfortable with the current law.

"Last year's update to our charter law was developed with extensive input from teachers, school districts and the charter school community. It set higher expectations for starting and running charter schools while increasing support for the most effective schools," she said. "For the first time, it ensures impact on public schools is considered in the application review. The bill struck an appropriate balance to ensure the best opportunities for all students, and our mission is to implement the law well."

Donna Johnson, the state board's executive director, said it would be "inappropriate" for state board members to comment on the proposal until a bill had been filed. She said the board did not ask lawmakers to file a bill, but acknowledged that it "speaks directly to a concern that was voiced by multiple board members."

"There must be a definition of impact. We would like to see a formalized rubric that we would use going forward," Johnson said. "It should not be something that is based purely on emotion. Impact should be considered in some kind of research-based manner."

Contact Matthew Albright at [mabright@delawareonline.com](mailto:mabright@delawareonline.com) or at (302) 324-9228. Follow him on Twitter @TNJ\_mabright.

# COMMENT

## As our schools fail, so do we fail our children

**DELAWARE VOICE**  
JAMES M. BAKER

I had the pleasure of serving as mayor of the city of Wilmington from 2001 to 2013. I am also an African-American who lived through the 1960s as a young man in my

20s. Both experiences were a continual lesson for me in the marriage between poor education and urban plight.

In February, the White House introduced the "My Brother's Keeper" initiative. The fact sheet revealed sobering statistics. Data shows that boys and young men of color, regardless of socioeconomic background, continue to be disproportionately at risk.

Large disparities remain in reading proficiency, with 86 percent of African-American male students and 82 percent

of Hispanic male students reading below proficiency levels by the fourth grade compared to 58 percent of white males reading below proficiency levels. The only future for these young people is frustration and hopelessness -- if not a life of unemployment or poverty, then a life of crime.

The impact of a failing public school system has taken its toll on the city and state, and our at-risk children continue to pay the price. The city has seen a 60 percent dropout rate for city students for years with very little improvement.

Fourth-graders at Warner Elementary School on 801 W. 18th St. in Wilmington have proficiency rates of 41 percent in reading and 35 percent in math, compared to state averages of 72 percent and 70 percent respectively. Warner is 93.5 percent low income.

Fourth-graders at Shordidge Elementary School on 100 W. 18th St. are 43 percent proficient in reading and 40

percent in math. Shordidge is 93.3 percent low income.

In contrast, fourth-graders at Kuumba Academy Charter School on 519 N. Market St. in Wilmington are 92 percent proficient in reading and 76 percent in math. Kuumba is 85.2 percent low income. Eighth-graders at Prestige Academy on 1121 Thatcher St. in Wilmington are 77 percent proficient in reading and 76 percent in math. Prestige is 81.5 percent low income.

### Unbelievable and nonsensical

So why are some lawmakers proposing legislation that will make it nearly impossible for new charter schools to open and well-performing charter schools to expand? This is both unbelievable and nonsensical. Considering the numbers cited above, would you deliberately work to impede the progress of charter schools?

I support any method that gives our children the best education and best chance for a successful life. I genuinely believe that charter schools offer that opportunity.

Legislators should be focusing on creating more high-quality education options, not limiting the growth of charter schools.

The numbers tell the story -- charter schools are making a difference for at-risk students in the city and district schools are not.

This proposed legislation is detrimental to students and to poor, urban African-American children in particular. As a citizen and former public servant, I refuse to say and do nothing while low-performing schools are allowed to continue to exist in our state and in the city of Wilmington.

James M. Baker was mayor of Wilmington from 2001 to 2013.

5-8-14  
25  
EDUCATION

# Bill gives state more power to study charters

Senate-bound legislation tries to clarify impact guidelines

By Jon Offredo  
The News Journal

The Delaware State Board of Education can study more closely the impact charter schools have on surrounding districts and impose conditions on them under legislation sent to the full Senate on Wednesday.

The legislation, embraced by lawmakers and education groups as it cleared the Senate Education Committee, replaced a more controversial bill that allowed board officials to reject new charters based on the impact they would have on existing schools. The original bill was crafted in response to frustrations from several board members that charter school applications had to be approved as long as they met the right criteria, no matter how they affected surrounding district schools in terms of student loss, overlapping of programs or focus.

Charter school advocates argued that the original proposal would have denied students and parents the option to enroll in schools they think could better serve their kids.

The bill's sponsor, Sen. Bryan Townsend, D-Newark, said the legislation gives board members the latitude to understand how proposed charters and charter expansions would affect the overall education system.

"The bill in my mind gets at the issue of the state board of education being able to take a holistic view of the education system," he said.

The state Department of Education would define the meaning and process for considering impacts of charter schools on districts in the application review process under the new legislation. The State Board

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# Charter: Bill allows state board to place conditions

Continued from Page A1

would consider and approve those definitions and meanings no later than its October meeting. The bill allows the board to place conditions on schools relating to geographic location, grades served and the academic focuses or emphasis.

Those conditions would allow board members to make more informed decisions about which schools fit the existing system and serve currently unmet needs, rather than approving a school that would specialize in say, STEM education, when the nearby school district just invested money in STEM education, Townsend said.

The legislation clarifies a law passed last year that allows state officials to consider the impact on existing schools when approving new charters, but explicitly prevents them from rejecting one based solely on that impact.

The vagueness of the term "impact" came into play last month after the board and Secretary of Education Mark Murphy approved four new charter schools to open in New Castle County over the next few years. Townsend was among 20 state lawmakers who wrote to the board before that decision voicing "deep concerns" about the amount of money and number of students traditional districts could lose.

Representatives from public and charter school associations, as well as the governor's office, all supported the bill, saying it added much-needed clarity.

Lindsay O'Mara, Gov. Jack Markell's education policy adviser, said the bill adds a lot of value to the approval process by defining impact, which in the last bill wasn't very well defined.

"I think one of the most valuable things this bill does is ask the Department of Education to look across the country, examine best practices and really come up with some factors and rubrics and some structure around how impact would be considered as part of the process," she said.