



**STATE OF DELAWARE**  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
Margaret M. O'Neill Bldg., Suite 1  
Dover, Delaware 19901  
302-739-3621


The Honorable John Carney  
Governor

John A. McNeal  
Director

**MEMORANDUM**

DATE: February 28, 2019

TO: All Members of the Delaware State Senate  
and House of Representatives

FROM:   
Mr. J. Todd Webb, Chairperson  
State Council for Persons with Disabilities

RE: H.B. 48 (Unit Funding for K-3)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 48, which provides State funding to kindergarten through third grade for basic special education. State funding already occurs for intensive and complex special education during these grades. Currently the basic special education funding runs from fourth through twelfth grade. This bill is an effort to promote earlier identification and assistance for basic special education needs which should then mitigate costs over the long term. Pursuant to its terms, funding for K-3 special education will be phased in gradually over 4 years. SCPD strongly endorses the proposed legislation and has the following observations.

The State funds public schools based upon how many "units" of students are enrolled in the school and school district by the last day of September. How many students comprise one unit depends on the student's grade level, special education classification and, for some grade levels, whether the student is enrolled for a full day or a half day. 14 Del. C. § 1703, among other things, outlines categories of units, based on grade level, special education classification and full-or-half-day enrollment, and defines how many students comprise one unit. The more students it takes to form one unit, the less funding a school district receives.

The current version of § 1703 states that 16.2 students form one Kindergarten through third grade unit unless the student is categorized as requiring intensive or complex special education, at which point one unit is equal to 6 students (intensive) or 2.6 students (complex). The proposed amendment creates a new unit category: Kindergarten through Grade 3 students that are identified as eligible for basic special education and related services. The proposed amendment would, over the course of four years, gradually lower the number of students that would form one K-3 basic special education unit, which functionally increases funding to schools and school

districts with students falling into this unit category.

State funding for school districts and schools is broken down into three categories called “divisions.” Division I money is used to employ teachers, staff, and administrators.<sup>1</sup> Division II is used to finance almost all other school costs.<sup>2</sup> Division III provides additional financial support to school districts.<sup>3</sup> How many “units” of students are enrolled in each school district and school on the last day of September impacts how much a school district and school receive from all three of these pots of money. In other words, the number of units affects multiple factors that will impact student experience, e.g. how many teachers/staff a school can hire and how much money a school will receive to purchase books and materials.

Currently, § 1703 contemplates a unit for Grade 4-12 students who are identified as requiring basic special education and related services; each unit is comprised of 8.4 students. However, as mentioned briefly, no such category currently exists for K-3 grade students. Currently, one unit is equal to 16.2 students, regardless of whether a student has a disability, unless they are identified as needing intensive or complex special education and related services. This is problematic because students with disabilities, even those that merely require “basic” special education, have additional needs that school districts must address.

There is an ongoing lawsuit alleging that the State is failing to adequately and equitably fund schools, which has resulted in a failure to sufficiently educate students who are low-income, English Language Learners, and/or have disabilities.<sup>4</sup> The lawsuit was filed by the American Civil Liberties Union of Delaware (“DE ACLU”) and Community Legal Aid Society, Inc., (“CLASI”) on behalf of two nonprofit organizations, Delawareans for Educational Opportunity, and the Delaware branch of the National Association for the Advancement of Colored People (“DE NAACP”). One shortcoming in the State’s current school funding scheme that Plaintiffs identified in their complaint is the failure to provide additional funding to schools educating K-3 students who require special education services that are neither intensive nor complex. *Delawareans for Educational Opportunity v. Carney*, 2018 WL 6175677, at \*14 (Del. Ch. Nov. 27, 2018). The Plaintiffs allege that inadequately funding this category of students resulted in a failure to identify students for special education and related services, delays in creating and implementing Individual Education Programs (IEPs), and lost opportunities to help students catch up academically before they fall “irrevocably” behind.<sup>5</sup>

Creating a K-3 basic special education unit and defining the number of students that comprise one unit below 16.2 students (the number of students that comprise one K-3 unit now) will allow schools to hire more staff and obtain more funding to meet student needs. The proposed

---

<sup>1</sup> 14 *Del. C.* § 1702(a).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; 14 *Del. C.* § 1707.

<sup>4</sup> *Delawareans for Educational Opportunity v. Carney*, 2018 WL 6175677 (Del. Ch. Nov. 27, 2018); *Delawareans for Educational Opportunity v. Carney*, 2018 WL 4849935 (Del. Ch. Oct. 5, 2018).

<sup>5</sup> Am. Comp. ¶¶ 104-106; *Delawareans for Educational Opportunity v. Carney*, 2018 WL 6175677, at \*14-\*15 (Del. Ch. Nov. 27, 2018).

amendment will gradually increase funding by lowering the number of students that constitute one unit until it aligns with the Grade 4-12 basic special education unit; 14.2 students will form one unit for the 2019-2020 school year; 12.2 for the 2020-2021 school year; 10.2 for the 2021-2022 school year; 8.4 for the 2022-2023 school year. While it may be ideal if funding increased immediately for the K-3 basic special education unit, any increase is a step in the right direction.

SCPD is offering another suggestion related to funding for students with disabilities. Although this proposed amendment patches a funding hole for one category of students, other children with disabilities that receive services and accommodations under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) rather than the Individuals with Disabilities Education Act (“IDEA”) may be being missed. For purposes of Delaware’s education funding statute, whether a student is classified as requiring basic, intensive or complex special education is based upon the IEP and Delaware Department of Education (“DDOE”) regulations.<sup>6</sup> A review of DDOE regulations suggest that students are only included in a disability unit if they have an IEP.<sup>7</sup> However, not all students with a Section 504 plan will have an IEP. Schools need funding, and teachers and staff to create and implement successful Section 504 plans. It may be good policy for the State to implement a system to ensure these students’ needs are reflected in the unit system, as well.<sup>8</sup>

Again, SCPD strongly endorses the proposed legislation, as it will provide more funding to schools and school districts who teach students between grades K-3 that are classified as requiring basic special education and related services. SCPD is also asking the General Assembly to consider ensuring schools receive necessary financial support for students with Section 504 plans who do not also have IEPs.

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

cc: Ms. Laura Waterland, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

HB 48 unit funding for k-3 2-28-19

---

<sup>6</sup> 14 Del. C. § 1703(d)(7).

<sup>7</sup> 14 Del. Admin. C. 701.1.3.

<sup>8</sup> See Delawareans for Educational Opportunity v. Carney, 2018 WL 6175677, at \*14 (Del. Ch. Nov. 27, 2018).