



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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The Honorable John Carney  
Governor

John McNeal  
SCPD Director

## MEMORANDUM

DATE: March 10, 2021

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

FROM: Terri Hancharick – Chairperson <sup>TH</sup>  
State Council for Persons with Disabilities

RE: S.B. 56 (An Act to Amend the Delaware Code Relating to  
Educational Opportunity Funding)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 56, which will provide additional funding for schools to support English learner (EL) and low income (LI) students. This bill is introduced as a result of a settlement agreement in RE Delaware Public Schools Litigation C.A. No. 2018-0029-VCL.

Senate Bill 56 requires that “[t]he Department of Education (DOE) shall adopt regulations identifying the types of services and supports that may be funded with money from the Opportunity Fund.” The bill identifies specific expenditures that may be funded with this money (including “additional staff,” “contractual services,” “supplies and materials”), but does not restrict school districts to these categories, allowing them to spend the funds on “other expenditures necessary to provide additional services and supports for EL and LI students.” §1726(b)(1).

SCPD endorses the proposed legislation and has the following observations and recommendations.

The bill also requires the Department of Education to create accountability procedures and logistical support to districts, requiring the Department of Education to “provide an expenditure plan template and plan development supports to school districts and charter schools, including identifying evidence-based practices shown to improve performance outcomes for EL and LI students.” §1726(b)(2). Under the language of the bill, in order to receive funds, school districts must “submit a proposed expenditure plan to the Department of Education for review no later than the second Friday of July of each fiscal year” and the plan must “separately list each school governed by the school board of the school district or charter school that will receive funding under this section.” §1726(b)(3). School districts and charter schools that receive funds must also “submit an annual report on the use of funding received under this section to the Department of Education no later than November 1 of each year.” §1726(e)(1).

The bill also creates requirements to help ensure that funding is appropriately allocated to support EL and LI students. The bill states that “[f]unding received under this section is supplemental to and may not supplant any state, local, or federal funds.” §1726(4). SCPD is requesting further clarification on this section, and what if any, impact or restriction this might have on local and municipal tax revenue allocation decisions.

Furthermore, Opportunity Fund resources must be allocated “such that not less than 98% of funding received under this section that is generated by a school’s LI and EL population calculation is allocated to that school.” §1726(4)(c). There is an exception to this allocation requirement, permitting school districts to allocate funds differently, but they may only do so following the processes described in 14 Del. C. §1704(4). §1726(c)(2). School districts would be required to vote on this proposal at a public school board meeting following two consecutive weeks of public notice in the local newspaper, postings on the school doors, and distribution to the school’s “principal, teacher association building representative, and Parent Teacher Organization/Parent Teacher Association parent leader of any affected school,” as per 14 Del. C. §1704(4). While this public meeting and notice requirement can make diversion of funds a politically unpopular option, SCPD is advocating for stronger language prohibiting or constraining the reallocation of funds under this bill.

The bill proposes amending §1726, Title 14 of the Delaware Code to define the amount per pupil that will be funded through the Opportunity Fund. The bill proposes that the “per pupil amount” will be “calculated as follows: \$55 million

divided by the total sum of EL and LI student enrollment in each school district and charter school.” §1726(f)(1). The bill specifies that in calculating the per pupil amount, “a student may be counted as both an EL student and a LI student if the student satisfies the definitions for both groups.” §1726(f)(3). Moving forward, “for each fiscal year after fiscal year 2026, the Opportunity Fund total must be equal to at least the per pupil amount calculated in Fiscal Year 2025 under this subsection and multiplied by the sum of EL and LI student enrollment as of September 30 of the previous fiscal year.” §1726(f)(2). SCPD recommends changing this provision to account for inflation in future fiscal years and to ensure that the value of this funding does not decrease over time.

In addition to the amount provided per pupil, the bill also specifies that “[a]t least \$5 million of the annual appropriation to the Opportunity Fund must be allocated to public schools, including charter schools, identified as having an enrollment of at least 60% LI students or 20% EL students.” For any “public school receiving funding under this subsection,” they must spend “the allocated funds for mental health or reading supports to enhance services and provide additional supports to EL or LI students.” §1726(d)(1). Elsewhere in the bill, the language specifies “public schools, including charter schools” or explicitly mentions “school districts and charter schools.”

While this bill provides substantially more financial resources to schools with higher populations of EL and LI students, the increased funding by no means meets the full needs of these schools and their students. SCPD endorses greater funding as part of this and similar pieces of legislation. SCPD emphasizes that, while this is a stride forward in greater and more equitable funding for schools across the state, it is only the start, not the end, of progress taken to improve school funding.

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

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