



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

John McNeal, Director  
SCPD

## MEMORANDUM

DATE: June 29, 2023

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

FROM: Mr. Benjamin Shrader, Chairperson   
State Council for Persons with Disabilities

RE: HB 188 (An Act to Amend Title 14 of the Delaware Code Relating to  
the Public Education Equity Ombudsperson Program and the Education  
Equity Council)

The State Council for Persons with Disabilities (SCPD) has reviewed HB 188 which seeks to codify portions of the Equity Ombudsman program, established as a result of a settlement order in the school funding lawsuit, currently operating as the Delaware Public Education Ombudsperson Program through the Parent Information Center of Delaware.<sup>1</sup> This program provides students and families with advocates to assist them when encountering inequity within the school system, such as disparate discipline and denial of educational opportunities. This bill also establishes an Educational Equity Council, for the purpose of providing input and oversight to the Education Ombudsman Program and to “study and recommend solutions to ongoing or systemic equity.”

The SCPD has the following observations about this bill:

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<sup>1</sup> See bill synopsis and <https://picofdel.org/public-education-ombudsperson-program-dpeop/>

- According to Delaware’s Every Student Succeeds Act (“ESSA”) Plan<sup>2</sup>, 64% of low income students, 85% of English language learners and 86% of students with disabilities did not meet the state standards in grades three through eight for English Language Arts established by the state; similarly 74% of low income students, 81% of English language learners and 89% of students with disabilities did not meet the state’s math standards in those grades. Statistics based on race and ethnicity are similarly concerning - data compiled by Propublica shows significant racial disparities in our state’s education: Black students are 3.5 times as likely to be suspended than white students and Hispanic 1.5 times as likely as White students, whereas white students are 2.1 times more likely to be enrolled in at least one or more AP class and 2.5 times more likely than Hispanic students.<sup>3</sup>
- In Delaware, where 31% of our students are Black and 46% are white, 57% of our out-of-school suspensions are for Black students, compared to 24% for White Students; expulsion rates are similar (56% vs. 30%). In at least one Delaware district discipline rates were reported as 5.1 times higher for Black students, compared to white students, coupled with an achievement gap of as much as 2.8 grades (Brandywine School District).

This bill would continue a program intended to combat those disparities. However, SCPD has the following observations:

- Terminology is inconsistent – in some places the program is called the Equity Ombudsman program and in others the Education Equity Ombudsperson Program. **This inconsistent terminology should be corrected.**
- With this bill, the Education Equity Council (EEC) would have a minimum of 17 voting members and 9 non-voting members, which may be unworkably large and difficult to maintain. The EEC responsibilities may overlap some with the GACEC, specifically relating to making recommendations to the legislature and Department of Education to improve equity in public education, and also requesting data from the Department of Education. **The SCPD Council advocates that one of the voting member seats be reserved for a member of the GACEC, to ensure that the GACEC and ECC are not duplicating effort.**

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<sup>2</sup> Available at <https://education.delaware.gov/community/funding-contracts/federal-and-state-programs/essa/>.

<sup>3</sup> <https://projects.propublica.org/miseducation/state/DE>

- There are two differences between the Equity Ombudsperson’s capacity under the settlement order and the capacity it would have pursuant to the proposed legislation. First, unlike the settlement order, the legislation would most likely not enable the Ombudsperson non-lawyer employees to represent students at hearings. Second, while the bill allows the Equity Ombudsman to refer matters for legal services organizations or pro bono programs where that is important for protecting a student’s rights, the bill would disallow program funds from being used to pay for litigation or other proceedings asserted against the State or its agencies, employees or officials, otherwise than in appeals on the record from administrative proceedings. The legal services could only assist after a student’s issue already goes to an administrative hearing, such as a due process hearing, severely limiting what such legal services can do because they could not ensure the facts and evidence necessary for successful resolution of the students’ case are part of the record. The non-attorney advocates cannot benefit from the counsel of attorneys, nor can the students directly be represented at hearings, significantly restricting the students’ ability to achieve education equity. **The SCPD advocates that these restrictions be removed through an amendment to the pending legislation or through future legislation.**

**The SCPD Council does not oppose this bill but does recommend the above changes.**

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

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

HB 188 Public Education Equity Ombudsperson and Council 06-29-23