



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: April 26, 2010

TO: All Members of the Delaware State Senate

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

RE: H.B. 328 [Special Education "FAPE" Definition]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 328 with H.A. 1, which would clarify the standards used to determine the needs of students with disabilities. SCPD strongly endorses the proposed legislation since it would improve the education of students with disabilities and enable them to maximize their potential.

Lieutenant Governor Matt Denn prepared the legislation to ensure that public schools, special education panels, and the courts use the definition of a free, appropriate public education ("FAPE") adopted by the Third Circuit Court of Appeals. The Third Circuit's precedents interpreting federal law are binding on Delaware but public schools often refer to FAPE descriptions adopted in other jurisdictions which are less student-oriented. For example, districts often invoke a 6th Circuit decision opining that students are "not entitled to a Cadillac-style education but one that is equivalent to a serviceable Chevrolet". The bill essentially codifies the Third Circuit's standards in State law. The amendment clarifies that the standard applies to both the "specialized instruction" and "related services" prongs of a "FAPE".

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

cc: The Honorable Jack A. Markell
Members of the House of Representatives
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council