



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: March 11, 2013

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

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: H.B. 24 [School Attendance]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 24 which implements recommendations from the Truancy Task Force by changing provisions of the Delaware Code regarding compulsory attendance and when a truancy case must be brought to the Truancy Court. Consistent with the synopsis, the bill would have two effects.

First, under current law, the principal may refer a case for prosecution at any time up to the 30th day of unexcused absences but must refer the case for prosecution following the 30th day. See Title 14 Del.C. §2725(c). The bill substitutes "20th" day for "30th" day, thereby reducing the discretion of the principal. Reasonable persons may differ on whether truncating the principal's discretion is preferable.

Second, under current law, a set of sequential activities is set in motion for children in grades K-5:

- after 10th day of unexcused absence, notice to parents and visiting teacher;
- following 15th day of unexcused absence, notice to parents to appear at school within 10 days of notice for conference;
- following 30th day of unexcused absence, referral for prosecution; and
- following completion of prosecution and subsequent failure of student to return to school within 5 school days, referral to DSCY&F.

Title 14 Del.C. §2702(d)

The legislation applies these sequential activities to students in grades K-12.

There are at least two (2) technical problems with the legislation:

- A. It establishes inconsistent timetables. Unamended §2702(d)(2) contemplates a parental conference 25 days after initiation of unexcused absences while proposed §2702(d)(3) contemplates prosecution 20 days after initiation of unexcused absences. This results in a referral for prosecution prior to the initial parental conference. It also creates some “tension” with Title 14 Del.C. §2125(c) which generally envisions the principal’s referral for prosecution occurring after the parental conference.
- B. If the legislation is enacted, Title 14 Del.C. §2702(e) becomes surplusage. Compare Title 14 Del.C. §2702(d)(1) and 14 Del.C. §2702(e). If §2702(d) is expanded to cover students in grades 6-12, there is no need for §2702(e). It should therefore be stricken as part of the bill.

Finally, the Legislature may wish to consider unintended consequences. Promoting quicker prosecution of parents of students over 16 years of age may prompt students to simply drop out of school. Parents are faced with incarceration and hefty fines. A first offense is punishable by up to 10 days in jail and a \$300 fine. See Title 14 Del.C. §2729(d). Query whether families facing such prosecution will opt for withdrawal from school.

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

cc: Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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