



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**

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December 23, 2013

Ms. Susan K. Haberstroh, Ed.D.  
Department of Education  
35 Commerce Way – Suite 1  
Dover, DE 19904

RE: DOE Proposed Charter Schools Regulation [17 DE Reg. 588 (12/1/13)]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its Charter School regulation published as 17 DE Reg. 588 in the December 1, 2013 issue of the Register of Regulations. As background, legislation (H.B. 165) was signed by the Governor on June 26, 2013 which included many revisions to Delaware's charter school law. The revisions included the creation of the following new section:

The Department of Education shall administer a performance fund for charter schools, to be known as the "Charter School Performance Fund". The Department of Education shall establish eligibility requirements for applicants desiring to apply for funding, which shall include but not be limited to a proven track record of success, as measured by a Performance Framework established by the charter school's authorizer or comparable measures as defined by the Department. The Department of Education shall also establish criteria to evaluate applications for funding, which shall include but not be limited to the availability of supplemental funding from non-State sources at a ratio to be determined by the Department. The Department of Education shall prioritize those applications that have (a) developed high-quality plans for start-up or expansion or (b) serve high-need students, as defined by the Department. The fund shall be subject to appropriation and shall not exceed \$5 million annually.

Title 14 Del.C. §509(m)

The Department is now issuing some brief revisions to its charter school regulation to implement the above statute. SCPD has the following observations on the proposed regulation.

First, the above statute requires the Department to “establish eligibility requirements for applicants desiring to apply for funding” and “criteria to evaluate applications for funding”. The proposed regulation only defines the fund without describing the actual “eligibility requirements” and “criteria to evaluate applications” contemplated by the new statute. Perhaps the Department intends to adopt standards at a sub-regulatory level. It would be preferable to include standards in the Part 275 regulation which contains a §6 covering “funding”. This would provide an opportunity for public and stakeholder input on the standards.

Second, the statute authorizes the Department to define “high-need students”. The proposed regulation adopts a rather vague standard which only focuses on one parameter, low income status:

“High-Needs Students”: means students that qualify as low economic status pursuant to Department determination.

If the Legislature intended to only prioritize students from low-income families, it would have simply adopted such a reference in the statute. During the consideration of the bill, multiple amendments were introduced in this context. See attachments. An amendment (S.A. 3) which solely focused on low-income students did not pass. Significantly, multiple representatives introduced amendments which prioritized not only low-income students, but also students with disabilities. See H.A. 9 and H.A. 11. The implication is that there was a lack of consensus on the focus of prioritization but “high-needs” students should not be simply narrowly defined to only include low-income individuals. It would be propitious if the State could encourage charter schools to develop specialized programs for students with disabilities. This would be consistent with State public policy as reflected in Title 14 Del.C. §3121. Moreover, conceptually, students with disabilities are “high needs” students. By regulation (14 DE Admin Code 1426, §6.0), students cannot be classified as IDEA-eligible unless they demonstrate significant disability-based limitations on educational performance. SCPD therefore recommend that the DOE define “high-needs students” to include “students with disabilities”.

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

Sincerely,



Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

cc: The Honorable Mark Murphy, Secretary of Education  
Dr. Donna Mitchell, Professional Standards Board  
Dr. Teri Quinn Gray, State Board of Education  
Ms. Mary Ann Mieczkowski  
Ms. Paula Fontello, Esq.  
Ms. Terry Hickey, Esq.  
Ms. Ilona Kirshon, Esq.  
Mr. Brian Hartman, Esq.  
Developmental Disabilities Council  
Governor's Advisory Council for Exceptional Citizens

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SPONSOR: Sen. Townsend & Sen. Henry & Sen. McDowell

DELAWARE STATE SENATE  
147th GENERAL ASSEMBLY

SENATE AMENDMENT NO. 3  
TO  
HOUSE BILL NO. 165

Amend House Bill No. 165 as amended by deleting line 77 in its entirety and substituting in lieu thereof the following:

“applicants desiring to apply for funding, which shall include but not be limited to: (1) an overall student body population in which low-income students comprise at least 10% of the student body, and (2) a proven track record of success, as”

SYNOPSIS

This amendment focuses the impact of the Charter School Performance Fund and seeks to increase the positive impacts of the Fund on all Delaware schoolchildren in a time of limited budgets and net cuts to education, by requiring monies from the Fund support programming and innovations occurring within settings more representative of Delaware's overall student population.

Author: Senator Townsend

SPONSOR: Rep. Baumbach

HOUSE OF REPRESENTATIVES  
147th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 9

TO

HOUSE BILL NO. 165

AMEND House Bill No. 165 by striking line 82 in its entirety and substituting in lieu thereof the following:

developed high-quality plans to serve a high proportion of traditionally under-served students including students with low socio-economic status (SES) and students with disabilities.

SYNOPSIS

The amendment requires that the high-quality plans for the receipt of funds directly serve traditionally under-served students.

SPONSOR: Rep. Heffernan

HOUSE OF REPRESENTATIVES  
147th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 11

TO

HOUSE BILL NO. 165

AMEND House Bill No. 165 by striking line 82 in its entirety and substituting in lieu thereof the following:

developed high-quality plans to serve a high proportion of traditionally under-served students including students with low socio-economic status (SES), rural students, and students with disabilities, with those schools receiving at least 50% of the performance fund.

SYNOPSIS

The amendment requires that preference is given to high-quality plans directly serving traditionally under-served students, rural students, or students with disabilities. Those programs are to receive at least 50% of the fund.