



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: May 18, 2015

TO: The Honorable Debra Heffernan
The Honorable Stephanie Bolden
The Honorable Earl Jaques
The Honorable Kimberly Williams
The Honorable Helene Keeley
The Honorable Sean Lynn
The Honorable Sean Matthews
The Honorable Edward Osienski
The Honorable Harris McDowell
The Honorable Margaret Rose Henry
The Honorable Bryan Townsend

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

RE: H.B. 117 (Low-Income Student Unit Funding)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 117 which would create a funding source for students enrolled in Delaware public schools who are determined as low-income according to the Department of Education (DOE). This funding source will be in addition to the normal enrollment based funding provided to school districts and charter schools and provides roughly \$66,072 in additional State funding for each unit of 250 low-income students. The bill is earmarked with the attached fiscal note which includes an FY16 State share of \$12.3 million.

SCPD believes the basic concept underlying the proposed legislation is well-intentioned. However, Council has significant concerns based on the following observations.

First, the synopsis highlights that 98% of the units would be presumptively directed towards the schools generating the units. However, this ignores the flexible funding initiative contained in §353 of the FY16 budget epilog. Consistent with the attached April 21, 2015 letter, districts participating in the flexible funding initiative are authorized to use funds "(n)otwithstanding any sections of the Delaware Code to the contrary" (epilog lines 14-15). Therefore, they could simply ignore the "98% safeguard" touted in H.B. 117.

Second, apart from the "flexible funding initiative", low-income unit funds could be used for purposes

with little value to the instruction of low-income students. The bill (line 12) authorizes funds to be used for any “supplemental school and educational services and programs”. Consider lines 17-18 which define the scope of use of the low-income unit funds:

(d) Funds appropriated in support of a unit for low-income students may be used for expenditures for any Division III purpose pursuant to §§1304, 1707(h), and 1710 of this title.

A. The first cited section (1304) consists of a 1-sentence authorization for districts to offer additional compensation and pay raises to personnel (ostensibly including administrators):

§1304 Salaries in excess of state supported uniform salary schedules.

Nothing contained in this chapter shall prevent any local board from paying an additional amount of salary to any employee when such additional amount is derived from local funds or from Division III appropriations.

B. The second cited section [1707(h)] authorizes districts to use Division III appropriations to pay legal costs associated with collective bargaining:

Section 1707(h) Division III funds shall be utilized to supplement funds appropriated under Division I, including legal expenses associated with collective bargaining, and Division II for the purpose of advancing education beyond the level authorized through the basic appropriations in Divisions I and II or through any other state or federal appropriation.

C. The use of Division III funds is not prescriptive. Title 14 Del.C. §1709 provides as follows:

§1709 Use of appropriation for purpose other than that designated.

No part of any amount appropriated to any district shall be transferred from 1 subdivision of Division I to any other such subdivision of Division I or to Division II, or from Division II to any subdivision of Division I. But nothing contained in this matter shall prohibit the transfer of Division III funds to Division I to comply with §§1304, 1705 and 1712 of this title or Division II.

Third, lines 21-22 recite, using passive voice, that “(t)he units for low-income students are covered under the 98% rule as defined in §1704(4) of this title and returned to the buildings that generate them.” This is an odd recital since §1704(4) is explicitly limited to Division I appropriations, not Division III appropriations.

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

cc: The Honorable Jack Markell
The Honorable Matthew Denn
Ms. Ann Visalli, Director, Office of Management & Budget
Mr. Michael Morton, Controller General
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 117 low-income student unit funding 5-18-15

148TH GENERAL ASSEMBLY

FISCAL NOTE

BILL: HOUSE BILL NO. 117
SPONSOR: Representative Heffernan
DESCRIPTION: AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE CREATION OF A UNIT FOR LOW-INCOME STUDENTS.

ASSUMPTIONS:

1. This Act shall be effective the fiscal year after its enactment.
2. This Act will create a new funding source for students enrolled in Delaware public schools who are determined low-income according to the Department of Education. State funding will be provided at a rate of 1 unit of funding for every 250 low-income students enrolled.
3. This legislation will create an additional 186.65 state units of funding for students determined to be low-income.
4. A student unit of funding is \$66,072 while the local share of personnel costs is assumed to be \$28,497. A student unit of funding excludes Division II – Energy and All Other Costs funding and Division III – Equalization funding. Other employment costs are assumed at 30.08%.
5. Overall costs are assumed to grow 2.0% annually.

<u>Cost:</u>	<u>State Share</u>	<u>Local Share</u>
Fiscal Year 2016:	\$12,332,500	\$5,319,100
Fiscal Year 2017:	\$12,579,200	\$5,425,500
Fiscal Year 2017	\$12,830,800	\$5,534,000

Office of Controller General
April 30, 2015
MSJ:MSJ
0271480011

(Amounts are shown in whole dollars)



Governor's Advisory Council for Exceptional Citizens (GACEC)
516 West Loockerman St., Dover, DE 19904
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

April 21, 2015

The Honorable Melanie Smith, Chair
The Honorable William J. Carson, Jr.
The Honorable Debra J. Heffernan
The Honorable James (JJ) Johnson
The Honorable Harvey R. Kenton
The Honorable Joseph E. Miro
Legislative Hall
411 Legislative Avenue
Dover, DE 19901

The Honorable Harris McDowell, III, Co-Chair
The Honorable Brian J. Bushweller
The Honorable Bruce C. Ennis
The Honorable Karen E. Peterson
The Honorable Catherine L. Cloutier
The Honorable David G. Lawson

Dear Representative Smith, Senator McDowell and members of the Delaware Joint Finance Committee:

The Governor's Advisory Council for Exceptional Citizens (GACEC) is writing to you on behalf of children with disabilities in Delaware's public schools. We urge you to remove language that was inserted into this year's budget bill that would allow for the diversion of money specifically allocated for the education of children with disabilities. We believe that the inclusion of this language has the potential to cause real harm to children with disabilities in our schools and we hope and believe that this is not the intent of the Joint Finance Committee. The following organizations have confirmed their unequivocal support of this letter and its content:

Attorney General of Delaware
Autism Delaware
Delaware Family Voices
Delaware Parent Teacher Association
Delaware State Education Association
Developmental Disabilities Council (DDC)
Disabilities Law Program (DLP)

Easter Seals Delaware and Maryland's Eastern Shore
Mental Health Association of Delaware
National Alliance on Mental Illness-Delaware
Parent Information Center (PIC) of Delaware
State Council for Persons with Disabilities
United Cerebral Palsy (UCP) of Delaware
321Foundation

Last January, a task force established by the budget bill delivered recommendations regarding the provision of 'flexibility' to school districts in the use of their state funds. This task force had no representatives from any group representing students with disabilities, even though the budget epilogue language explicitly recognized that the group would be dealing with issues involving state funds for students with disabilities.

The task force recommended that the state establish a pilot project allowing school districts more discretion to use state funds. As stated, that is a reasonable proposition. But included in this recommendation was a recommendation that school districts be permitted to use basic special education unit funds, which the districts have received only because of the presence of students with disabilities, for purposes other than the education of those students. As you know, the state's formula for funding of school districts provides additional funds to districts based upon how many students with diagnosed disabilities those districts are educating. The reason for these additional funds is apparent: educating students with disabilities is more expensive than educating students who are lucky enough not to have to overcome disabilities. Yet, the task force recommended that school districts have the discretion to divert all of these basic special education funds for purposes having nothing to do with the education of children with disabilities.

This recommendation is reflected in the language in Section 353 of this year's proposed budget epilogue, which we urge you to amend. Section 353 of the budget epilogue excludes units "earned in Pre-K, Intensive and Complex categories" from the proposed flexible funding pilot. What it therefore allows, however, is the diversion of any unit funds that are designated for "basic" special education students. The majority of students with disabilities in our public schools are designated as "basic," rather than "intensive" or "complex." *What this language means, therefore, is that schools are free to take funds that they have received only because of the presence of these students with disabilities, which were intended by the legislature to be used for the additional expense of educating these students, and use them for virtually any purpose that the school sees fit.*

The language in the budget epilogue requiring districts to "ensure compliance with levels of special education and related services in all approved Individualized Education Programs for all students..." is practically unenforceable and is of no comfort to the parents of students with disabilities. We are all aware (a) that some services students with disabilities receive are not enumerated in their IEPs, and (b) that IEPs are often driven in part by the resources available to the school writing the IEP. The reality is that if school districts take money away from students with disabilities, which this epilogue language authorizes them to do, those students will receive lower levels of service. Thus, this would potentially impact the child and their family for many years because they have not received the level of education they are entitled to and deserve.

Allowing schools to take funds away from students with disabilities will inevitably harm those students. As advocates for the state's children with disabilities and their parents, who rely on the public schools to treat those students fairly and meet the individualized needs of these students, we urge you to remove this language and ensure that state funds designated for students with disabilities actually serve those students.

Thank you in advance for your time and consideration of our request. Please feel free to call me or Wendy Strauss at the GACEC office should you have any questions or concerns. If you would like to discuss this further we would be more than willing to assist in scheduling a meeting with you.

Sincerely,

Handwritten signature of Robert D. Overmiller in cursive script, with the letters 'GACEC' written in a smaller font below the signature.

Robert D. Overmiller, Chair
GACEC

CC: The Honorable Michael L. Morton, Controller General
Ms. Ann Visalli, Office of Management and Budget