



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

John A. McNeal
Director

MEMORANDUM

DATE: February 6, 2019

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

FROM: Mr. J. Todd Webb, ^{OTW/JP} Chairperson
State Council for Persons with Disabilities

RE: H.B. 21 (Education for Inmates who are Students with Disabilities)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 21 which would remove barriers for inmates who are students with disabilities and have an Individualized Education Program (IEP) under state and federal law when being considered for parole or a sentence modification. SCPD has the following observations.

In the synopsis, H.B. 344 purports to “remove barriers and unrealistic goals to offenders with learning disabilities when being considered for parole or a sentence modification.” Persons convicted of crimes can be required to participate in educational programming and can be barred from seeking parole or sentence modification unless they receive a high school diploma or GED. For inmates with disabilities who, were they not incarcerated, would have received a “diploma of modified performance standards”¹ in lieu of a standard diploma, completing the requirements for a standard diploma or GED may be functionally impossible. The purpose of the bill is to allow inmates who are able to complete the requirements for a “diploma of modified standards” in accordance with their IEPs to do gain the same benefit as inmates who receive standard diplomas or GEDs. It also instructs the Department of Education (DOE) to “promulgate rules and regulations to implement” the section.

Although well-intentioned, this bill is unlikely to benefit most inmates with disabilities. It will potentially benefit inmates who have IEPs. Those inmates are inmates who were identified as requiring special education services and who are no older than 21² and who have not waived their rights to educational services.³ The bill would exclude all other inmates with disabilities, because they have no IEPs on which to base a “diploma of modified standards.” The broad swath of inmates who would be excluded include

¹HS 1 to HB 287 with HA 1, which passed, changed the term “diploma of modified performance standards” to “Diploma of Alternate Achievement Standards.” The language in HB 344 will need to be amended to make it consistent with HS 1 to HB 287 with HA 1.

²The right to special education services under IDEA terminates at the earlier of (1) receiving a diploma or (2) the end of the school year after the student turns 21 years old.

³The DLP has received reports that some DoC staff may be encouraging inmates who may otherwise be eligible to waive their rights to receive educational services under IDEA.

inmates who aged out of special education services prior to receiving their “diploma of modified standards” as well as those who were never identified as requiring special education services and those who acquired their disability after age 21 (e.g., due to a brain injury).

It does not appear that it is the intent of the bill to exclude these categories of inmates, but this is the effect. Even for those inmates who had IEPs when they were in school, the IEPs are no longer valid once the inmate turns 21. Even if there were potentially some continued viability, there is no guarantee that an IEP from many years, or even decades, ago will provide the appropriate goals and supports for an inmate many years after it was last reviewed.

The current system, where inmates who are unable to receive a standard diploma or GED due to disabilities can be barred from seeking parole or sentence modifications, is deeply flawed and potentially discriminatory. Efforts to fix that problem are laudable, and any progress is better than no progress, but this bill will leave many, if not most, of the affected inmates no better off than they are now.

If the goal is to ensure that inmates with disabilities have access to the benefits available to those who are able to receive standard diplomas or GEDs, a more in depth program will be required. Inmates who were formally eligible for IEPs would need to be evaluated, and the IEPs would need to be updated into some sort of “adult IEP” and deemed to have validity outside of the confines of IDEA. Something similar would need to be done to identify inmates who might need these “adult IEPs” who, for whatever reason, were never provided with special education services and do not have an original IEP to use as a starting point. This would be a significantly more involved program.

Of course, an easier solution is to provide an exemption from the compulsory educational programming for inmates with disabilities who cannot reasonably be expected to receive a standard diploma or GED. This eliminates the “penalty” suffered by inmates with disabilities who cannot receive a standard diploma or GED, but also prevents them from receiving the benefits of educational programming. As such, this would also be an imperfect solution. Although this bill will help some inmates with disabilities, it does not solve the problem that it purports to solve.

Given the aforementioned observations, SCPD recommends that the language be amended to reflect the changed terminology in HS 1 to HB 287 with HA 1. Although the intent is good, SCPD has concerns about not having accommodations or a Section 504 Plan. The legislation is too narrow and does not identify specifically how it will remove barriers. SCPD wishes to re-emphasize ADA compliance language.

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

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

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