Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
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MEMORANDUM

DATE: **May 14, 2012**

TO: **The Honorable Members of the Delaware General Assembly**

FROM: **Terri A. Hancharick, Chairperson**
GACEC

RE: **Senate Bill 207 (Special Education "Childfind" & Hearing Panel Composition)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed Senate Bill 207 with Senate Amendment No. 1. This bill amends two statutes applicable to special education students. Council would like to share the following observations.

First, it amends the existing "Childfind" statute. The current law already requires each district to identify, locate, and evaluate children with disabilities residing within the confines of the district. The bill adds provisions clarifying that the "Childfind" duty extends to children who are homeless, wards of the State, or are enrolled in private schools. The amendment excludes vocational school districts. The attached corresponding IDEA regulation, 34 C.F.R. 300.111, mentions the three categories of students included in S.B. No. 207 (homeless; wards of state; attending private schools); however, the federal regulation also includes a requirement that Childfind address "highly mobile children, including migrant children." See 34 C.F.R. 300.111(c)(2). Both Senate Bill No. 207 and the attached Department of Education (DOE) Childfind regulation [14 DE Admin Code 923, §11] omit any reference to the latter category of children. It would be preferable to include the category in the bill to conform more closely to the corresponding federal regulation. Since the bill has already passed the Senate, a House amendment could be added or, at a minimum, the Department could commit to amending its Childfind regulation to explicitly address this category of children.

Second, the legislation amends the existing special education hearing panel statute to delete a requirement that the attorney panelist be admitted to practice in Delaware. Instead, the qualifications are changed to an "attorney admitted to practice and in good standing with the bar of a state." Based on prior discussions with DOE staff, the GACEC understands that the change is intended to allow the Department to include a law school professor who is an expert in special education law as an attorney panelist. Given the low incidence of hearings, it is somewhat difficult to develop an experienced cadre of attorney hearing officers. The proposed change provides some flexibility to allow an out-of-state attorney to serve on panels. However, in deference to the

Delaware Bar, a more narrow exception could have been considered instead of literally allowing general attorneys from Iowa, Nebraska, and Alaska to serve as Delaware hearing panelists. Line 15 could have adopted the following standard: "(1) One attorney either admitted to practice in the State or employed as a professor or instructor in an accredited law school with demonstrated expertise in special education law."

Thank you in advance for your time and consideration of our observations and recommendations. Please feel free to contact me or Wendy Strauss should you have any questions.

CC: Rina Marks, Delaware State Bar Association