



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: March 20, 2015

TO: The Honorable Members of the Delaware General Assembly

FROM: Robert D. Overmiller, Chairperson
GACEC

RE: **House Bill No. 45 Epilog: Department of Education (DOE) Flexible Funding Pilot**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the flexible funding pilot information as included in the Epilog §353 of proposed FY2016 budget bill, House Bill 45.

As background, the Department of Education promoted development of a pilot "flexible funding" initiative in 2014. An authorization was included in the attached §367 of the FY15 budget epilog establishing a working group to develop a pilot plan for submission to the Governor and Joint Finance Committee by December 1, 2014. This working group did not have representatives of parent organizations, student organizations or agencies such as the GACEC or Parent Information Center which focus on special education. The initiative was advertised as not affecting special education funding. See June 20, 2014 News Journal article which recites as follows: "The group's plan would not change how special education funding is distributed and would not alter salary schedules."

The final report was issued in December. The GACEC subsequently obtained a briefing on the report from the Deputy Secretary of Education and submitted the attached January 21, 2015 letter outlining concerns and recommendations.

As noted earlier, the pilot is included in the proposed FY16 budget bill. See §353 of H.B. No. 45. The Delaware State Education Association (DSEA) asked the Joint Finance Committee (JFC) to "not accept" the pilot proposal in its comments in the DOE JFC budget hearing. See attachment.

Council would like to share the following observations consistent with our January 21, 2015 letter.

First, as promoted by the GACEC, the epilog does include an assurance that the pilot would not "trump" the existing statutory requirement of a school nurse in each facility. Council endorses this assurance.

Second, as promoted by the GACEC, the epilog exempts Pre-K units. However, it does not exempt 4-12 Basic Special Education units as defined in 14 Del.C. §1703(a). Since the majority of special education students are included in the “Basic” unit, funding for most special education students is subject to conversion and/or diversion. This could have unfortunate results for such students. It would be preferable to exempt the special education “Basic” funding on the same basis as the exemption for “Intensive” and “Complex” units.

Third, House Bill No. 30 (with 32 sponsors) is currently pending. It would expand the “4-12 Basic Special Education unit” to a “K-12 Basic Special Education unit”. Enactment would cut the unit count for the covered K-3 special education students almost in half, i.e. from 16.2 to 8.4. It is somewhat unusual to specifically focus additional resources on this population while contemporaneously authorizing a pilot to divert or reallocate the same funds.

Fourth, current law [14 Del.C. §1321(e)(13)] provides the following protection of funding for special education students, including those counted under the “Basic” unit: “All earned units generated by students receiving special education services shall be used to support these students.” This protection is reinforced for students generating Basic Special Education units [14 Del.C. §1703(d)(4)b7]. The pilot program would allow districts to circumvent this protection since the epilog recites that it is “(n)otwithstanding any sections of the Delaware Code to the contrary” (lines 14-15). Parenthetically, epilog language (lines 24-26) purporting to protect special education funding will have little effect since IEPs and §504 plans rarely include staff composition or staff-pupil ratios.

Fifth, the epilog contemplates reporting by participating districts (lines 6-8 and 24-27). The epilog could be improved by including the equivalent of the following excerpt from Title 14 Del.C. §4112F: “(2) To facilitate data collection and analysis, the Department of Education may adopt a uniform reporting document and may require reporting of data in a standardized electronic or non-electronic format.” It would assist the DOE in aggregating data if it were submitted in a uniform format. It would also be preferable to require each participating district to post its annual report (line 24) on its website to facilitate public review.

Thank you 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: The Honorable Matt Denn, Attorney General
Frederika Jenner, DSEA

Attachments