

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING
7:00P.M., January 21, 2020
George V. Massey Station, Second Floor Conference Room
516 West Loockerman Street, Dover, DE

MINUTES

MEMBERS PRESENT: Al Cavalier, Nancy Cordrey, Cathy Cowin, Bill Doolittle, Karen Eller, Thomas Keeton, Mary Ann Mieczkowski, Beth Mineo, Robert Overmiller, Jennifer Pulcinella, Kimberly Warren, and Laura Waterland.

OTHERS PRESENT: Guests: Larry Ringer/Parent Information Center of Delaware, Maria Locuniak, Dale Matusevich, Cindy Brown, Pam Bauman and Susan Veneema/Delaware Department of Education (DDOE); and Pam Weir/Birth to Three.

STAFF PRESENT: Wendy Strauss/ Executive Director, Kathie Cherry/Office Manager and Sybil Baker/Administrative Coordinator.

MEMBERS ABSENT: Dafne Carnright, Matt Denn, Ann Fisher, Terri Hancharick, Tika Hartsock, Emmanuel Jenkins, Danna Levy, Carrie Melchisky and Brenn  Shepperson.

In the absence of the Chair Ann Fisher and Vice Chair Terri Hancharick, Secretary Karen Eller called the meeting to order at 7:08 pm. Karen welcomed everyone to the January general membership meeting. A **motion was made and approved** to accept the January agenda.

PUBLIC COMMENT

Individuals signed up to give public comment did not attend.

Karen asked for and received a **motion to approve** the November meeting minutes. The **motion was approved**. She then asked for and received a **motion to approve** the November and December financial reports. The **motion was approved**.

DOE REPORT

Pam Bauman, Mary Ann Mieczkowski, Cindy Brown and Susan Veneema from the Delaware Department of Education presented a power point on the FFY2017 SPP/Apr Report. The power point is attached for your reference.

FINAL REPORT FROM THE CHAIR

Karen announced absent members and thanked those guests in attendance. Karen asked for an update from the nominating committee. Robert shared that all current members have agreed to continue to

serve. The nominating committee agreed to leave the nominations open and allow nominations from the floor at the February meeting.

DIRECTOR'S REPORT

Wendy asked Bill to share about the Extended Learning Opportunities meeting. Bill shared that the meeting took place prior to the GACEC meeting tonight so he was only able to attend for about 30 minutes. The group began looking at current opportunities. Bill said it was going to take two years to come up with recommendations. Wendy asked Robert to give an update on the Joint Sunset Committee meeting on DVI. The committee met today and reviewed the draft report. The final report will be shared on Tuesday January 28, 2020. Wendy discussed the committee formed to revamp Delaware Health and Social Services (DHSS) in general. She just received an invitation to attend today. The Life Conference will be held January 29, 2020. Today is the deadline for registration. Our building will be receiving a facelift with a paint job and new flooring, which will hopefully be done soon. We have a partial security system installed currently and we are waiting on the rest of the installation, hopefully next month. Wendy shared that Sybil will be leaving GACEC to move to Colorado. Sybil has been with Council for nine years. She has done an excellent job and will be missed. Sybil thanked Wendy, Kathie and the Council for the wonderful experience over the last nine years. Wendy went on to discuss an email received from a parent in Red Clay about not having any parent council meetings this year. Bill shared that they are changing the structure of the parent councils and have not held meetings for three months. It was discussed that contact information for Sarah Celestin of the Red Clay School District should be shared with the parent.

MEMBERSHIP COMMITTEE

There was no report at this time; however, Wendy shared that Danna has some health issues and has requested a leave of absence (LOA). Wendy asked for a motion to accept the LOA request from Danna Levy. **A motion was made and passed with one abstention.**

COMMITTEE REPORTS

POLICY AND LAW

Chair Beth Mineo presented a **motion** to accept the recommendations made in the January 2020 Legal Memo with additions. **The motion was approved with one abstention.** The additions include the following: DDOE Regulation 614: recommend another review for consistency with capitalization and punctuation. DMMA Regulation 519: ask for clarification about when prior authorization is needed and providers of service requirement to be enrolled as Medicaid providers. The fee schedule was not accessible via the link provided and a search of the website did not locate the document on the fee schedule section of the website. DMMA Regulation 523: Ask for clarification on the process, such as what constitutes emergency coverage? Are there dentists who are willing to accept the fee schedule indicated to provide services? DHSS/DMMA Regulation 528: By following the DDOE CEP (Community Eligibility Program) model it is likely that fewer children will be served. Eliminating the

requirement for parental consent may result in more children getting access to services but doing so conflicts with current state law. HB 201: recommend that the State may wish to consider placing other low incidence programs under DDOE.

Commentary provided in the legal memorandum was as follows:

1. Proposed DDOE Regulations 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion, 23. Del. Register of Regulations 507 (January 1, 2020)

The Delaware Department of Education has proposed updates to the existing regulations found at 14 Del. Admin. C. §614, which pertain to uniform definitions for student conduct which may result in alternative placement or expulsion. The regulations establish definitions of specific types of conduct that may result in student discipline, as well as various related terms. The regulations do not require that any specific conduct result in either expulsion or alternative placement; they solely define the applicable terms to be used in a school district or charter school's Code of Conduct.

None of the proposed amendments to the existing regulations are substantive; statutory citations have been updated where appropriate, and some edits to punctuation and capitalization have been made where appropriate. The only proposed change in wording is found in the definition of "Violation of Behavior Contract," in subsection 2.0, where "his/hers" is replaced with "the student's," presumably to make it gender neutral.

As the proposed amendments do not change the substance of the existing regulations, and the regulations do not mandate any specific disciplinary action, the DLP sees no apparent reason for the Council to oppose the proposed changes.

2. Proposed DHSS/DMMA Regulation Regarding Non-Emergency Medical Transportation, 23 Del. Register of Regulations 519 (January 1, 2020)

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding transportation, specifically to establish coverage and reimbursement methodologies for non-emergency medical transportation services (NEMT). The Medicaid NEMT benefit is authorized under the Social Security Act under § 1902(a)(70) and 42 CFR § 440.170. The benefit ensures necessary transportation to and from providers and includes coverage for transportation and related travel expenses necessary to secure medical examinations and treatments.

Prior to the proposed amendment, the Delaware State Plan provided non-emergency transportation through a brokerage program. While this brokerage system remains in place, the proposed regulation now allows NEMT to be provided without a broker when "it is medically necessary for the member to travel to receive treatment and/or medical evaluation; the location of the medical services provided is greater than 25 miles from the member's place of residence and the member is required to remain on the premises of the medical services provider overnight; or the medical service provided results in

displacement of the member for a consecutive 24-hour period.” This should assist with individuals needing transportation who are in more remote areas or who require more intensive services that require overnight stays or travel.

Reliable medical transportation services are critical for ensuring access to care for individuals with disabilities. Council should consider supporting this regulation and encourage other efforts to expand transportation services.

3. Proposed DHSS/DMMA Regulation Regarding Adult Dental Services, 23 Del. Register of Regulations 523 (January 1, 2020)

DHSS/DMMA is proposing to amend Title XIX Medicaid State Plan and the Alternative Benefit Plan (ABP) regarding dental services, specifically to add adult dental services and to maintain the State’s assurance that the ABP matches regular Medicaid. The adult dental benefit offers basic dental services to eligible adults 21 and over. While State programs are required by law to cover dental services for children, coverage for adult services is optional. Covered services for individuals 21 and older are limited to the following: diagnostics, preventive, basic restorative, periodontics, prosthodontics repairs and oral and maxillofacial surgery.

Additionally, payments for dental care treatments have a \$3 recipient copay. The annual maximum benefit also may not exceed \$1,000 per year, with an additional \$1,500 that may be authorized on an emergency basis.

This barebones language only serves to amend the state plan with CMS to allow for coverage of the dental benefit. Hopefully, DMMA will promulgate more extensive regulations elaborating on the program. Council should consider endorsing this Medicaid state plan amendment.

4. Proposed DHSS/DMMA Regulation on Delaware Healthy Children’s Program State Plan, 23 Del. Register of Regulations 528 (Jan. 1, 2020)

DMMA proposes to amend section 2.2 of Title XXI Delaware Healthy Children’s Program State Plan regarding Health Services Initiatives, which governs governmental initiatives aimed at improving the health of Delaware children. The regulation is being amended to revise the definition of “low-income” to align with the Delaware Department of Education’s (DDOE) definition of low-income in its Vision Services – School Based Initiative, and to revise the data collection process in an effort to aid in the identification of uninsured children.

Much of the proposed amendment poses little to no concern; however, Councils may wish to support the proposal with additional recommendations. The biggest change is with the change to the definition of “low-income” to align with DDOE’s definition, which has been in use since the 2013-14 school year. Currently, low-income is defined as a Title I school where at least 51% of the student body receives free or reduced-price meals. DMMA proposes to change the definition to include only those schools that qualify as a Community Eligibility (CEP) School. Schools are considered eligible for CEP if at least 40% of its students are “directly certified” through the Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) and the school provides meals to its students. This definition is in line with DDOE’s definition and guidance provided by the U.S.

Department of Education. U.S. Department of Education, Office of Elementary and Secondary Education, *Guidance The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended* (January 2014).

In the 2019-20 school year, 116 total Delaware schools qualify for CEP status. Delaware Community Eligibility Provision Schools, School Year 2019-2020. These CEP schools educate nearly 62,000 students, which is approximately 44% of the total student enrollment for Delaware. *Id.* This is less than the total number of Title I schools as recent as the 2018-2019 school year, which totaled 155. 2018-2019 Title I Schools by LEA. This definitional change may reduce the number of students who qualify for vision screening services, which may be of concern.

In addition to the above concern, the United States Department of Agriculture (USDA) proposed to change the categorical eligibility in SNAP, by eliminating the broad-based categorical eligibility, which gives states the flexibility to waive specific asset and income limits for households receiving both SNAP and other benefits. In its analysis, USDA estimated that this change would result in approximately 1 million students automatically losing access to free school meals. *Revision of Categorical Eligibility in SNAP*. ([USDA Link](https://www.usda.gov/press-releases/2019/11/14/779491101)). USDA's proposed regulation received tens of thousands of comments and resulted in petitions against the change and protests. Maria Godoy, *Activists Protest USDA Changes That Threaten Free School Lunch*, (Nov. 2019), <https://www.npr.org/sections/thesalt/2019/11/14/779491101/activists-stage-protest-against-usda-changes-that-threaten-free-school-lunch>).

Council may wish to oppose these definitional changes especially because this change may result in fewer children receiving school-based vision services outlined under this plan. In addition, the threat of USDA's proposal could mean that even more Delaware students would become ineligible.

The second major change involves the process by which eligible students are identified and screened. Presently, once a student fails the school-supplied vision screening, a qualified provider would send home, with the student, a parental consent form. Only if a parent consented to the provider's services would a student then be screened and provided with corrective lenses and frames in the on-site mobile eye clinic.

DMMA proposes to remove the need for parental consent before the provision of provider services. Instead of obtaining consent prior to service, the qualified provider would only be required to send home, with the student, a notice that the student would be receiving a vision screening, eye exam, and corrective lenses and frames if necessary. If a guardian does not want these services, they must return the form/notice to the school indicating their refusal. It is unclear from the proposal whether the form would need to be sent back to the school consenting to services before they are performed; however, the removal of the words "For children whose return with parental consent..." would lend itself to the belief that the proposal is removing the need for parental consent.

Under Delaware law, parental consent is required for the provision of medical treatment to a minor. 13 Del C. § 707 (b). Medical treatment is defined as "developmental screening, mental health screening and treatment, and ordinary and necessary medical and dental examination and treatment [.]" 13 Del. C. § 707 (a)(2). Eye screenings and exams would arguably be included under this definition of medical

treatment, which requires parental consent. We recommend DMMA not remove the requirement for parental consent, as required by state law.

DMMA also proposes to change the timeline for providing corrective lenses and frames to those students identified as having a need for these. Instead of being provided with corrective eyewear in the mobile eye clinic, the student will be given a notice to be sent home, explaining the student's need for corrective eyewear, and requesting insurance information. There is no mention in the proposed changes of when the students would then be provided with the corrective eyewear. We recommend DMMA include a timeline of when students can expect to receive corrective eyewear once insurance information is provided.

In an effort to streamline the process, we recommend that in addition to not removing the requirement for parental consent for the provision of the eye screening and examination, DMMA also include the request for insurance information in the initial consent form. This would eliminate the need for providers to send a second notice/form home with students. The initial parental consent form would then include whether the parent consented to the eye screening and examination and, if the parent consents to the services, the student's insurance information. The remainder of the identification process has not substantively been changed in the proposal although it has been edited in the regulations for readability.

Regarding the definitional change of low-income, Council may wish to oppose the change given the reduction of eligible students that would receive this service – in addition to the threat of USDA's change. Council may wish to support the rest of the proposed amendment but ask that DMMA make the changes below:

Do not remove the need for parental consent for the provision of eye screening, eye examinations, or corrective lenses and frames. Parental consent is required by Delaware law.

Include a timeline for when a student may receive corrective lenses and frames once identified as having a need and insurance information has been provided. The request for insurance information can be included in the initial parental consent form.

Proposed Legislation

House Bill 201, AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE STATEWIDE PROGRAM FOR SERVICES FOR STUDENTS WITH AUTISM SPECTRUM DISORDER. (June 11, 2019)

This bill, primarily sponsored by Representative K. Williams, would amend 14 Del. C. § 1332 to require that DDOE administer the statewide program (program) for services for students with autism spectrum disorder (ASD) and that DDOE hire a Director for the program. H.B. 201 is additionally sponsored by Senator Poore and Representative Jacques and Co-Sponsors Senators Delcollo, Hocker, Lockman, and Sturgeon and Representatives Bennett, Brady, Lynn, and Matthews. The bill is currently on the Ready List after being voted out of the Education Committee with 13 votes On Its Merits.

Council has previously expressed concerns about the program being administered within the Christina School District (CSD), including the “statewide” program not actually being statewide because it is centered in New Castle County (NCC); difficulty tracking students across the state in need of services because of a lack of data availability from the DDOE; funding issues; and changes in student population since the start of the program over 40 years ago.

Placing the program under the DDOE, and not within a school district or other entity, may alleviate concerns previously expressed by Council. Council previously supported similar legislation for other low incidence populations, including the deaf and hard-of-hearing. Current Council priorities for 2020 include support for legislation such as H.B. 201. Council may wish to support this bill as is.

House Bill 259, AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO COLLEGE SAVINGS AND “ABLE” SAVINGS ACCOUNTS

House Bill No. 259 was introduced in the House and assigned to the Revenue & Finance Committee on June 30, 2019. The bill would allow residents of Delaware to have two new deductions from personal income tax. The first is a deduction of up to \$2,500 from taxable income for contributions to a “529” College Savings Plan. The second is a deduction from taxable income up to \$5,000 for contributions to a qualified ABLE program, also known as a “529A” Savings Account. House Bill No. 259, allows a Delaware resident taxpayer to be eligible for the deductions regardless of whether the contribution was to a 529 or 529A plan sponsored by the State or another state or institution, as long as the plans meet the federal criterion.

26 U.S.C. § 529A defines qualified ABLE program. In general, “ABLE Accounts, which are tax-advantaged savings accounts for individuals with disabilities and their families, were created as a result of the passage of the Stephen Beck Jr. Achieving a Better Life Experience Act of 2014 or better known as the ABLE Act. The beneficiary of the account is the account owner, and income earned by the accounts will not be taxed. Contributions to the account, which can be made by any person (the account beneficiary, family, friends Special Needs Trust or Pooled Trust), must be made using post-taxed dollars and will not be tax deductible for purposes of federal taxes.” An ABLE account will, with private savings, “secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, Medicaid, SSI, the beneficiary’s employment and other sources.”

Currently, the State of Delaware does not provide any income tax deduction for ABLE Accounts, while 13 other states do provide a deduction (including Delaware’s sister states of Maryland and Pennsylvania). Council should support the proposed bill because it would provide more incentive to Delaware taxpayers to create ABLE Accounts, which would be beneficial to disabled Delawareans.

House Bill 236, AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO LIMITATIONS ON USE OF SECLUSION AND RESTRAINT

This bill seeks to amend the definition of “public school personnel” to specifically exclude constables appointed pursuant to Chapter 27 of Title 10 from the definition. Section 4112F(a)(4) restricts public school personnel from most forms of seclusion and restraint, but it excludes “law enforcement

officers” and Department of Corrections (DOC) and Division of Youth Rehabilitative Services (DYRS) employees and contractors from those restrictions. Additionally, individuals who are excluded from the definition of “public school personnel” who act as school resource officers and who interact with students with disabilities are required by Section 4112F(d) to undergo awareness training related to interactions with students with disabilities, and are also required to undergo annual general school resource officer (SRO) training.

The current definition of “public school personnel” does not include constables because they are not “law enforcement officers” as defined in Title 11. The proposed bill seeks to add constables as a separate category. The DDOE regulations currently restrict SROs under 14 Del Admin Code 610. Section 2.0 to law enforcement officers as defined in 11 Del C §9200:

“School Resource Officer (SRO)” means a contractor, subcontractor or employee of a public school district or charter school who is a sworn law enforcement officer as defined in 11 Del.C. §9200.”

Consequently by regulatory definition, constables cannot serve as SROs; however, they currently do so in several school districts. This anomaly needs to be corrected, first by amending the statute and then by issuing new regulations. This sort of begs the question whether constables are suitable to serve as SROs. There have been many stories in the news of SROs acting in an inappropriate manner, and in particular assaulting students and not engaging in de-escalating techniques.

The training of constables is not nearly as in depth as that of police officers and the qualifications are stricter for police officers. Police officers must have at least 60 hours of postsecondary education (or 30 hours combined with substantial military experience). Del Tech provides “Constable Academy” that anyone other than retired police officers must take in order to become a constable. This is a one-month course with 180 hours of instruction. SRO training takes place over five days. Constable training is overseen by a Board of Examiners. State Police training is 22 weeks; cadets must pass a written test and physical exam before being admitted to the program. Not all constables are permitted to carry weapons, but many do.

If school districts intend to employ constables as SROs, and perhaps this is out of medical necessity, it is better that the law clearly requires them to undergo the appropriate training. Therefore, council may wish to consider endorsing the legislation or staying neutral.

Senate Bill 177- AN ACT TO AMEND TITLE 21 RELATING TO SUSPENSION OF DRIVERS LICENSES FOR SCHOOL EXPULSION

This amendment to 21 Del Code §2732(e) strikes language that requires the Department of Motor Vehicles (DMV) to suspend the license of any student who has been expelled from school. This amendment brings into conformity the provisions of Title 21 with those of Title 14 relating to the revocation of a student’s driving privileges when he or she is expelled from a public school. Prior amendments to Title 14, Section 4130 and Title 21, Section 2707 removed the requirement that the Secretary of the Department of Motor Vehicles revoke a student’s driving privileges upon notice from the superintendent of a public school that the student had been expelled. These changes were endorsed by council last year. Council may wish to endorse this bill.

ADULT TRANSITION SERVICES

Cathy Cowin reported that the committee heard from Dale Matusevich from the DDOE Exceptional Children Resources workgroup. Dale reviewed the State Performance Plan (SPP) targets for indicator 2 (dropout rate) and indicator 14 (post school outcomes). The group discussed setting new targets in the fall. The group also discussed Career-Technical Education (CTE) and PIPELINE. There are 15 schools currently participating.

CHILDREN AND YOUTH

Committee Chair Bill Doolittle shared that Maria Locuniak from DDOE presented the data for APR indicators 15 & 16 to his group. He did not elaborate on the presentation. He shared that the committee approved presenting a letter making recommendations for the alternate assessment for consideration of the Council; however, he will need to revamp the letter and will present it next month. His committee also continued to discuss the current school construction formula and how to make progress implementing changes to it.

INFANT AND EARLY CHILDHOOD

Chair Jennifer Pulcinella shared that she and Cindy Brown discussed early childhood transition. The Early Childhood Inclusion Committee (ECIC) is busy working on Memorandum of Understanding (MOUs) and working points for the upcoming year. They will be presenting to the Council in February. Indicators and unit counts were also discussed, as well as a couple of positions available on the DDOE website including, Inclusion Specialist and Coordinator to work with childcare centers to better prepare three-year old's for transition.

PERSONNEL COMMITTEE

It looks like there will need to be a posting for the open position. More information to follow.

AD HOC COMMITTEE REPORTS

No Ad Hoc committee reports were given.

OUTSIDE COMMITTEE UPDATES

Wendy shared that the Delaware Disability Hub is currently being updated and will hopefully be available in March. She also shared that there will be six professional development videos produced using funds allotted by the Joint Finance Committee. The video titles are as follows:

- Team Approach to Mastery (TAM) — Models in Action

- Student Led IEP: How to Prepare Your Students
- Student Led IEP: Inside the IEP
- Mindfulness in the Classroom: Breathing Techniques with Students
- Classroom as a Student Safe Space
- Creating Classroom Community and Empathy
- Transition to the Community for Students with Disabilities: Teaching for Daily Living

Bill shared that depositions in an American Civil Liberties Union (ACLU) lawsuit are currently being taken. If this moves forward GACEC may be called to give comments.

Robert shared that Senator Hansen's Division of Developmental Disabilities Services (DDDS) subcommittee will be extended until June with a resolution she is filing. She indicated that additional time was needed to produce findings. Robert also shared that a piece of legislation to keep an eye on is Senate Bill 203, which will allow homeschool students to qualify for related services such as occupational and physical therapy. Discussion ensued regarding whether private school students are eligible for therapies and which therapies are stand-alone services. Related services are not entitlements. Senate Bill 204, which looks like it will pass, will mean that students will now start school after Labor Day.

Karen reminded members that responses to letters could be found at the back of the room. **A motion was made and approved** to adjourn the meeting at 8:36 pm.