



**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)  
GENERAL MEMBERSHIP MEETING  
7:00PM, March 15, 2022  
ZOOM MEETING**

**MINUTES**

**MEMBERS PRESENT:** Al Cavalier, Nancy Cordrey, Matt Denn, Bill Doolittle, Cory Gilden, Terri Hancharick, Tika Hartsock, Jessica Heesh-Mensack, Genesis Johnson, Thomas Keeton, Molly Merrill, MaryAnn Mieczkowski, Beth Mineo, Erika Powell, Jennifer Pulcinella, Stefanie Ramirez on behalf of Laura Waterland, Meedra Surratte, Erik Warner

**OTHERS PRESENT:** Susan Veenema/Delaware Department of Education (DDOE), Jody Roberts/ ,Lynda Lord/

**STAFF PRESENT:** Pam Weir/ Executive Director, Kathie Cherry/Office Manager and Lacie Spence/Administrative Coordinator.

**MEMBERS ABSENT:** Karen Eller, Ann Fisher, Kristina Horton, Maria Olivere, Trenee Parker, Jill Scannell, Brenné Shepperson and Lindsay Williamson.

Vice Chairperson Terri Hancharick called the general membership meeting to order at 7:01pm. It was announced that a quorum was present. Bill Doolittle **made a motion** to approve the March agenda. The **motion passed unanimously**. Bill Doolittle **made a motion to approve** the February meeting minutes as amended. The **motion passed unanimously**. Tika Hartsock **made a motion** to approve the February financial report. The **motion passed unanimously**.

**PUBLIC COMMENT**

There was no public comment for March.

**COMMITTEE REPORTS**

**ADULT TRANSITION SERVICES COMMITTEE**

Thomas Keeton reported that the Committee discussed their goals and direction for the balance of the year. The Committee would like to invite Dale Matusevich to return for an update of the registration process. Secondly, the Adult Transition Committee would like to research mechanisms which will provide accountability for communication and registration of students.

They would also like to gather information from the State's Mentoring Program and evaluate component 5, which is the data component for DPAS 2. The committee would like to see prompts added to Power School IEP plus software based on age and enrollment that could include what parents should know, options for guardianship, prompt to invite DDDS & DVR to the transition IEP meetings, a list of service providers, DART renewal, doctor reports, list of transition agencies who support transitioning students. The committee plans on finding contacts who can help come up with a way to incorporate having these prompts added into the software.

### **CHILDREN AND YOUTH COMMITTEE**

Bill Doolittle reported that the Committee had three action items for this meeting. The Committee **made a motion** to approve sending two data requests to DOE for related services data and classroom composition data. The **motion carried** unanimously. The Committee **made a motion** for the GACEC to support the language for the special education funding taskforce resolution. The **motion carried** unanimously. The Children and Youth Committee **made a motion** to request a copy of the mid-year unit count. The **motion passed** unanimously. Bill reported that as an independent advocate, he met with the Secretary of Education today. Bill discussed the conversation took place with the Committee.

### **INFANT AND EARLY CHILDHOOD COMMITTEE**

Jennifer Pulcinella reported that the Infant and Early Childhood Committee discussed the Division of Developmental Disabilities Services (DDDS) 2100 Eligibility Criteria Regulations as well as today's DECC meeting. A question was brought up about admitting at the age of three for the program. The Committee wondered if it has this always been age three or was it age five previously. They wondered what the rationale is for this. In addition, it was noted that the transition at age three is still problematic in that before three, it is about the family while after three it is only the about the child. With the current changes going on in the Birth to Three Program and the DOE systems, the Committee wants to ensure that the family does not get lost in the process. Molly Merrill shared that with Part C transitioning to DOE, it would be helpful for a Community Navigator from DDDS present for the transition into the school year.

### **MEMBERSHIP COMMITTEE**

Al Cavalier reported that updates that were made to the New Membership Application Guidelines that were previously emailed to Council members. The only change that was made since the previous draft was dispersed, was lowering the recommended range of members appointed to the Council to 18 to 22. This is just a recommendation and is not regulatory, but rather a general range of what the ideal number of members to maintain would be. This recommendation would not make us out of compliance if we were above or below that range. Al added that this update was made due to the conversation with the Deputy Attorney General (DAG), Patty Davis, and her concern with the large number of members on the GACEC. Bill Doolittle asked why this recommendation is so far below the historic average of members. Al replied that the DAG was troubled that having too many members could complicate having the proper representation of each IDEA category. Discussion ensued. Membership Committee

made a motion to approve the New Membership Guidelines. The **motion passed**, with Tika Hartsock and Erika Powell abstaining. Bill Doolittle and Terri Hancharick were opposed.

## **POLICY AND LAW COMMITTEE**

Beth Mineo reported that the Policy and Law Committee was unable to get through all items they were tasked with reviewing this evening. The Legal Memo for March is below.

### **House Bill 300- An Act to Amend Title 14 of the Delaware Code Relating to Free Public Schools**

House Bill 300 proposes “creat[ing] Mental Health Services Units for school districts and charter schools serving students in grades 6-8.” The bill would provide increasing funding for social workers or counselors each year from 2023 to 2025, at a rate of:

- 1 unit for 400 full-time 6<sup>th</sup>-8<sup>th</sup> grade students in 2023
- 1 unit for each 325 full-time 6<sup>th</sup>-8<sup>th</sup> grade students in 2024
- 1 unit for each 250 full-time 6<sup>th</sup>-8<sup>th</sup> grade students in 2025

The bill proposes 1 unit for each full-time 6<sup>th</sup>-8<sup>th</sup> grade students (no incremental increase).

This proposed funding is very similar to the school mental health funding formula for K-5<sup>th</sup> grade students codified in Del. C. § 1716E (except the incremental scale for funding counselors or social workers started in 2022).

The proposed act:

stipulates that funds shall only be provided at a level necessary to satisfy the ratio requirements, and funding levels shall be determined after considering funds already received from the Opportunity Fund or any other funding already applied toward mental health support personnel. Further, funds allocated under this Act may not supplant mental health funding from another source unless ratios are already met and an approved application for supplanted funds is granted by the Department of Education.

This may mean that schools already funding mental health providers at the ratios required under this bill would not receive additional funding. While the bill describes a process where schools could request to use this funding to supplant other funds already used for mental health services, there is no process for schools to request using this funding to supplement funds already used for mental health services if the district has already met the baseline established in this bill. It may be beneficial to permit schools to request to use these funds to supplement existing funding if there is need for more extensive mental health services in their school or district.

Councils may wish to support this bill but advocate for more funding based on demonstrated need above the ratios established in the bill. As written, if a school district or charter has greater need for mental health supports than the required ratios in this bill and is already funding mental health support at these ratios, that school district or charter school would not benefit from this funding.

### **House Bill 301: An Act To Amend Title 14 Of The Delaware Code Relating To Mental Health Educational Programs**

This act would require “The Department of Education [to] establish and implement statewide mental health educational programs for each grade [K-12] in each school district and charter school in this State.” The act provides only minimal requirements for the mental health education programs. The instruction must:

- (1) ...includ[e] instruction in mental health and the relationship between physical and mental health to enhance student understanding, attitudes, and behaviors that promote health, well-being, and human dignity.
- (2) Be taught by appropriately trained certified educators.
- (3) Be comprehensive, developmentally appropriate, and sequential in nature.
- (4) The act also requires that the school district or charter school provide in-service training on the new instructional program

While the act has limited requirements for the new instructional program, it does require the Department of Education to “consult with mental health experts, including individuals with the Department of Health and Social Services, Department of Services for Children, Youth, and Their Families, Mental Health Association of Delaware, Delaware Guidance Services, National Alliance of Mental Illness Delaware, and National Council for Behavioral Health.” The act also empowers the Department of Education to “adopt regulations to implement and enforce this section.” Future regulations may provide more specific guidance on the mental health curriculum.

Councils may wish to support this act, but to engage in the development of the instructional programming and subsequent regulations because as written, the act may have potential benefit but is vague as to what actual school programming may look like.

#### **House Bill 303- Required Coverage of Behavioral Well Check**

House Bill 303 is an Act that would amend several titles of the Delaware Code. First, it would amend two (2) chapters of Title 18, the Insurance Code, Insurance. It would amend Chapter 33, Health Insurance Contracts, General Provisions, by adding Section 3370E and Chapter 35, Group and Blanket Health Insurance, Group Health Insurance, by adding Section 3571Z.

In addition, the Act would amend Title 31 Welfare, In General, Chapter 5, State Public Assistance Code by adding Section 530.<sup>1</sup> It would also amend Title 29, State Government, Public Officers and Employees, Chapter 52, Health Care Insurance, by amending Section 5215.

The Act would require all insurance carriers in the state to provide coverage for annual well visits for behavioral health. The coverage is mandated in all plans, including group plans, Medicaid, and plans for State government officers and employees.

The behavioral health well check is to be provided pre-deductible annually, by a “licensed mental health clinician with at minimum a masters level degree.” (Sections 1, 2, 3, and 4; 18 *Del. C.* § 3370E.(a)(1); 18 *Del. C.* §3571Z.(a)(1); 31 *Del. C.* §530.(a)(1); and 29 *Del. C.* §5215.(a)). The requirements of the visit are broad and comprehensive, and “must include but is not limited to a review of medical history, evaluation of adverse childhood experiences, use of appropriate battery of validated mental health screening tools, and may include anticipatory behavioral health guidance congruent with stage of life using the diagnosis of ‘annual behavioral health well check.’” (Sections 1, 2, 3, and 4; 18 *Del. C.* § 3370E.(a)(1); 18 *Del. C.* §3571Z.(a)(1); 31 *Del. C.* §530.(a)(1); and 29 *Del. C.* §5215.(a)).

House Bill 303 also establishes an advisory committee for the design and implementation of the of the annual behavioral health well check created by the Act. (Section 5). The committee would consist of nine (9) members. The members shall include two (2) “actively practicing

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<sup>1</sup> This reviewer was also asked to review and analyze House Bill 317, which is an Act would provide health coverage for children that are not otherwise covered. This Act would also amend Chapter 5 of Title 31 by adding Section 530. The section designation of either the Act created by House Bill 317 or the Act created by House Bill 303 would need to be changed as they could not both have the same section number, namely 530.

pediatric behavioral health clinicians, one of whom shall specialize in the treatment of adolescents;” two (2) “actively practicing adult behavioral health clinicians, one of whom shall specialize in the treatment of geriatric populations;” one (1) “actively practicing women’s behavioral health clinician;” two (2) behavioral health policy advocates, one of whom is a specialist in behavioral health policy advocacy at the national level and one of whom is a specialist in behavioral health policy advocacy at the local level;” and two (2) “actively practicing primary care physicians.” (Section 5).

This Act implements and expands upon the requirements of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).<sup>2</sup> This Act is also a belated recognition by the legislature that Delaware citizens are entitled to coverage for mental health and substance abuse disorders on a par with physical health services. As stated in the preamble to the Act, Delaware ranks 35<sup>th</sup> in the nation for mental illness and substance abuse disorders. The situation was exacerbated by the COVID-19 pandemic. Mental health issues cost “almost \$200 billion in lost wages and almost \$100 billion in healthcare costs nationally.” (Preamble to the Act). The failure to address childhood trauma through treatment and screening leads to an increase in mental health illnesses and substance abuse disorders and an increase in incarceration and other negative health behaviors. (Preamble to the Act). There is also the stigma associated with mental health disorders and the intent of the Act is to help change those perceptions by encouraging individuals to seek care and treatment by mandating insurance coverage.

This is a bill that Councils should consider endorsing as it will require parity in coverage for mental health and substance abuse disorders and medical coverage.

### **House Bill 306 – Driver’s Licenses for Individuals Registered as Sex Offenders**

HB 306 was introduced and assigned to the House Public Safety & Homeland Security Committee on March 3, 2022. The bill proposes to revise existing law related to the issuance of driver’s licenses for registered sex offenders<sup>3</sup>. Currently, state law requires that individuals required to register as sex offenders for a felony conviction must surrender their driver’s license to the sentencing court, be issued a temporary license, and report to the Division of Motor Vehicles (DMV) for issuance of a new license where letter code “Y” indicating sex offender status appears in the “restrictions” area of the card. See 21 Del. C. § 2178(e). The law also states the person will need to pay \$5.00 fee for issuance of the new license.

The bill proposes to change the coding that appears on the license to “SO” indicating sex offender. It is not clear from the synopsis of the bill provided why the change in coding has been proposed, though presumably “SO” would more clearly indicate the individual is a registered sex offender.

The bill also imposes a requirement that individuals who must register as a sex offender for a felony conviction who have a nondriver identification card follow the same process of surrendering the identification card to the court, receiving a temporary card, and reporting to the DMV for issuance of a new card that has the same coding (“SO” indicating sex offender). In

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<sup>2</sup> Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, Pub. L. No. 110-343 §511 (codified at 29 U.S.C.A. §1185a (2010)). This federal law generally prevents group health plans and health insurance carriers that provide coverage for mental health or substance abuse disorders from providing less favorable benefits than for physical health benefits. This law does not apply to Medicare. There is parity in Medicare through the Medicare Improvements for Patients and Providers Act of 2008, Pub. L. No. 110-275 (enacted July 15, 2008) (MIPPA).

<sup>3</sup> Although the exact data is unclear, there is substantial evidence that there are a disproportionate number of individuals with intellectual disabilities who are convicted sex offenders. Callahan, Jeglic, et al, *Sexual Offenders With Intellectual Disabilities: An Exploratory Comparison Study in an Incarcerated U.S. Sample* <https://journals.sagepub.com/doi/10.1177/0306624X211066825> ( 12/2021).

these circumstances the individual would also need to pay a \$5.00 fee to the DMV for issuance of the new card.

While in most cases the underlying offense that would result in a person would be a felony, there are some circumstances contemplated by the relevant statute (11 Del. C. § 4120) where a person could be required to register based on one or more misdemeanor convictions. In those cases, the requirement to obtain and carry a new driver's license with the letter code to indicate sex offender status would appear to not apply.

Several other states require some designation for registered sex offenders on state-issued licenses, and in some states these laws have faced legal challenges. In 2019, a federal trial court found that the state of Alabama's requirements for labelling of driver's licenses and state IDs for registered sex offenders violated individuals' First Amendment rights. *Doe v. Marshall*, 367 F. Supp. 3d 1310 (M.D. Ala. 2019). Similarly, in 2020, the Louisiana Supreme Court similarly found that laws requiring that registered sex offenders to carry ID cards branded "sex offender" and criminalizing alteration of such cards were unconstitutional because they constituted "compelled speech" and were not the "least restrictive means" of serving the state's interest in public safety. *State v. Hill*, No. 2020-KA-03232020, WL 6145294 (La. 2020). Louisiana filed a petition for a writ of certiorari with the U.S. Supreme Court in 2021, however this petition was denied without a written opinion on October 4, 2021. It is important to note, however, that in both cases the required labelling was far more obvious (in Alabama the law had required driver's licenses be labelled "Criminal Sex Offender" in bold, red text, and in Louisiana, IDs were required to be labeled "Sex Offender" in all capital, orange text) as opposed to a letter code as used on Delaware's licenses; in the Alabama case the Court actually mentioned Delaware's use of the letter "Y" to label driver's licenses in a footnote as an example of a more subtle means of enabling law enforcement to identify individuals registered as sex offenders while "reducing the unnecessary disclosure of information to others." *Doe* at 1327.

It is unclear whether changing the letter coding to "SO" rises to the unconstitutional level of compelled speech found in the Alabama and Louisiana cases. It certainly will increase the likelihood that others will be made aware of a person's status as a sex offender, as at least anecdotally, there are many circumstances in public life where presentation of identification is a requirement.

Should the Councils choose to take a position on this bill, they may wish to oppose given the myriad of restrictions and public disclosure already required for individuals required to register as sex offenders. It might be helpful to inquire what state interest is served by identifying sex offenders to third parties in this manner, when law enforcement and others can already identify them with the restriction "Y" if necessary.

### **House Bill 311- Amendments to the Equal Accommodations Statute**

HB 311 adds language to Title 6 Chapter 45 , otherwise known as the Delaware Equal Accommodations Statute ("DEAL"). DEAL was originally enacted in 1953. Over time, the legislature has added protected classes to the statute, including disability in 1986. It has been amended a number of times. Over many years, the state agency that enforces the law, the Division of Human Relations (DHR) within the Department of State, has taken an increasingly narrow view of what types of discrimination against people with disabilities are illegal under DEAL. Specifically, it unilaterally decided that DEAL does not cover cases in which a person is asking for a reasonable modification ( or reasonable "accommodation", which is often used interchangeably) of a policy or practice, or for a physical alteration of a structure. DHR has

often said it “doesn’t enforce the ADA<sup>4</sup>” and has generally, though not always, refused to take any case where the person might also have an ADA claim, even though there is nothing in the statute to support this. DHR dismisses these cases for lack of jurisdiction without doing any investigation whatsoever. 5

This interpretation has essentially cut off access to DEAL for people with disabilities in the state, who, most of the time, do not encounter direct discrimination ( i.e. I won’t serve you because I don’t like people with disabilities and I don’t want you here) but encounter barriers to access. These barriers are sometimes physical, but are often intangible- such as policies and practices that have to be altered to allow access.

CLASI has had some success appealing some of these denials of jurisdiction, most recently in a case that resulted in excellent language clarifying that yes, DEAL covers requests for reasonable accommodations. CLASI remains concerned that DHR may continue to slam the door on disability discrimination cases. Legislators and others felt it prudent to introduce HB 311 to make it abundantly clear that the law’s scope is inclusive of all discrimination based on disability. HB 311 does the following:

1. Using the same terms and definitions for those terms as in the ADA
2. Clarifying that places of public accommodation must make reasonable modifications in policies, practices, and procedures, sometimes referred to as “reasonable accommodations”, unless doing so would fundamentally alter the program, business, or service.
3. Clarifying that a public accommodation must provide auxiliary aids and services, unless doing so would fundamentally alter the program, business, or service or be an undue burden.
4. Clarifying that places of public accommodation must remove physical barriers if doing so is readily achievable ( done without much expense).
5. Clarifying that state investigations of complaints must apply the requirements under state law in a manner consistent with equivalent requirements under federal laws.
6. Clarifies that an individual does not have to use the exact terms in DEAL to request a reasonable modification or auxiliary aids and services for the request to be covered by DEAL
7. Extends the time to file a complaint under DEAL to 1 year.
8. Allows the Commission to waive the cost of transcript, upon application by a party.
9. Makes corresponding changes to the requirement under § 10006A of Title 29 that a public body allow a member with a disability to use electronic means of communication to attend a meeting because "reasonable modification" is the term now used under § 4504 of Title 6. The term "reasonable accommodation" is retained because that is the term used

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4 DHR does not appreciate that the ADA enforcement is difficult and expensive. The US Department of Justice accepts a fraction of complaints filed for investigation; the only alternative is to file a case in federal court, which is a lengthy and expensive process. Most of these disputes can be resolved cheaply, simply and often amicably. 5CLASI has no idea how many complaints DHR has rejected in this manner. However, CLASI has taken cases involving access to deaf interpreters in a hospital setting, curb ramps, and more recently, a child seeking a medical examination and multiple cases against child care providers, including refusing to allow a Medicaid funded nurse to accompany a toddler with diabetes, a child with developmental delay who was not yet “potty-trained” who was denied admission, and a child who was deaf who was denied admission.

under state and federal law in employment contexts, which might apply to a member of public body.

Councils should consider strong endorsement of this bill. Currently, most disability discrimination cases are not being heard by DHR and this avenue for relief, which is quick, inexpensive for both sides, and which offers conciliation, is not available to Delawareans with disabilities. HB 311 will prevent DHR from continuing to exclude (without legal justification) claims by people with disabilities under DEAL.

### **HB 314: An Act To Amend Title 10 Of The Delaware Code Relating To Mandatory Sentences For Juveniles.<sup>6</sup>**

House Bill 314 (“HB 314”) seeks to amend Chapter 9, Title 10 of the Delaware Code relating to Mandatory Sentences for Juveniles by amending § 1009(k)(1) to clarify that a 6- or 12-month mandatory commitment to Level 5 incarceration or institutional confinement for a juvenile only applies to adjudications of delinquency for the charge of Robbery First Degree or Possession of a Firearm During the Commission of a Felony if the offense was committed *after the child’s 16th birthday*. The bill was introduced in the Delaware House of Representatives on March 3, 2022, sponsored by Rep. Heffernan, Sen. S. McBride, and Reps. Dorsey Walker and Longhurst.<sup>7</sup>

It was subsequently assigned to the House Judiciary Committee, which will hold a hearing within twelve (12) legislative days.

Specifically, this bill is a clarification to House Amendment 1 to HB 307 (“HA 1”) from the 49th General Assembly,<sup>8</sup> and adds language to 10 Del.C. § 1009(k)(1) providing that the mandatory commitment applies only where the youth was over the age of sixteen (16) when they committed the offense of Robbery First Degree or Possession of a Firearm During the Commission of a Felony. This clarification will help to ensure that youth who commit either of these offenses while under the age of sixteen (16) do not receive a mandatory sentence 6- or 12-month incarceration or confinement.

Although children with disabilities are not specifically mentioned in the bill, data shows that such children will likely be impacted by its passage (or failure). According to a 2015 white paper, 65-70 percent of justice-involved youth have a disability.<sup>9</sup> The number is likely similar in Delaware. Furthermore, in its Juvenile Justice Guide Book for Legislators focused on reentry and aftercare, the National Conference of State Legislatures reports that “[a]bout 70 percent of juveniles in the system are affected with at least one mental illness.”<sup>10</sup>

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<sup>6</sup> <https://legis.delaware.gov/BillDetail?LegislationId=79162>.

<sup>7</sup> HB 314 is co-sponsored by Sen. Gay and Rep. Baumbach.

<sup>8</sup> <https://legis.delaware.gov/BillDetail?LegislationId=26279>.

<sup>9</sup> The Arc’s National Center on Criminal Justice and Disability. “Justice Involved Youth with Intellectual and Developmental Disabilities: A Call to Action for the Juvenile Justice Community.” (2015). [https://thearc.org/wp-content/uploads/forchapters/15-037-Juvenile-Justice-White-Paper\\_2016.pdf](https://thearc.org/wp-content/uploads/forchapters/15-037-Juvenile-Justice-White-Paper_2016.pdf).

<sup>10</sup> <https://www.ncsl.org/documents/cj/jjguidebook-reentry.pdf>.



As written, the clarification aligns with Delaware’s trend toward recognizing young people, including those with disabilities, as separate and distinct from adults. Therefore, Councils may wish to support the bill as written. However, Councils may wish to recommend that the Legislature review whether Delaware law should even include mandatory minimums for youth adjudicated delinquent as was the original intent of HB 307.

HB 307 sought to repeal and remove *all* mandatory minimum sentencing scheme for juveniles adjudicated delinquent in Family Court. Recognizing that young people are inherently different than adults, HB 307’s sponsors put forth a bill which would allow Family Court judges and commissioners to fashion sentences which are appropriate for each individual youth. This reasoning is in line with several U.S. Supreme Court decisions from the last several decades, including *Miller v. Alabama*<sup>11</sup> (holding that mandatory life without parole for a youth was unconstitutional), *Roper v. Simmons*<sup>12</sup> (holding that a death sentence for a crime committed when the individual was under the age of eighteen (18) was unconstitutional), and *Graham v. Florida* (holding that it was unconstitutional for a young person to be sentenced to JLWOP for a crime not involving homicide.<sup>13</sup>

These, and other similar cases, stand on scientific literature differentiating a child’s developing brain from an adult’s developed brain. So, the original text of HB 307 made *sense* when considering the line of U.S. Supreme Court cases and available science around the development and growth of a youth’s brain. The House Judiciary Committee agreed on March 28, 2018 with six (6) Favorable<sup>14</sup> votes and three (3) votes On Its Merits<sup>15</sup>. However, on April 19, 2018, Rep. J. Johnson, HB 307’s primary sponsor, introduced HA 1, which was placed with the bill immediately prior to a vote by the House. HA 1 retained the mandatory minimum sentences for Robbery First Degree and Possession of a Firearm During the Commission of a Felony.

Retaining the above two (2) mandatory minimum sentences flies in the face of the available literature and U.S. Supreme Court precedent. Although not unconstitutional, it prevents Family Court Judges and Commissioners from adequately considering everything that makes a youth a youth and an individual, including those youth-specific characteristics.

Therefore, although HB 314 follows the current trend in Delaware, Councils may wish to provide their support with the recommendation that the Legislature consider revisiting whether

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11 567 U.S. 460 (2012). Holding that young people cannot be sentenced to life without the possibility of parole (“LWOP”) for homicide crimes where LWOP is the only option for sentencing. Further, mitigating factors must be considered before a young person can be sentence to juvenile LWOP (“JLWOP”), such as their age, age-related characteristics, background, and mental and emotional development.

12 543 U.S. 551 (2005). Considering the social and neuroscience literature at the time, the U.S. Supreme Court recognized three general characteristics that separated young people from adults: (1) lack of maturity and possession of an underdeveloped sense of responsibility, which result in impetuous and ill-considered actions and decisions; (2) more vulnerable and susceptible to negative influences and outside pressures; and (3) early stages of character development.

13 560 U.S. 48 (2010).

14 A favorable vote means the legislator recommends the full Chamber pass the legislation.

15 A vote On its Merits means the legislator recommends the full Chamber take action on the legislation, but the legislator does not take a position on what action should be taken.

retaining the two mandatory minimum sentences for juveniles adjudicated delinquent is necessary or warranted.

### **HB 315: An Act To Amend Title 14 Of The Delaware Code Relating To Free Public Schools for Substitute Teachers.<sup>16</sup>**

House Bill 315 (“HB 315”) seeks to amend Chapter 17, Title 14 of the Delaware Code relating to State Appropriations by adding a new section of the code, § 1716F, which would provide unit funding for substitute teachers. HB 315 also seeks to amend Chapter 12, Title 14 of the Delaware Code relating to Educator Licensure, Certification, Evaluation, Professional Development, and Preparation Programs by amending § 1210 to provide a pathway to initial licensure for individuals providing long-term teaching under proposed § 1716F. The bill was introduced in the Delaware House of Representatives on March 3, 2022, sponsored by Rep. Heffernan, Sen. Sturgeon, and Reps. Dorsey Walker, Griffith, and K. Williams.<sup>17</sup> It was subsequently assigned to the House Education Committee, which will hold a hearing within twelve (12) legislative days.

Specifically, this bill does a few distinct things: (1) provides unit funding for full time employees who are hired to provide permanent substitute teaching support in Delaware schools<sup>18</sup>; (2) requires the Delaware Department of Education (“DDOE”) to develop a professional development program specifically for substitute teachers; and (3) creates a new pathway to initial licensure for substitutes under the proposed § 1716F.

In essence, HB 315 is an attempt to solve one of the oldest and most consistent issue seen by school systems all over the country: the shortage of substitute teachers. The COVID-19 pandemic only served to exacerbate the issue, causing some Delaware schools to even close their doors or provide virtual instruction on days where there were no substitutes to cover the number of teachers who were absent.<sup>19</sup> An article for WMDT cites unpredictable schedules, inadequate training, and daily pay rates as reason why substitute teachers have been so difficult to hire.<sup>20</sup> HB 315, it seems, would address all three of the reasons cited by the WMDT article.

Although HB 315 seems beneficial on its face and a no-brainer for support, Councils will need to consider the possible unintended consequences of its enactment and whether more time, care, and consideration needs to be taken before giving support.

#### Unit Funding for Permanent Substitute Teaching Support

Beginning the 2023-24 school year, HB 315 would provide for full time substitute teachers based on the number of students counted in the September 30 unit count for elementary,

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<sup>16</sup> <https://legis.delaware.gov/BillDetail?LegislationId=79164>.

<sup>17</sup> HB 315 is co-sponsored by Sens. Gay, Hansen, Hocker, S. McBride, Pinkney, Walsh; and Reps. Baumbach, Bolden, Briggs King, Carson, Longhurst, Mitchell, Osienski, and Ramone.

<sup>18</sup> It is unclear whether this is specifically for designated high needs schools or *all* Delaware public schools. This confusion is discussed in more detail in the analysis below.

<sup>19</sup> <https://www.delawareonline.com/story/news/2022/01/12/some-delaware-schools-go-virtual-close-covid-staffing-shortages-substitutes-covid-19/9171770002/>.

<sup>20</sup> <https://www.wmdt.com/2022/03/a-bill-to-find-a-solution-for-the-substitute-shortages/>.

middle, and high schools. The September 30 unit count determines the number of teachers a school and school district are allocated, and therefore how the general assembly determines its appropriations. The appropriations are divided into three “Divisions” with teachers being funded with Division I monies.<sup>21</sup>

HB 315 would allow schools, based on the number of Division I units – teachers – to hire full-time substitutes. Specifically,

- A school with 25-29 teachers would receive .65 of a full-time substitute unit;
- A school with 30-49 teachers would receive 1 full-time substitute unit;
- A school with 50-54 teachers would receive 1.65 full-time substitute units; and
- A school with 55 or more teachers would receive 2 full-time substitute units.

HB 315 further states that any “fractional” units could be used to support full-time substitute teachers throughout the district. It is unclear how this particular provision will function and how it will affect how full-time substitute teachers would be used throughout the district. For example, if the “fractional” units from the schools within the district are then combined at the district level to provide for full units, who determines where these “district” full-time substitutes would go? Would they be stationed at *one* school for the duration of the year, or would they become *floaters* to be used as the district sees fit? The latter would be counter to what full-time substitutes are supposed to provide: stability and continuity for the students and the school.

One of the other concerns is that HB 315 provides for a “cash option” that would allow a District to essentially *trade-in* up to thirty (30) percent of the full-time substitute units for \$35,000 per unit. Although the funds would be required to be used to support substitute teaching or reducing class size, how does this help accomplish the goal of ensuring there are enough substitute teachers available? This question becomes more salient when considering the pay and benefits for full-time substitute teachers under HB 315.

HB 315 requires that full-time substitute teachers hired under consistent with these provisions would be paid from state funds for ten (10) months consistent with 14 Del. C. 1305. Specifically, full-time substitute teachers must be paid at a starting salary equitable to a no degree step 1 salary, which is .96171. As an illustration, the lowest salary for a teacher in the 2019-2020 school year was \$42,338.22. A no degree step 1 salary for the 2019-2020 school year would then be \$40,716.88. In stark contrast, the range of pay for substitute teachers in 2019-2020 was anywhere from \$66 per day to \$104 per day.<sup>23</sup> So the district has to weigh: do I want to pay one person approximately \$40,000 to be at one school? Or do I want to take the cash option and pay substitute teachers *per day* at all my schools? The cap of thirty (30) percent of the units available for trade-in helps ensure that most of the funds are used for full-time substitutes, but why allow the cash option at all?

Another issue concerns whether HB 315 would apply to *all* elementary, middle, and high schools or whether it is specifically for those schools who are defined as “high needs.” There is one reference to high needs schools which is (b)(1), where it identifies the number of full-time substitute units to which schools would be entitled. This is the only mention of “high needs” schools within the entire bill. It is unclear whether the bill is intended to only affect those

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21 Title 14, Chapter 17 of the Delaware Code.

22 <https://www.doe.k12.de.us/page/1490>. “Average Salary of Full-Time Staff 2019-2020.”

23 <https://www.delawarepublic.org/education/2019-04-19/state-seeks-solution-to-substitute-teacher-shortage>.

schools identified as “high needs” or whether there was a mistake made in drafting, or both. There are two recommendations for this (b)(1) section that Councils may want to consider.

1. The citation to the “high needs” definition included in the bill is 14 Del. C. § 1726. This is an incorrect citation and should be changed to 14 Del. C. § 1102A(5)(b). However, this correction may be unnecessary if it was a mistake to restrict these full-time substitute units to high needs schools.
2. The drafters label this section as (b)(1) yet there is no (b)(2); the next section after (b)(1) is (c). In general, if there is a (b)(1), there is going to at least be a (b)(2). It is possible that the drafters intended there to be separate unit count determinations for schools considered “high needs”; or that was the original thought and was subsequently abandoned. Councils may wish to recommend that the drafters clarify whether the bill would apply to *all* schools, just those identified as “high needs,” or both with different allocations as well as whether charter schools are included.

The distinction between which schools will qualify for full-time substitutes and how many is extremely important when considering the cost of the bill. It should be noted that as of March 11, 2022, there is no fiscal note yet attached. In an attempt to provide some idea of the cost, this reviewer did a rough approximation for what this number may look like.<sup>24</sup>

- If HB 315 applies to *all* elementary, middle, and high schools: \$ 9,171,477.22
- If HB 315 applies *only* to “high needs”<sup>25</sup> elementary, middle, and high schools: \$ 1,152,287.70
- If HB 315 applies to *all* elementary, middle, and high schools but with different allocations for each: ?????

It should also be noted that the salary for full-time substitutes would not be paid completely from state appropriations, but rather in some combination of state and local funds.

#### Professional Development Program for Substitutes

The second thing HB 315 would do is require that DDOE develop a professional development program no later than May 30, 2023 specifically targeted at substitute teachers. This program would be for both district and charter school use and would be required to include, at a minimum, training on:

- Implementing lesson plans;
- Classroom management;
- Student behavior, including disability awareness and behaviors that may manifest because of disabilities; and
- Basic understanding of Individualized Education Plans and Section 504 Plans.

The bill would also make all individuals hired as full-time substitutes subject to state, district, and building level professional development requirements as well as to the provisions

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<sup>24</sup> These are just approximations. The calculation assumes the cash option is not used and includes a percentage of a salary; approximate number of total full-time substitute units was 225.25 for *all* elementary, middle, and high schools and 28.3 for *high needs* elementary, middle, and high schools. The calculation does not include charter schools. The data for the number of teachers used to determine the full-time substitute unit count came from <https://www.doe.k12.de.us/page/1490> “Number of FTE Staff 2019-2020”. The salary number used was \$40,716.88, which is 96.171% of the lowest salary teacher in 2019-2020.

<sup>25</sup> <https://www.doe.k12.de.us/Page/4495>.

found in Title 14, Chapter 41 of the Delaware Code.<sup>26</sup> Finally, it allows the full-time substitute to use the hours spent doing professional development training as credits toward a standard teaching certificate.

Councils may wish to generally support the inclusion of a professional development requirement in a bill relating to substitute teachers, especially for full-time substitute teachers. One of the concerns heard often in terms of substitute teachers is that they are not well-versed in what happens – or should happen – within the classroom. And students may exhibit more maladaptive behaviors when a substitute is in the classroom when compared to their actual teacher. Equipping substitute teachers with training specifically related to classroom management and addressing student behaviors is nothing short of a much needed, great idea.

However, Councils may wish to recommend that the drafters consider whether there should be a requirement that DDOE consult with the Delaware Center for Teacher Education<sup>27</sup> at the University of Delaware in developing the training and professional development program. A collaboration such as this would help ensure consistency in training for those teaching in Delaware schools.

#### Pathway to Licensure

Finally, HB 315 would provide for a pathway to licensure for full-time substitutes. Specifically, it would allow those full-time substitutes to use their time in the classroom as an alternative to student teaching, which is a prerequisite to receiving initial licensure. On its face, this idea makes sense and Councils may wish to support this general premise and the language in the bill with a few minor recommendations.

In attempting to include this additional pathway in Chapter 12, Title 14 of the Delaware Code, the drafters may have inadvertently made a fairly substantial change to the alternatives to student teaching requirements. The current text of 14 Del. C. 1210(a)(1), which is the first of four (4) alternatives to student teaching, reads:

One year of teaching experience consisting of a minimum of 91 days of long-term teaching experience in 1 assignment, except that this paragraph (a)(1) does not apply to applicants seeking an initial license to teach in a core content area. For the purposes of this section, “core content area” means any subject area tested by the state assessment system, including mathematics, English/language arts, science, and social studies. Experience in an alternative routes for teacher licensure and certification program or the Special Institute for Teacher Licensure and Certification Program may not be used to meet this alternative.

HB 315 would change 14 Del. C. 1210(a)(1) to read:

One year of teaching experience consisting of a minimum of 91 days of long-term teaching experience in 1 assignment or 3 years of long-term teaching experience consisting of 91 days of long-term teaching experience per year in multiple assignments under § 1716F of this title. Experience in an alternative routes for teacher licensure and certification program or the Special Institute for Teacher Licensure and Certification Program may not be used to meet this alternative.

In making these changes, the drafters removed the carve-out for applicants seeking an initial license to teach in a core content area. Councils may wish to recommend that the drafters retain this carve out and instead place the specific provision related to an alternative route for

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<sup>26</sup> These provisions include a wide range of items including training on school bullying prevention, suicide prevention, and child abuse and safety awareness.

<sup>27</sup> <https://www.dcte.udel.edu/>.

full-time substitutes as the fifth alternative to student teaching rather than included in one of the already-existing alternatives.

In general, Councils may wish to offer cautious support for HB 315 consistent with the concerns expressed within this analysis. In addition, Councils may wish to question why retired teachers and / or current students within a teacher education program were not provided for within a push for hiring substitute teachers, similar to Pennsylvania's recently proposed legislation.<sup>28</sup>

### **House Bill 317- Cover All Delaware Children Act**

House Bill 317 is called the "Cover All Delaware Children Act." The Act would amend Title 31 Welfare, In General, Chapter 5, State Public Assistance Code by adding Section 530.<sup>29</sup> The Act would provide medical coverage to children who reside in Delaware, regardless of their immigration status, and who are not eligible for Medicaid or other medical coverage.

The Department of Health and Human Services would create and operate the program to provide benefits that mirror the benefits of the Medicaid and Children's health Insurance Program (CHIP). The coverage would be comprehensive and would include "hospital, medical, dental, and prescription drug benefits." (Section 530(c)). In essence, this Act creates a state funded insurance program for children whose immigration status of not being documented prevents them from being eligible for Medicaid. Upon passage and signing by the Governor, the coverage required by the Act would begin on January 1, 2023.

Councils should support the creation of a program that provides health insurance coverage to children who, but for their immigration status, would qualify for coverage through Medicaid or CHIP. All children, including those that are not documented or that have disabilities, should be insured in Delaware. The inevitable consequences of children going without preventative or critical health care will result in more significant health issues in the future. An investment in health care now will contribute to cost saving outcomes in the future, such as utilization of emergency rooms for primary care and forgoing care until a medical need becomes urgent.

Although the proposed legislation is certainly laudable, the concern that Councils should have is that the creation and operation of the health program is dependent upon annual appropriations. (Section 530(a)). To achieve the purpose of the Act, the program must be funded fully and become an entitlement. If the program is subject to appropriations each year, it could be defunded, essentially eliminating the program without repealing the legislation. If the program is only partially funded, the program would be forced to implement some means to limit cost, such as capping individual coverage or utilizing a waitlist. Those measures would result in an inequitable administration of benefits and defeat the purpose of the Act, which is to fully cover all children in Delaware. Councils should favor and insist that funding for the program be ongoing and not subject to yearly requests from the legislature.

On March 1<sup>st</sup>, a fiscal note prepared by Victoria Brennan, Office of the Controller General, was attached to the bill. According to the note, the Division of Medicaid and Medical Assistance (DMMA) estimated that there are 2000 eligible children in Delaware that are not

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<sup>28</sup> <https://www.bctv.org/2021/12/17/psea-welcomes-legislation-that-will-ease-substitute-teacher-shortage/>.

<sup>29</sup> This reviewer was also asked to review and analyze House Bill 303, which is an Act would provide coverage for annual well visits for behavioral health. This Act would also amend Chapter 5 of Title 31 by adding Section 530. The section designation of either the Act created by House Bill 303 or the Act created by House Bill 317 would need to be changed as they both could not have the same section number, namely 530.

qualified for Medicaid or other health insurance programs. DMMA estimates that 1,000 children would be enrolled and covered in 2023, with the balance and total enrollment achieved in 2024 and 2025. Unfortunately, it will take approximately three (3) years for all the children to be enrolled. This is not fast enough, and Councils should insist on specific language in the bill to promote the program and facilitate enrollment. Moreover, there does not appear to be any consideration given to the cost and funding the program if the number of undocumented children is higher than the DMMA estimate or increases in the coming years. The total cost of the program, including administrative costs, for 2023 (the inception year) is \$2,050,000.00. For 2024 the total cost is \$6,950,000. And for 2025, the total cost is \$7,310,000. These are estimates; however, if it turns out that they are inadequate to fully fund the program, the funding should be increased so that every child is covered.

### **House Bill 319 -Constitutional Amendment Regarding Parental Rights**

HB 319 synopsis describes itself as an act proposing an amendment to Article I of the Delaware Constitution to affirm that Delaware parents and legal guardians have a fundamental right to the care, custody, and control of their children. The Act indicates this amendment would require government officials to prove that State interference with these rights is a necessary “compelling interest” and the least intrusive means. It purports to fill a void in the Delaware constitution and caselaw.

While the synopsis sounds compelling a closer read of the statute reveals that in fact it would undo a Delaware Supreme Court case, that has been crucial to many parents, including those with disabilities, to have their children returned to their care once concerns about their “fitness” to parent have been addressed; Tourison v. Pepper, 51 A.3d 470 (Del. 2012). HB 319, notably, extends parental rights as a fundamental right to not only biological and adoptive parents but also legal guardians. Tourison, has been used by many parents who have regained fitness to parent, to terminate a legal guardianship that gave care and custody to another party.

The assertion that there is a void in the Delaware constitution and caselaw protecting parental rights is inaccurate. The Delaware Supreme Court has affirmed that parents have a fundamental right to make decisions concerning the care, custody, and control of their children. Tourison, citing Troxel v. Granville, 120 S. Ct. 2054 (2000); Shepherd v. Clemens, 752 A.2d 533, 541; Black v. Gray, 540 A.2d 431, 435 (Del. 1988). Therefore, what HB 319 adds, substantively, is extending this same right to legal guardians, by adding “or legal guardian” to section (b) of this bill is what is problematic for individuals with disabilities, and others, who have had their children placed into a guardianship. This amendment to the Delaware Constitution would put legal guardians on equal footing with parents in asserting rights to raise the child. Likely this would result in more parents with disabilities being deprived of the right to raise their own children.

Secondly, the evidentiary standard in infringing upon parental rights in Delaware is a “clear and convincing” whereas HB 319 uses a “compelling” State interest standard (also called “strict scrutiny”), which would be helpful to parents with disabilities in asserting rights to their children. However, as discussed above, applying these rights equally to legal guardians would be incredibly problematic for parents with disabilities. It also may be utilized to protest public health and safety mandates in schools, such as mask wearing, and vaccination requirements. Masking during periods of high transmission, and immunization against preventable diseases protect Delaware children with disabilities who are medically fragile.

Extending equal rights to legal guardians would create conflict between State law and the U.S. constitution. This could result in numerous court challenges, wasting the time of parents

with disabilities and delaying the adjudication of their rights, as well as taxpayer dollars and court resources.

Councils should consider opposing the bill as drafted.

### **House Bill 324 – Criminal Penalties for Assault of Health Care Workers**

HB 324 seeks to amend existing provisions in the Delaware Code to broaden the statutory definition of assault in the second degree at 11 Del. C. § 612 to include qualifying offenses committed against a wider range of health care workers. This bill was reported out of Committee in the House on March 9, 2022.

Prior to the passage of HB 214 in 2016, an assault that would otherwise be considered a third degree assault (a misdemeanor) would automatically be considered a second degree assault (a felony) in cases where the perpetrator had recklessly or intentionally caused injury to a law enforcement officer, first responder, or public transit operator. See 11 Del. C. § 612(3). In 2016, the Legislature passed HB 214, which expanded the automatic re-designation to assault in the second degree to include cases in which the perpetrator had intentionally caused physical injury to a “the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, or licensed medical doctor while such person is performing a work-related duty,” as well as “any other person... rendering emergency care.” See 11 Del. C. § 612 (4)-(5).

HB 324 proposes to further expand the conditions in 11. Del. C. 612 (3)-(4), to include hospital constables, in addition to “any person providing health care treatment or employed by a health care provider while such person is performing a work-related duty.” This language is extremely broad, and in many cases would essentially include anyone employed by a particular facility or program. Perhaps most of interest to the Councils, this would potentially include direct service professionals serving individuals with disabilities in community settings, as well as all employees at facilities such as group homes and psychiatric hospitals. Presumably the perpetrator in the vast majority of such cases would be a patient or service recipient, a person with a disability, most likely a behavioral health related disability. As second degree assault is considered a felony, the consequences could be significant for individual defendants in terms of sentencing as well as the collateral consequences of a felony conviction.

Notably, a nearly identical bill, HB 144, was introduced in March of 2020 just prior to the COVID-19 pandemic. At that time, The News Journal had published two op-eds relating to the bill. The first, by Karen Lantz, Esq. of the ACLU of Delaware and Jack Guerin of the ACLU’s Coalition for Smart Justice, criticized the bill, stating that it “[would move] Delaware in the wrong direction on criminal justice reform.” They also referred to the alternative strategy of “workplace violence prevention programs” and mentions that legislation has passed in numerous other states requiring hospitals to have workplace violence prevention programs as opposed to increasing criminal penalties for assault. A rebuttal, penned by Wayne Smith of the Delaware Healthcare Association and Marcy Jack of Beebe Healthcare, contended that the strategies of workplace violence prevention and broadening the criminal statute are complementary and should be pursued together. Mr. Smith and Ms. Jack cited to statistics regarding the widespread occurrence of assaults on health care workers and asserted that not amending the statute to include all health care workers would result in a situation where workers are not equally valued, as the same incident occurring within a health care facility would be considered a felony in some cases and not in others, depending on the job title of the victim. Finally, the rebuttal emphasized that acts covered by the statute would need to be “intentional” to be considered assault, and



therefore the amended statute would not unfairly target individuals experiencing a behavioral health crisis.

Advocates on both sides of the issue agree that the assault of health care workers is a serious problem that needs to be addressed. It has been widely reported that approximately 75% of workplace assaults take place in health care settings. See e.g., ABC News coverage available at <https://abcnews.go.com/Health/epidemic-75-workplace-assaults-happen-health-care-workers/story?id=67685999>. Additional strain on the health care system caused by the COVID-19 pandemic as well as controversies surrounding masking and vaccination policies have only increased concerns about threats and violence toward health care workers. See, e.g., PBS News Hour, “Health care workers once saluted as heroes now get threats,” Sep. 29, 2021, available at <https://www.pbs.org/newshour/nation/health-workers-once-saluted-as-heroes-now-get-threats>. At the same time, staffing and retention of health care workers is a growing concern. See, e.g., Ed Yong, Why Health Care Workers Are Quitting in Drove, The Atlantic, Nov. 16, 2021, available at <https://www.theatlantic.com/health/archive/2021/11/the-mass-exodus-of-americas-health-care-workers/620713/>. The inability of health care providers to maintain staffing also impacts people with disabilities, potentially compromising safety and quality of care in a variety of settings.

While an act must be “intentional” to be deemed an assault in the second degree, this threshold would not clearly protect individuals with behavioral health conditions from unnecessary criminalization in all situations. There is no explicit exception in the statute for individuals with mental health conditions or other conditions that may impact behavior in circumstances that may increase the likelihood of such incidents. Some individuals may be easily agitated or prone to bursts of aggression as a result of their condition but could still legally be found to have “intentionally” caused injury to another person. Incidents involving individuals receiving inpatient care at psychiatric facilities are already often reported to police; expanding when such incidents would be considered felonies may encourage further reporting of these incidents and increasing criminalization of these individuals, as opposed to focusing on treatment and supporting the development of appropriate behaviors and coping skills.

In programs and facilities serving individuals with disabilities, inadequate staffing and poor training of direct care staff often contribute to incidents escalating to the level of physical assault. Staff may not be paying sufficient attention to an increasingly agitated individual or may not feel empowered to de-escalate conflict when an individual starts behaving aggressively. In these situations, the alleged perpetrators should not face greater punishment for not receiving the appropriate care. Further, as the ACLU’s op-ed regarding the prior bill pointed out, alleged perpetrators of assault in these circumstances would still face consequences such as prison time or a fine for the misdemeanor charge. Saddling often vulnerable individuals with felony convictions would potentially create larger obstacles to employment as well as certain types of housing and residential programs.

There has been a push for similar legislation around the country, often led by nursing unions and other trade organizations. In Massachusetts, after similar legislation was enacted, advocates proposed an amendment making it clear that any individual who was being transported or held in a psychiatric facility under the provisions of the state’s civil commitment law or has otherwise been “determined by mental health providers to need psychiatric evaluation or treatment” could not be charged with a felony under the Massachusetts statute. This bill, H.1342, was scheduled for hearing in October 2019 but does not appear to ever have been voted on.

Balancing the safety of health care workers with the rights and wellbeing of the individuals they serve is always a delicate balance. The DLP suggests that the Councils oppose this bill without language such as that which appears in the Massachusetts bill. This language could be introduced to further clarify that the new provisions would not apply in certain circumstances where an individual is actively receiving psychiatric treatment or other behavior related support

### **Senate Bill 232- Required Civics Curriculum and Assessment**

Senate Bill “SB 232” seeks to require that each school district and charter school serving high school students administer in Grade 10 and again in Grade 12 an assessment of United States history, government, and civics that includes all the following: (1) The nature, purpose, principles, and structures of United States constitutional republic. (2) The principles, operations, and documents of the United States government. (3) The rights and responsibilities of citizenship. This proposed Act would require that school districts and charter schools report information regarding the implementation of this Act to the Department of Education (“Department”) and that the Department report that information to the Governor and members of the General Assembly and post the report on the Department’s website.

No doubt participation in civics education in the 21st century will empower students to be well-informed and help student develop beliefs and behaviors needed to participate in civil life. However, the DDOE has existing civics and history curriculum standards that already cover all of the subject matter included in SB 232. <https://www.doe.k12.de.us/Page/2548>; This includes instruction on the three branches of government, how bills become law, and the obligations of citizenship etc. Broadly the curriculum is described as follows:

*Civics directly addresses citizenship education within the context of political systems. Students study the assumptions upon which governments are founded, and the organizations and strategies governments employ to achieve their goals. With specific respect to the United States, students learn the underlying principles of representative democracy, the constitutional separation of powers, and the rule of law. They need to comprehend that an essential premise of representative democracy is the willingness of citizens to place a high premium on their own personal responsibility for participation in social decision-making. Students develop the skills which citizens must possess in order to discharge those responsibilities while protecting their rights and the rights of others. The study of civics prepares students to translate their beliefs into actions and their ideas into policies.*

A Social Studies Assessment is given in grades 4, 7 and 11. <https://www.doe.k12.de.us/domain/518>; Assessment data is available on the DDOE website if legislators wish to evaluate it.

Councils should consider opposing SB 232 as duplicative of existing DDOE-established state standards and assessments for Social Studies, which includes civics. Legislative oversight is neither appropriate nor necessary.

The Policy and Law Committee recommends endorsing House Bill 300, 311 and 314 as represented in the Legal Memo. Relative to House Bill 301, the Committee recommends endorsing this legislation and providing comments on the following: concerns that the educational programming could end up being stigmatizing if not structured appropriately. For example, many people equate disabilities with illness/absence of health. Talking about “physical health” may be misconstrued to mean absence of disability. The legislative language is also silent on whether the programming must be research-based/evidence-based, and we recommend that the bill specify that it must be. In reference to House Bill 303, the Committee recommends supporting the concept of the Bill but offering the following commentary: the bill could be even stronger if it were to specify that at least one member of the advisory committee have expertise relative to individuals who are dually diagnosed with intellectual disabilities and mental health challenges. In addition, with the advent of the new coverage, it will be very important to wage a public awareness campaign to ensure that those who will benefit know about these new developments. Pertaining to House Bill 317, the Committee recommended endorsing, but expressing concern that if Delaware is committed to the availability of healthcare for all children, the benefit should be an entitlement rather than subject to funding decisions every year. As written, if funding isn’t adequate, difficult decisions will need to be made about which children can access the benefits and which will have to be relegated to a waiting list. Further, if funding isn’t guaranteed, that will impact the delivery of services and the continuity of care. Beth added that the Committee does not recommend endorsing House Bill 315, 319 or 324 at this time. No position was taken on House Bill 306. Matt Denn added that written comments are not always well received by Bill sponsors. He recommended that when time permits, the GACEC staff should reach out to the staff of the sponsors responsible for a Bill and receive feedback from them before drafting a formal letter. Beth asked Kathie Cherry if there would be adequate time for a two phased approach. Kathie answered that there is no way to know, it depends on how quickly the legislation moves through the Committees. Regarding House Bill 315, the committee had the following comments: The GACEC recognizes the disruption to learning that occurs when there are inadequate educator resources to cover all classrooms. The Council also appreciates the efforts of the sponsors to remedy these disruptions. There is concern, however, about the potential unintended consequences of the proposed approach. First, it is unclear whether the bill applies only to high needs schools. Second, we would appreciate more explanation relative to the cash substitute option, having concerns that it could actually incentivize districts to avoid bringing on a full-time substitute in favor of less-costly pay-by-the-day options. Doing so would seem to be contrary to the point of the bill, which is to enable districts to bring aboard personnel who can become a consistent presence within the school environment, known to the students and becoming increasingly familiar with school culture. The final two concerns relate to the inadequate preparation of full-time substitutes for their roles. There may be unanticipated repercussions from current teachers about the minimal standards that substitutes need to meet in order to qualify for certification. They are far inferior to the standards that other teachers had to meet in terms of GPA requirements, passage of Praxis tests, and student teaching expectations. Although the Bill requires full-time substitutes to participate in some professional development, the intensity and scope of this training is underspecified. Moreover, the requirement for student teaching, which typically occurs with intensive mentorship, is waived once the substitutes have spent 91 days in a single teaching assignment. The teachers who serve on the GACEC were highly concerned about these diminished expectations, in part because they erode the standards of their profession, but particularly

because of the negative consequences of inadequately prepared educators on students, and especially on students with disabilities who need specialized instruction. Tika Hartsock added that as an educator, she has witnessed Special Education teacher being pulled to cover as substitutes. This causes Special Education students not to receive the services they are entitled to and IEPs are not being implemented with fidelity. She believes that not addressing the issue of the lack of substitutes would have adverse effects. Bill Doolittle agrees with the concept of the Bill but thinks improvements should be made. Regarding House Bill 319 the Committee would appreciate further explanation of the need for this legislation; in other words, what specific problem is it intended to solve? We are concerned that enhancing the legal standing of guardians could eclipse the efforts of biological parents who are seeking to regain custody of their children, including parents with disabilities who have temporarily lost custody of their child. In reference to House Bill 324, the Policy and Law Committee appreciate the intent to protect the well-being of healthcare workers, yet are concerned about unintended consequences. First, acts of aggression can at times be a manifestation of an individual's disability, and to hold someone criminally liable for an act that was not in their power to avert is inappropriate. Second, broadening the definition of healthcare worker to include "any person providing healthcare treatment or employed by a healthcare provider" has risk. Is a direct support professional working in a group home for individuals with intellectual disabilities included in that definition? (Most likely reimbursement for their services comes from Medicaid.) If the group home resident experiences a behavioral incident associated with their disability, and harms the direct support professional, would they be considered to have committed a crime?

There was a **motion to approve** the recommendations of the Policy and Law Committee, with the exception of House Bill 315. The **motion passed unanimously**, with Matt Denn abstaining. The Committee brought forward a **motion to approve** expressing concern and opening a dialogue around House Bill 315. The **motion carried unanimously** with Matt Denn and Tika Hartsock abstaining.

### **GUEST SPEAKERS**

Lynda Lord and Jody Roberts of the Division of Developmental Disabilities Services (DDDS) presented on Eligibility Criteria Regulations. The draft regulation was sent to Council members prior to the meeting for review. Al Cavalier expressed concern with the wording in the area of the Number 7.0 in the Regulation that states, "eligibility will be considered provisional and will be re-determined by DDDS at or shortly after the individual reaches age 14." Al fears that this language could be interpreted as an individual possibly becoming no longer eligible. Lynda explained that this is just to review and update the records and is not intended to remove eligibility. Bill Doolittle agreed with Al's concerns with the language and recommended using the word revalidate, rather than provisional. Bill Doolittle was uneasy with Number 8.0 of the Regulation regarding assessments. Bill added that there is an array of social competency evaluations and if DOE does not happen to pick one that is appropriate for the functioning level of the individual, that could give false results. Bill believes this needs to be kept very current as the science changes. Bill noted it is a matter of practice, rather than Regulation. Lynda Lord added that the list of assessments is used as a guide, but the language in the Regulation states that additional assessments may be accepted. Lynda added that she has never experienced any complaints of assessments not being accepted. Bill Doolittle asked if a review was done to

ensure that DDDS services would be covered by the Part C for eligible individuals up to three years old. Lynda is unsure what services Part C provides, but DDDS collaborates with Child Development Watch for applicants who just turned age three. Lynda noted that they have not covered applicants under age three during her tenure, but she would have to confirm if that was done historically. Her understanding is that DDDS begins at age three. Bill suggested taking a closer look at if the age of three is still an appropriate age. Molly Merrill shares Bill's concerns and asked if this is in Policy, or just in practice. She added that she has not seen anything in writing and the current Regulation does not reference a minimum age. Molly highlighted the importance of having a worker involved to help families prior to the beginning of the process of transitioning on to DDDS, and also while the Part C program is transitioning to DOE. This can be a crisis point where balls can be dropped. Bill Doolittle suggested that the Regulation ensures that Part C supports are equivalent to DDDS. Jessica Mensack would like to better understand the service structure under Part C and the service structure within DDDS to see what the differences are in services and how we can support and leverage this moving forward. Lynda and Jody appreciate these recommendations and feedback. Terri thanked Lynda and Jody for their presentation. Pam offered to schedule some time to meet to continue this conversation if needed.

## **DDOE REPORT**

MaryAnn Mieczkowski presented on the 2022 IDEA Grant Application. Her presentation was previously emailed to Council members. Mary Ann advised Council members that a copy of the Draft Application was previously shared and can also be found on DDOE's website. Susan Veenema joined presentation to discuss Reasonable Progress. Al Cavalier asked if MaryAnn is the one who decides which "buckets" the money goes into once the amount of money is determined from the Grant Application. MaryAnn replied that she refers to the previous year's budget as a guide and decisions are based upon what has to be done. MaryAnn invited anyone to reach out to her with any questions they may have. Bill Doolittle expressed significant concern with the fidelity of assurance for 4,5,7, and 11. Bill will reach out to MaryAnn to at a later date to discuss this in further detail. Tika Hartsock shares the same concerns. Al Cavalier would also like to discuss how the GACEC can be more helpful and useful. Al would like the opportunity to address struggles and issues that need improvement, rather than focusing on the successes. Mary Ann replied that GACEC members are invited to sit in on every one of the stakeholder groups, with the responsibility to come back the Council and share that information. MaryAnn stated that the department values the input they gather and that the GACEC is often the first on the invitation list to join stakeholder groups. Pam Weir added that she appreciates the conversation but was hoping for a more in depth description of how the DOE completes the Grant Application, as they had previously corresponded about. Pam stated that the stakeholder engagement does not seem as valued as she hoped, but at times comes across as fulfilling a checkbox. Terri suggested forming a small work group to have this discussion for those with similar concerns. The GACEC staff will work on scheduling a meeting.

## **CHAIR REPORT**

Vice Chair, Terri Hancharick, announced the absent members and guests for the evening.

## **DIRECTOR'S REPORT**

Executive Director, Pam Weir stated that due to time limitations she would email GACEC members her monthly Directors report. The following report was emailed to Council:

- Please provide your feedback on the FFY 2022 Part B Grant Application (draft attached) by utilizing the attached *GACEC Advisement for DDOE* document. Please provide this feedback to GACEC staff by March 25, 2022.
- GACEC Board and General Council Membership Meetings are going Hybrid starting in April- Need at least two volunteers for each the April, May and June General Membership meetings to meet with me here at Massey Station from 5:30 to close of meeting. Please let Pam know if you can attend in-person and which month you would like to attend in-person.
- JFC approved a technology packet for the GACEC to support hybrid meetings and I will have more information in the coming weeks.
- Microsoft Teams- approved for all Council members. Those who do not have a K.12 or Delaware.gov email address will have a Delaware.gov email address assigned to them. GACEC staff will send one-pager on how to access for the first time and then develop training to access basic features. Will include trainings so each member can advance at their own pace. Please let Pam know if you have any questions.
- Board approved the creation of a Bylaw revision ad hoc committee. Please let Pam know if you would like to participate.
- Board approved the formation of the Research and Data ad hoc committee- with the State being in “Needs Assistance” for the fourth year in a row, the Board has approved the creation of a Research and Data ad hoc committee to take a deep dive into IDEA data to build a foundational understanding of what IDEA implementation should look like in Delaware and what it currently looks like in Delaware. This foundational understanding will help inform the overall effectiveness of the implementation of the GACEC’s mission and federal and state mandates. Through this work, the Research and Data ad hoc committee will be able to better connect the dots with data requests and identify and address unmet needs in a systemic way rather than piece meal it the way we have had to. To begin the work, I will be drafting a letter to the DDOE to electronically obtain five years of OSEP data- Grant application, Grant Award Letter, Determination’s letter with RDA Matrix and SPP/APR submission, LEA Determinations. Please let Pam know if you would like to participate.
- Joint GACEC/ICC Meeting Update- April 26th 2-2:30 during their quarterly meeting. Pam will share more information in advance of the meeting.

## **OUTSICE COMMITTEE/ADHOC COMMITTEE REPORTS**

Pam Weir announced that the GACEC Board of Directors decided to put together a By-Law ad hoc committee, as well as a Research and Data Committee. Please reach out to GACEC staff if you are interested in joining either of these committees.

Terri Hancharick welcomed and thanked our guests for the evening. Terri reminded members to contact GACEC staff if they would like to see any of the letters or responses written by the GACEC. Thomas Keeton **made a motion** to adjourn the meeting at 9:19pm, with Tika Hartsock seconding the motion. The **motion passed** unanimously.