



**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING
7:00PM May 16, 2023
MICROSOFT TEAMS MEETING**

MEMBERS PRESENT: Al Cavalier, Nancy Cordrey, Bill Doolittle, Karen Eller, Kristina Horton, Genesis Johnson, Molly Merrill, Beth Mineo, Trenee Parker, Jennifer Pulcinella, Stefanie Ramirez on behalf of Laura Waterland, Brenné Shepperson, Meedra Surratte and Erik Warner

OTHERS PRESENT: Nicole Topper/Department of Health & Social Services (DHSS), Hope Sanson/DHSS, Erin Rich, Lillian McCuen, Shonetsha Quail/DHSS, Susan Veenema/Delaware Department of Education (DDOE), LaTysse McKinzie-Mack/CASA Program Coordinator, Office of the Child Advocate

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

MEMBERS ABSENT: Matt Denn, Ann Fisher, Cory Gilden, Tika Hartsock, Jessica Mensack, Maria Olivere and Erika Powell

Vice Chairperson Erik Warner called the membership meeting to order at 7:00pm. It was announced that a quorum was present. Bill Doolittle **made a motion** to accept the May agenda with flexibility with Thomas Keeton **seconding the motion. The motion was unanimously approved.** Thomas Keeton made a **motion to approve** the April meeting minutes and Bill Doolittle **seconded the motion. The motion passed unanimously.** Bill Doolittle **made a motion** to approve the April financial report, with Molly Merrill **seconding the motion. The motion passed unanimously.**

PUBLIC COMMENT:

There was no public comment for this month.

COMMITTEE REPORTS

ADULT AND TRANSITION SERVICES COMMITTEE:

Erik Warner reported that the Committee received a presentation from LaTysse McKinzie-Mack, who is the Court Appointed Special Advocate (CASA) Program Coordinator at the office of the Child Advocate. CASA Delaware is looking for an additional 200 volunteers to help advocate for abused and neglected children. The Committee would like LaTysse to come back next year and present to full Council, as her information pertains to children ages birth through 18, and sometimes, up to the age of 21.

CHILDREN AND YOUTH COMMITTEE

Unfortunately, there was an issue with the recording during this portion of the meeting. No written report was submitted.

INFANT AND EARLY CHILDHOOD COMMITTEE

Jennifer Pulcinella reported that the Infant and Early Childhood Committee discussed the Part C two year extension Epilogue draft given to them by Bill Doolittle. The Committee decided that it does not need a new workgroup but needs to advocate for using the Interagency Coordinating Council (ICC) with the caveats that we have added, as well as the ICC suggestions and sending a letter to support the ICC letter. The ICC needs to be the workgroup utilized to advise and assist. The Committee also discussed the Educational Equity Act. They plan to carefully review this for clarification. Jennifer reported that the transition meetings have had a good turnout and people have been open. They have been working on focus groups for families who are currently in the Part C Program or have recently left to make sure their voices are heard. Service delivery model is the first consideration with the best practices considered in the exploration phase. No concrete decisions are being made until input has been made by all. The use of Padlet as a locked and confidential way to gather thoughts is the best for the most honest collection of information. Jennifer noted that the Purchase of Care (POC) Legislative Report has been released and the Committee discussed that Delaware (DE) Thrives has a new website with the slogan, "*From babies to the community, health is connected. DE Thrives helps you make healthy choices. We can link you to resources, programs, and social networks for life's stages. When our babies and children thrive, we all are better off. Healthy women. Healthy babies. Healthy families. Healthy communities. That's DE Thrives.*" Jennifer stated that Choices Delaware is putting out inaccurate information. The School for the Deaf experience is very different than what has been portrayed.

POLICY AND LAW COMMITTEE:

Beth Mineo reported that the Policy and Law Committee is recommending endorsing the actions in the Disabilities Law Program Memo. The Committee endorses adopting all of the recommendations in the memo with some additional comments. Additional comments included sharing question on who qualifies as a behavioral health specialist and suggesting follow up and coordination on House Bill 3 with bill sponsors; suggesting an extension of the definition of “school-connected traumatic event” beyond the death of a member of the school community on House Bill 4 and sharing observations with the sponsors of House Bill 6 that it may be more appropriate to base the number of people detailed to this task on the size of the local education agency as it would appear to be a “heavy lift” for one person. The **motion passed unanimously** with Trenee Parker and Kristina Horton abstaining.

House Bill No. 3 – Proposed Amendment to § 2702, Title 14 of the Delaware Code Relating to School Attendance

House Bill No. 3 proposes to amend § 2702 of Title 14 of the Delaware Code, adding language that would excuse a student’s absences for a mental or behavioral health reason.

The amendment states the above, adding that “each school district and charter school shall determine the maximum number of excused absences allowable under this section.” The amendment then defines an excused absence as a full school day, not requiring a medical or doctor’s note. Furthermore, the language of the amendment adds that a student cannot be penalized for such an absence and must be “given the opportunity to make up any schoolwork missed during such excused absence.”

Finally, the amendment adds that after two excused absences for reasons of mental or behavioral health, the student “must be referred to a behavioral health specialist.”

The amendment’s synopsis cites a recent CDC survey which found that the COVID pandemic worsened the existing mental health crisis in youth. The bill intends to help schools identify students with mental and behavioral health needs, ensuring that the school will refer the student to a specialist after two excused absences. “[The] bill makes clear that the mental and behavioral health of students is a priority in this State.”

The amendment is a step in the right direction towards legitimizing the mental and behavioral health needs of students; many students may not take needed days away from school to avoid the accrual of unexcused absences. As the synopsis notes, “[o]ne in 5 school aged children has a mental health condition, and 45% of children may have experienced a traumatic event.” Identifying the students with behavioral and mental health conditions and ensuring they have the support and resources they need is an important and ongoing task for Delaware schools.

One concern is that the amendment leaves schools to determine the maximum number of excused absences allowed; unfortunately, mental health concerns are not always considered

serious or excusable by school administration. Adding language to ensure a minimum number of excused absences could help to remedy this.

Council should consider supporting this amendment.

House Bill No. 4 – Proposed Amendment to § 3581, Title 14 of the Delaware Code Relating to Mental Health Services for School Trauma

House Bill No. 4 proposes to amend § 3581 of Title 14 of the Delaware Code, adding language to detail mental health services for school-connected traumatic events.

The amendment is introduced by noting that the death of a student or a staff member can largely impact the entire community; students and staff that have “experienced a death in their school community need space for grieving, supports for healing from trauma, and developmentally appropriate interventions[.]”

The amendment defines “school-connected traumatic event” as the “death of any student, educator, administrator, or other building employee of a public school.” By January 1, 2024, the amendment provides that the “Department of Education, in consultation with NAMI Delaware, the Delaware Association of School Psychologists, the School Social Workers Association of Delaware, the Delaware School Counselors Association, the Delaware School-Based Health Alliance, at least 1 licensed clinical pediatric psychologist, and other community stakeholders and mental health specialists, shall develop all of the following:

1. Guidance and best practices for public schools dealing with a school-connected traumatic event including recommendations on counseling availability during school.
2. Written materials that public schools may distribute to students and families after a school-connected traumatic event setting forth additional public and private options for mental health care available in the State.
3. Written materials that public schools may distribute to a student’s parent or caregiver to encourage them to seek counseling if impacted by the school-connected traumatic event.”

Furthermore, the amendment states that the Department of Education will cover the cost of grief counseling for up to 30 days after a school-connected traumatic event.

Additionally, the amendment requires every public school to create a crisis response policy that includes:

1. The establishment of a district crisis response team, its composition, and roles of each crisis response team in a school-connected traumatic event.
2. Procedures for the verification of the school-connected traumatic event and the determination of the response level necessary from the crisis response team.

3. Procedures for the assessment of school-connected traumatic event's impact on students and educators, the identification and referral of students that are most impacted by the event, and the coordination of required grief counseling and crisis response services.
4. Evaluations for further continued support after the expiration of thirty days of grief counseling.
5. Procedures for determining the appropriate amount of information to release about the event and how to disseminate this information to students, faculty, and staff.
6. Policies providing behavioral health supports for crisis response team members involved in the response to a school-connected traumatic event.

Public schools will have to submit the policies adopted to the Department of Education by September 1, 2024 and provide any changes to the policy within 60 days of the change.

The amendment's synopsis states that the Act is Nolan's Law and its purpose is to provide more supports to school districts after a school-connected traumatic event.

The American Psychological Association notes that "left unaddressed, the negative impacts of stress and trauma can disrupt a student's behavior and emotional wellbeing, academic success and health. [Those effected by traumatic events] might also demonstrate more fear-based behaviors (e.g., not wanting a door closed; being disturbed by a normal occurrence, like a bell ringing." This amendment aims to provide the necessary support should students and staff alike experience school-connected trauma. Preparing policies targeted at school-connected trauma will help schools and community cope with a loss; requiring thirty days of grief counseling to be paid for by the Department of Education will help to ensure mental health care is accessible to many students and staff.

Council should consider supporting this amendment, as it will help Delaware schools to become more trauma-informed and prepared for school-connected traumatic events; effected students and staff will have more resources in place.

HB 5: AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO REIMBURSEMENT OF SCHOOL-BASED BEHAVIORAL HEALTH SERVICES.¹

House Bill 5 (HB 5) seeks to amend Chapter 5, Title 31 of the Delaware Code relating to public assistance. Specifically, the bill seeks to add new § 532 which relates to Medicaid Reimbursement for School-Based Services. The bill was introduced in the Delaware House of Representatives on April 25, 2023, sponsored by Reps. Longhurst (primary sponsor), Heffernan, Minor-Brown, and Michael Smith and Sen. Poore.²

The bill was subsequently assigned to the House Education Committee, which last met on May 10, 2023 but did not discuss HB 5³. As of the date of this review, there is not currently another House Education Committee meeting scheduled.

HB 5 does the following:

1. Charges the Department of Health and Social Services (DHSS) to apply to the Centers for Medicare & Medicaid Services (CMS) by January 1, 2024 for a State Plan Amendment which would allow for reimbursement of medically necessary behavioral health services without Individualized Education Program (IEP) or Individualized Family Service Plan documentation (IFSP) (proposed § 532(a));
2. Once the State Plan Amendment is approved, requires that services by a mental health provider be reimbursed to the maximum extent permitted (proposed § 532(b));
3. Requires Local Education Agencies (LEAs) to reinvest reimbursed funds to support school-based behavioral health programs and services (proposed § 532(b)⁴); and
4. Requires DHSS to update regulations and provider manuals to comport with the approved changes (proposed § 532(c)).

In the preamble, the bill's authors state that CMS reimburses Delaware approximately \$65 for every \$100 billed for allowable services provided to Medicaid-enrolled students⁵ but notes that the current Delaware Medicaid State Plan limits the reimbursement of Medicaid-covered school based behavioral health services to only those provided for in a student's IEP or IFSP.⁶ This section of Delaware's State Plan was last updated and approved on August 24, 2016.

Prior to 2014, CMS's "free care" policy and guidance was that Medicaid payment "was generally not allowable for services that were available without charge to the beneficiary" with a few exceptions.⁷ Essentially, this free care policy "prevented the use of Medicaid funds to pay for covered services furnished to Medicaid eligible beneficiaries when the provider did not bill the beneficiary or any other individuals for the services."⁸

In 2014, CMS withdrew this prior guidance on free care in an effort to "improve access to quality healthcare services and improve the health of communities."⁹ This means that, as of 2014 Medicaid reimbursement was available for covered services provided to Medicaid beneficiaries, consistent with the state plan, regardless of whether there is a charge associated with the service. Essentially, schools can now seek reimbursement for Medicaid-covered services provided to students enrolled in Medicaid regardless of whether the student is eligible under an IEP or IFSP. For example,¹⁰ a qualified and Medicaid-enrolled audiologist that comes into the school and provides hearing assessments for the entire student body can now bill Medicaid for those services whether or not other third-party payers are also billed for the hearing assessment. Likewise, if a school nurse administers fluoride treatment to the entire student body, so long as that nurse or the school is enrolled as a Medicaid provider, the fluoride treatment could be eligible for Medicaid payment.

In its 2022 informational bulletin, CMCS shared that since CMS withdrew its guidance in 2014, only about sixteen states have received approval allowing Medicaid payments for covered services provided in a school setting that are not tied to a student's IEP or IFSP.¹¹ Delaware is not among those sixteen (as evidenced by HB 5, which is the subject of this analysis).

The focus of HB 5 is specifically on expanding access to behavioral health services. However, the current State Plan restricts Medicaid reimbursement for all services unless it is an Early Periodic Screening, Diagnosis and Treatment (EPSDT) screening service or documented within a student's IEP or IFSP.¹² Besides EPSDT screening services and behavioral health services, the Delaware State Plan also includes nursing services, physical therapy, occupational therapy, speech therapy, language and hearing services, and specialized transportation.¹³

Council may wish to support the bill with the following recommendations provided to the bill's sponsors:

1. Given the breadth of school-based services currently available under the State Plan, the bill should apply to *all* school-based services allowable under Medicaid and not just behavioral health services;
2. Consider whether additional provisions should be added related to outreaching for enrollment purposes within schools;
3. Consider whether any directives need to be given to the Delaware Department of Education in assisting DHSS with this expansion; and
4. Consider whether to use this opportunity to revise the current § 501 which describes the legislative intent of the State Public Assistance Code and includes the following concerning and troublesome language: "It is further declared to be the legislative intent that public assistance be administered, to the extent practicable, in such a way that . . . both parents are held responsible for supporting and parenting their children; recipients are not encouraged to have additional children while receiving public assistance; and the formation and maintenance of two-parent families is encouraged and teenage pregnancy is discouraged."

House Bill No. 6 – Proposed Amendment to § 1727, Title 14 of the Delaware Code Relating to School Mental Health Services

House Bill No. 6 proposes to amend § 1727 of Title 14 of the Delaware Code, awarding each school district and charter school 1 unit for the employment of a mental health professional and mental health coordinator position for each school district by the 2024-25 school year.

The amendment states that the duties of the mental health coordinator and mental health professional will be to develop partnerships with community-based organizations with the goal of expanding behavioral health services. The employee will also "consult with mental health professionals employed by the school district to develop an implementation plan that is culturally competent, grief and trauma informed, developmentally appropriate, evidence based or evidence-informed, and follows the federal National Standards for Culturally Appropriate Services in Health and Health Care."

The amendment then states that the implementation plan should include and consider: (1) a comprehensive mental health awareness program targeting youth, their families, and school staff

that creates a de-stigmatized school climate that is conducive to addressing the mental health needs of students; (2) a workforce capacity-building plan to increase awareness and literacy of school staff, administrators, parents, and others who interact with school aged youth to recognize the signs and symptoms of mental health concerns; (3) the development of a process to screen and identify school-aged youth in need of mental health services and supports; (4) the incorporation of brief intervention services to support school-aged youth experiencing distress, trauma, bereavement, or are at-risk for development of mental health and substance abuse disorders, and; (5) a plan of immediate response for school-aged youth that exhibit behaviors warranting the need for emergent or urgent clinical attention.

Additionally, the amendment states that the mental health coordinator and mental health professional will establish relationships with families, community groups, support services, behavioral health providers, and local businesses to broaden and link available community resources to school-aged youth and their families. The Department of Education is responsible for determining the qualifications required for the mental health professional/mental health coordinator, noting that the Department will take the applicant's knowledge of the school district and the surrounding community into consideration as part of the eligibility criteria.

Finally, within six months of hiring a mental health professional/mental health coordinator, every school district will provide to the Department a needs assessment and resource map, providing the status of mental health services for the entire school district and any relevant data indicating the district's disparities in behavioral health.

This amendment will serve to increase awareness for school districts and communities as it pertains to the mental well-being of students. Identifying students who are struggling with mental health while creating a network of support and resources in the community will bolster an atmosphere of care within Delaware schools. Providing intervention services may get students the help they need and help fewer students slip through the cracks.

Council should consider supporting this amendment.

House Bill No. 125 – Proposed Amendment to § 4137 of Title 14 of the Delaware Code Relating to Free School Meals

House Bill No. 125 proposes to amend § 4137 of the Delaware Code, requiring all Delaware schools to offer students free breakfast and lunch every school day.

The amendment strikes through much of what was previously included in § 4137. It then titles the section "Free School Meals Program." The amendment then states that "[a]ll schools that participate in the School Breakfast Program and National School Lunch Program must provide a breakfast meal and a lunch meal free of charge to any pupil who requests a meal without consideration of the pupil's eligibility for a federally free funded or reduced-price meal, with a maximum of 1 free meal for each meal service period." These meals must meet the meal pattern requirements outlined in the School Breakfast Program and the National School Lunch Program.

All schools that participate in the “community eligibility provision,” a provision which allows schools and local education agencies with high poverty rates to receive federal assistance payments for school meals in exchange for providing meals free of charge to all students, are required to offer breakfast through an alternative service model in addition to their traditional breakfast meal service. The amendment defines an alternative service model as a breakfast service that may include one or more of the following: (1) breakfast in the classroom; (2) grab-and-go breakfast and; (3) second-chance breakfast. Breakfast in the classroom is defined as breakfast meals that are eaten in the classroom at the start of the school day, either delivered to the classroom or served in the cafeteria or a cart or kiosk placed within the school. Grab-and-go breakfast is defined as a breakfast meal that students are able to access from a cart or kiosk placed within the school or can access breakfast in the cafeteria and take it to an alternate location for consumption. Second- chance breakfast is defined as the opportunity for students to obtain a breakfast meal at a time prior to the beginning of second period.

The amendment then states that the Department of Education will reimburse all participating schools; the amount of reimbursement will be the federal free reimbursement rate multiplied by the total number of eligible meals that the participating school serves during the applicable budget year minus the total amount of reimbursement for eligible meals served during the applicable budget year that the participating school receives under the School Breakfast Program and National School Lunch Program. Put more succinctly, the Department of Education will pay for all free meals minus the meals already provided through other programs.

Moreover, if the U.S. Department of Agriculture creates a statewide option for schools to participate in the Community Eligibility Provision, the Department of Education will participate in the option and work with local education agencies to collect data and implement the Provision statewide.

Schools that do not participate in the Community Eligibility Provision must request parents or guardians of each student to determine a family’s eligibility for federal and state food assistance programs, unless the school is able to obtain equivalent information through other means.

Because the U.S. Department of Agriculture waivers expired on June 30, 2022, Delaware schools participating in the USDA School Breakfast Program and National School Lunch Program were required to return to pre-pandemic policies as they related to free breakfast and lunch meals. This amendment would ensure that students continue to get free meals while at school; the amendment notes that “access to school meals should not cause stigma or stress for any student seeking an education, and “it is imperative that the State embrace these strategies to move forward the goal of ending child hunger.”

Feeding America cites one in seven children in Delaware face hunger – 30,040 children. Removing the stress of mealtime in a school setting will help tackle this steep number. This amendment takes seriously the issue of child hunger and does not require a student to meet any eligibility requirements in order to receive two free meals at school every day.

Council should consider supporting this amendment.

HB 200 – School-based Mental Health Services

HB 200 was introduced and assigned to the Education Committee in the House on April 25, 2023. It has since been reported out of committee on May 3, 2023 and was assigned to the Appropriations Committee in the House on May 4, 2023.

HB 200 seeks to establish requirements for mental health staffing in Delaware public and charter high schools, comparable to requirements that already exist under state law for public elementary and middle schools. See 14 Del C. § 1716E, 1716F. According to the proposed legislation, a “mental health services unit for high school” is defined as funding for a certain ratio of mental health staff to students in grades 9 to 12. For the 2024 fiscal year, the bill would define a mental health services unit for high school to include one “full-time counselor, school social worker, or licensed clinical social worker” for every 400 students; in fiscal year 2025 a unit would consist of one of these staff for every 325 students, and for the 2026 fiscal year and beyond, it would consist of one of these staff for every 250 students. Additionally, a “mental health services unit for high school” would include funding for “employment of full-time school psychologists or other mental health providers with experience in a school setting or experience providing direct services to school-aged children” for 700 full-time equivalent students (the bill does not clearly state a number of psychologists or equivalent providers). “Other mental health providers” are defined as “mental health services provider[s] licensed by the Board of Mental Health and Chemical Dependency.” See proposed legislation at 14 Del C. § 1716H(c)(2). Districts or charters may also receive funding for a fractional part of the requisite number of students for both counselors and psychologists.

In addition to creating mental health units for high schools, the bill contains additional provisions. Schools would be required to prioritize hiring mental health staff in schools with the highest percentages of low-income students, English language learners, and students with disabilities. Schools would also be required to prioritize hiring counselors for mental health over counselors for career planning. Additionally, the bill would amend existing sections of the code addressing mental health services units in elementary and middle schools to incorporate the same definition of “other mental health providers.”

The bill contemplates creation of a “mental health critical need reimbursement program,” which would “encourage school-based employees to become licensed mental health providers and remain school employees.” See proposed legislation at 14 Del C. § 3436A(a). Tuition would be reimbursed for full-time employees for up to 6 credits of coursework “in a credit-bearing program intended to lead to certification or licensure appropriate for a full-time mental health services provider as required by the Board of Mental Health and Chemical Dependency Professionals.” It is also not entirely clear where the funding would come from; while the bill states that reimbursement “will” be provided for tuition in these circumstances, it also states “[t]he Department *may* set aside funds as available for school employees meeting these criteria as demand requires.” See proposed legislation at 14 Del C. § 3436A(d)(3)(emphasis added).

It is no secret that both Delaware and the nation at large are facing a crisis in youth mental health. See, e.g., “Children’s mental health is in crisis,” American Psychological Association, available at <https://www.apa.org/monitor/2022/01/special-childrens-mental-health>. Prevention through early intervention and effective home and community-based supports are necessary to contain this crisis, and as school is where children spend a large portion of their time, school-based services are essential.

While there is obviously great need for more behavioral health support to be available to young people in Delaware and nationwide, as has been noted in analysis of similar bills in the past, there are staffing shortages throughout the mental health system and in related fields. While Delaware is faring better than many states in terms of availability of school psychologists, according to data compiled by the National Association of School Psychologists (NASP) for the 2021-2022 school year, Delaware had one school psychologist for every 791 students. See State Shortages Data Dashboard, National Association of School Psychologists, available at <https://www.nasponline.org/about-school-psychology/state-shortages-data-dashboard>. NASP’s recommended ratio is one school psychologist for every 500 students. *Id.* While the bill only requires one psychologist or other qualified provider for every 700 students, meeting the requirements of this bill may be difficult in practice, and schools may find themselves in competition for qualified candidates. While the Council should not consider this a reason not to support the legislation, it must be accompanied by other initiatives to expand the pool of qualified staff for the bill to have its intended effect. While the mental health critical need reimbursement program discussed above would be one way to potentially increase the number of available school-based mental health staff, it is unclear what type of school employees this program is intended to target or how likely school employees working in another role would likely be to enroll in higher education to become a mental health provider while still working full-time. Even greater incentives may be needed to encourage existing employees to pursue this line of work.

The Council should support HB 200 but should also encourage other initiatives to increase staffing in the mental health field both inside and outside of schools. Also, it is worth noting that the proposed legislation at 14 Del. C. § 1716H(a)(3) contains a sentence that reads “Districts and charter schools shall qualify for funding for a fractional part 250 full-time equivalent pupils enrolled in grades 6 through 8.” This most likely intended to read “grades 9 through 12.” The Council should recommend this correction.

Proposed DDOE Regulations on 275 Charter Schools, 26 Del. Register of Regulations 925 (May 1, 2023)

The Delaware Department of Education (DDOE) proposes to amend 14 Del. Admin. C. § 275, which governs Delaware Charter Schools. DDOE initially included proposed amendments in the January 1, 2023 Delaware Register of Regulations. Council submitted comments to DDOE in response to the January 1, 2023 proposed amendments. DDOE responded to several comments and made changes pursuant to Councils’ recommendations. Substantively, DDOE is proposing to amend this regulation to remove reference to Delaware Comprehensive Assessment System

(DCAS), clarify language around debts of a charter school, update the definition of a charter school to align with 14 Del. Admin. C. § 255 (which defines the different types of Delaware schools), and remove the definition of “highly successful charter school operator.”

Under proposed § 275.2.0, DDOE proposes to modify the definition of a Charter School. The current version defines a charter school as “a non-home based full time public school that is operated in an approved physical plant under a charter granted by, or transferred to, the Department with the approval of the State Board for the personal physical attendance of all students.” DDOE is proposing to change the definition to “a public school that is operated under a charter granted by, or transferred to, the Department or other authorizing body pursuant to 14 Del.C. Ch. 5.” This is consistent with how that term is now defined.¹⁴ The commentary provided with the proposed regulation states that “...comments were received asking...to not remove ‘non-home based’ in the definition of ‘Charter School,’ as there is concern that the definition would allow charter schools to operate as full-time virtual schools which could negatively impact students' academic and mental health.” DDOE’s position is to move forward with removing the “non-home based” language to allow “charter schools the flexibility to have virtual programming and does not believe the proposed changes allow for fully virtual charter schools.” Council may want to request clarification of this section to better define the distinction between “virtual programming” vs. “fully virtual charter schools” and how these regulations apply accordingly.

DDOE proposes to remove the mention of DCAS. Delaware is no longer using the DCAS as its statewide assessment tool. DCAS was replaced by the Delaware System of Student Assessment (“DeSSA”) beginning in the 2015-16 school year.

DDOE also proposes to remove the definition of “highly successful charter school operator.” While commentary provided with the proposed regulation states this definition was removed because it was not otherwise discussed in the regulation, regulatory guidance surrounding charter school performance may be valuable to incorporate.

The major substantive change is in proposed § 275.8.0 concerning enrollment preferences, solicitations, and debts. Current § 8.3 states

“Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.”

Council submitted comments in response to the January 1, 2023 proposed amendments which identified these provisions as being at odds with federal court precedent related to a State Educational Agency’s (SEA) responsibilities when a Charter School goes under.¹⁵ DDOE proposed changes in this version which would align it with current IDEA precedent in the Third Circuit. DDOE changed proposed § 8.3.1 to read “The State of Delaware may be responsible for the outstanding obligations of a defunct charter school pursuant to the Individuals with Disabilities Education Act only.” Although aligned with precedent concerning IDEA, it is unknown whether there may be other instances where the SEA must “step into the shoes of the

defunct charter school[.]” *M.K.* Therefore, Council may wish to recommend the language be revised to say “. . . pursuant to the Individuals with Disabilities Education Act or any other federal or state statutory or legal obligation.”

There are no additional substantive changes.¹⁶

Final DDOE Regulation on 915 James H. Groves High School, 26 Del. Register of Regulations 940 (May 1, 2023)

The Delaware Department of Education (DDOE) published its final adopted version of 14 Del. Admin. C. § 901, which describes the operation of the James H. Groves High School (“Groves”), an adult education high school. DDOE initially included proposed amendments in the November 1, 2022 Delaware Register of Regulations. Council submitted comments to DDOE. In the February 1, 2023 edition of the Delaware Register of Regulations, DDOE provided responses to the comments submitted by Council and reprinted the proposed amendment with additional changes. Council then submitted additional comments to DDOE following the February 1, 2023 proposed amendments.

DDOE made no changes following its receipt of Council’s comments on the February 1, 2023 proposed amendments. Any response from DDOE to Council comment is in **bold**.

Comment submitted: Proposed 14 Del. Admin. C. § 915.2.1.1.1.2 removes the standardized assessment requirement as part of the application for enrollment at Groves. Specifically, that section would be changed as follows (indicated by strikethrough): “Qualify as meeting secondary level skills, as determined by the Department, on a standardized assessment.” With the change, it is now unclear how DDOE would measure whether a student would qualify as meeting secondary level skills. Furthermore, it could lead to students being measured against different criteria, which can lead to inequitable outcomes. Councils may wish to recommend that DDOE not remove this requirement or if it chooses to remove the specific requirement of a standardized test, that it identify other ways of meeting this secondary skill level.

DDOE RESPONSE: “The Department . . . finds that subsection 2.1.1.1.2 provides the requirement that an applicant for enrollment in James H. Groves Adult High School have secondary level skills and the proposed regulation would allow two options for demonstrating that requirement is met by either passing a high school level standardized assessment or earning some high school credits.”

Comment submitted: The admission criteria do not contemplate those students in the prison education program specifically. Students in prison who are seeking their high school diploma or GED are automatically enrolled in Groves, yet there is no indication in 915 that there is an exception to the admission criteria for those students (or that students enrolled in prison education are enrolled in Groves). Therefore, Councils may wish to recommend that DDOE include language in this regulation that identifies Groves as providing education to incarcerated students and that those students are otherwise exempt from the admission criteria.

DDOE RESPONSE: “[T]he Department finds that individuals who are incarcerated in a Delaware Department of Correction facility receive education through the Prison Education Program established under 11 Del. C. § 6531A. Although some students in the Prison Education Program attend classes through James H. Groves Adult High School, the Prison Education Program provides other educational opportunities for incarcerated individuals, including special education, vocational training, and life skills courses.”

Comment Submitted: Current Section 2.3 disallows enrollment of students who have been expelled or are pending expulsion unless he or she receives a waiver from DDOE. Title 14 Del. C. § 4130(d) explicitly exempts Groves from the prohibition on enrolling expelled students. Councils may wish to recommend DDOE reconsider its position on whether expelled students can enroll at Groves without a waiver. Councils have previously made this recommendation in 2006 (10 Del. Register of Regulations 988 (December 1, 2006) and 18 Del. Register of Regulations 561 (January 1, 2015).

DDOE RESPONSE: “The Department . . . finds that the statute cited by GACEC, 14 Del. C. § 4130, concerns public school students who are expelled from a school district or charter school and it does not prohibit the Department from requiring students who have been expelled or are pending expulsion from obtaining a waiver to enroll in James H. Groves Adult High School. The waiver process in subsection 2.3 is in place to support students' progress and to help protect the safety of students and staff.”

Because this is a final regulation, there is no further action to take.

Proposed DDOE Regulations on 105 Residential Child Care Facilities and Day Treatment Programs, 26 Del. Register of Regulations (May 1, 2023)

The Department of Education proposes to transfer 9 DE Admin. Code 105 to 14 DE Admin. Code by creating 935 DELACARE: Regulations for Residential Child Care Facilities and Day Treatment Programs. This is part of the transfer of The Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth, and Their Families to the Department of Education.

The Department of Education proposes to strike the entirety of the previous 105 regulations to account for changes in federal requirements and changes acceptable practices regarding restrictive procedures.

While there are many changes to the regulations (ranging from stylistic to substantive), in general, many of the proposed revisions increase safety requirements, clarify approval and grievance procedures, remove ambiguity and opportunity for OCCL staff discretion, increase transparency, and change standards for disciplinary methods to diminish use of restrictive procedures and clarify safety practices. In general, these proposed regulations should be supported.

1. **Legal Basis:** The legal basis for these licensing regulations was previously 31 Del.C. §§341-344; it is now 14 Del.C. §§3001A-3005A.

2. **Purpose:** The proposed regulations add language stating that “These regulations establish minimum standards for these facilities and programs set forth by the Office of Child Care Licensing (known hereafter as OCCL).” The proposed regulations also eliminate “definitions of regulated services” and create one “definition of terms” list for the entire set of regulations.
3. **Definition of terms:** The proposed regulations introduce substantially more definitions, including for: “agreement of understanding”; “applicant”; “behavior supports;” “business day” ;“case manager”; “child abuse”; “child neglect”; “child sexual abuse”; complaint investigation”; “conference”; “corrective action plan”; “denial”; “designated representative”; “director”; “enforcement action”; “hearing”; “licensing specialist”; “licensing supervisor”; “Office of Child Care Licensing”; “physical escort”; “physical restraint”; “plan review”; “probation”; “referring agency”; “revocation”; “seclusion”; “serious non-compliance”; “staff member”; “supervision of children”; “suspension order”; “trauma-informed care”; “treatment plan”; “variance”; and “warning of probation.”

The proposed regulations also eliminate the terms: “secure residential care facility”; “transitional care facility”; “adventure activity program”; “aversive conditioning”; “behavior management”; “governing body”; “immediately”; “least restrictive environment”; “locked isolation” “mechanical restraint”; “non-violent physical intervention strategies”; “placing agency”; “record”; “requirements”; “restrictive procedure”; “.service worker”; and “treatment”

Further, some definitions have been changed under the proposed regulations:

The prior definition of “chemical restraint” was: “the involuntary, unplanned and emergency application of a psychotropic drug to restrict the function or movement of a child for the purpose of behavior management. The planned and routine application of a prescribed psychotropic drug is not a chemical restraint.” This has been changed to: “the involuntary, unplanned, and emergency *application of a psychotropic drug to restrict the function or movement of a child for the purpose of calming the behavior of an agitated child by the administration of approved sedative-hypnotic, antipsychotic, or dissociative medication via intramuscular injection.*”

The prior definition of “child” was: “A person who has not reached 18 years of age. A person in a facility or program who becomes 18 years of age while residing in the facility or participating in the program, and who has not attained the age of 25.” Under the proposed regulations, this definition has been changed to: “a person who has not reached the age of 18 years *or a person who becomes 18 while residing in the facility or participating in the program, who has not reached the age of 22. Child also includes a person enrolled in a State public school or receiving a board extension to remain in care.*”

The Definition of “Department” has changed from meaning the Delaware Department of Services for Children, Youth, and Their Families to instead mean the Delaware Department of Education, to reflect the transfer of OCCL from departments. Similarly, the definition of “division” reflects this administrative change as well.

The definition of “direct care supervisor” has been expanded to include a case manager. The definition of “direct care worker has been expanded to “mean[] a person designated by a licensee to provide direct care and supervision of children *as described in the facility or program’s policies.*”

The definition of “license” has changed from “the Division’s granting of authority through a written provisional or regular certification to a facility or a program to operate under applicable State law (s)” to “*a document issued by OCCL allowing a person or entity to operate a residential facility or day treatment program after demonstrating compliance with these regulations and applicable State laws.*” Similarly, the definition for “licensee” has changed from “the legal responsible entity for a licensed facility or program” to “*the person or entity, such as a company, corporation, business, organization, or agency, which has the legal responsibility and authority to operate a residential child care facility or day treatment program.*”

The definition of “parent” has been expanded to explicitly exclude “referring agency” as the person or entity who can be considered a “parent.”

The definition of “psychotropic drug” has changed from “a drug or substance that alters the chemical balance of neurotransmitters in the central nervous system” to “*a chemical substance that changes brain function and alters perception, mood, or consciousness.*”

The definition of “volunteer” has changed from “any person who provides an unpaid service or support to a facility or program for more than 40 hours in a calendar year, and whose primary role or function involves having direct contact with children. The term “volunteer” shall include student interns” to “*a person who provides an unpaid service or support to a facility or program. The term "volunteer" shall include student interns.*”

These changes in definitions and terms largely reflect changes in practices in restrictive procedures and changes in compliance and grievance procedures.

4. **The Definition of Regulation Services:** The definition of regulated services has been vastly expanded in the proposed regulations including a broader definition of residential care facilities (to include alternative to detention, drug and alcohol treatment, independent living, and wilderness adventure programs.” Further, the proposed changes identify specific regulations that apply to specific types of licensed programs.
5. **Authority to Inspect:** The proposed regulations expand and clarify the authority to inspect. Previously, the regulations required applicants or licenses to “allow access to the premises by any authorized representative of the Division, of another state agency, or any local building, fire or health agency for the purpose of determining compliance with applicable provisions of these requirements. On-site inspections may be conducted without prior notice.” In the proposed revisions, facilities must allow “*officials from OCCL and other State and local agencies during the hours of operation to determine compliance with applicable codes, regulations, or laws.*” This expands the types of officials that must be permitted to inspect the premises, as well as the types of

compliance issues that can be inspected. Further, the proposed regulations clarify that this must include access to “*documents and video recordings needed to determine compliance,*” in addition to the prior requirement to provide access to “information, files, and records.” The proposed regulations also clarifies the prior requirement to allow interviews to determine compliance, adding language requiring that:

Applicants, licensees, staff members, and volunteers if applicable, shall allow and not hinder the interviewing of an applicant, licensee, staff member, volunteer, resident, child in care, or child's parent by officials from OCCL or other State and local agencies. Interviews will occur to determine compliance with these regulations and other applicable codes, regulations, or laws. A licensee shall cooperate and have staff members cooperate with investigations regarding allegations of child abuse or neglect conducted by DSCYF.

6. **License Requirements:** The license requirements do not substantially change under the new proposed regulations, although there is additional language stating that “A license remains the property of OCCL and is not transferable or subject to sale.”
7. **Procedures for Initial Licensure:** The procedures for initial licensure are substantially expanded under the new proposed regulations. Whereas previously, the regulations require that an initial license be completed “on a form provided and in a manner prescribed by the Division,” the new proposed regulations go into substantial detail outlining the specific requirements, certifications, and supplementary materials that must be provided with a license application, as well as requiring applicants to and an OCCL information session. Additionally, under the new requirements, after initial provisional license is granted, “[a] licensing specialist shall conduct a compliance review at the facility or program before the expiration of the initial provisional license. Once this review is completed, OCCL will issue a provisional or annual license depending upon whether full compliance is obtained. If full compliance is obtained, this annual license will be valid for 6 months.” The new regulations provide much greater clarity regarding the actual requirements for licensing a facility, and ensure greater oversight of newly licensed programs.
8. **License Renewal:** The proposed regulations remove the requirement to provide a written request to OCCL 90 calendar days before the license expires (instead just maintaining the requirement to submit a completed application for license renewal within the same 60 days). The new regulations do require additional materials to be provided with the license renewal application, including proof of general liability insurance and motor vehicle coverage and a state business license or tax-exempt status. Further, the new regulations state that “applications received less than 60 days before the license expiration will be cited as late on the compliance review.” The proposed regulations also clarify that “if a license expires before a licensee applies for renewal, the licensee must cease conducting child care” and removes the prior provision allowing a provisional license to be renewed if the Division determined “that a licensee has demonstrated good faith efforts to achieve compliance but requires additional time.”

The proposed regulations also introduce an announced compliance review step in the renewal process. Additionally, the new regulations would introduce three types of licenses:

8.7.1 An annual license for 12 months when the licensee is in full compliance with the regulations;

8.7.2 A provisional license when the licensee is unable to achieve full compliance before the current license expires and the licensee agrees to comply with the corrective action plan; or

8.7.3 A license extension when compliance has not been determined through no fault of the licensee

9. **Changes Affecting a License:** While under the old regulations, OCCL would determine whether to modify a current license or require a new application under specific circumstances (change in ownership/ sponsorship. Location, name, applicable type of regulated service authorized, change in child population capacity), under the proposed regulations, a licensee would be required to submit a new application and receive approval before similar changes (change in name, change in authorized regulated service). For other changes (changing the ages of children served, making additions or renovations, changing meal services provided), the licensee would be required to submit a revised plan review and seek approval and a licensing specialist would need to conduct an on-site visit. A separate section is developed in the new proposed regulations to address the sale of a facility (14.7.1) or relocation of a facility or program (10). These proposed changes eliminate the Division’s discretion in when a new application is required, and introduces clarity, transparency, and opportunities for compliance monitoring.
10. **Relocation of a facility:** Similar to section above, the proposed regulations introduce specific requirements for licensees when preparing for a relocation of a facility and outline the approval and compliance measures required for a compliance review
11. **Regulation Variances:** The old regulations only required that an applicant or licensee make a written request for variance from rules, which could be granted if “if the licensee has documented to the satisfaction of the Division that the intent of the specific requirement will be satisfactorily achieved in a manner other than that prescribed by the requirement.” The proposed regulations provide clarity and detail as to the requirements of a variance request, the individuals at OCCL who may authorize a request, and an appeals process for licensees/ applicants whose requests are denied. This provides transparency and clear operations for the regulation variance procedures.
12. **Complaints:** The proposed regulations introduce a complaint process, and detail at length the process for investigating a complaint, making a complaint determination, coming into compliance after a complaint, and appealing a complaint. A clear complaint and grievance process is critical to ensuring the safety of children and youth in care of these facilities.

13. **Enforcement:** Similar to the section above, the new proposed regulations introduce clear enforcement mechanisms for failure to abide by “these regulations and applicable federal, State, and local laws and regulations.” Enforcement actions can include a corrective action plan “warning of probation, probation, suspension, revocation, or denial of a license application.”
14. **Notification:** The proposed regulations substantially change the notification requirements for serious incidents. Previously, a licensee was required to notify the Division within one working day of a child death. Under the proposed regulations, following a child death or attempted suicide, the licensee would be required to call OCCL, the child’s parents, and the referring agency immediately, providing specific protocol for after-hours notifications.

Further, the proposed regulations add to the types of incidents that must be reported within one business day, adding suspected abuse or neglect of a child (after reporting the child abuse hotline), known new charges, arrests, or convictions of licensee or staff; child medication reaction or medication error, equipment breakdown that threatens health and safety of children in care (including lack of working plumbing, phone service, fire protection, or temperature control).

The proposed regulations also now require that a licensee “call OCCL and speak to a licensing specialist within 2 business days and send follow-up documentation to the assigned specialist within 5 business days when the facility or program's phone number changes or when the chief administrator resigns, is dismissed, or is hired.”

These changes increase transparency and help ensure child safety in these facilities.

15. **Insurance Coverage:** No substantial changes

16. **Description of Services:** Proposed regulations substantially increase the information a licensee must have available. Previously, a licensee only needed to “develop, adopt follow and maintain on file a current written description of the facility’s or program’s: [a]dmission policies governing the age, specific characteristics, and treatment or service needs of children accepted for care; and [s]ervices provided to children and their families, including those provided directly by the licensee or arranged through another source.” This information only needed to be made available to the public via a brochure or “other generic written description of its mission, policies, and types of services offered.” Under the proposed regulations, the information must be made available via a website or printed materials and include additional information, including visitor and communication policies, grievance policies, and reporting policies.

This additional information ensures that families are aware of grievance and reporting procedures.

17.0 Policies and Procedures: The proposed regulations consolidate the various policies and procedures a licensee must have and follow, and update the requirements to include protection of a child’s digital privacy.

Importantly, the proposed regulations substantially alter the requirements for behavior management policies and procedures. Previously, the only requirements were in regard to training requirements for employees and volunteers interacting with children. Under the proposed regulations, the facilities must have policies and procedures that “include the concepts and use of the least restrictive effective treatment and positive reinforcements” and prohibit specific physical restraint and abusive practices. The proposed regulations also require that governing discipline and behavior supports include the model, program, or techniques used based on a child’s needs, developmental level, and behavior” and its use of de-escalation tactics, positive supports, time-outs, physical escort, chemical restraint, physical restraint, and seclusion (if applicable). The policies must specify specific procedures for time-out techniques (outlined in detail in the proposed regulations), including time limitations and time-outs and documentation requirements.

The proposed regulations also require policies regarding emergency situations, suicide prevention, grievances by children, and record security, maintenance, and disposal.

Overall, these policy requirements ensure a higher standard of safety and transparency for children in care at these facilities.

18.0 General Qualifications and Background Checks/ 19.0 Staff Qualifications/ 20.0 Administrative Oversight and Staffing/ 21.0 Personnel and Volunteer Files/ 22.0 Contracted Licensed Professional Files/ 23.0 Training

These sections are updated to require more specific personnel requirements, largely focusing on qualifications, clearances, and health appraisal requirements.

24.0 Allegations of Abuse or Neglect against a Staff Member: Few substantive changes, but the proposed regulations do add pro-active language required that “a licensee shall ensure children are not abused or neglected.”

25.0 Children’s Admission: No substantive changes

26.0 Service Plan: In addition to the existing requirement to have a completed service plan within 30 days, under the proposed changes, a facility must begin to create the service plan within 7 days (24 hours for facilities operating as shelter care). The new proposed regulations also outline specific requirements for that the service plan must address.

27.0 Children’s Health Appraisals: New proposals require that health file also include medical consents and release from the child’s parent or referring agency, as well as procedures if health or immunization information cannot be obtained.

28.0 Education Requirements/ 29.0 On-Site School Requirements: few substantive changes, except for specifying that “related services” must be provided or arranged along with special education services.

30.0 Religion and Culture: Proposed regulations remove language about licensee religious orientation (“A licensee that has a particular religious or denominational orientation shall provide a written description of its orientation or beliefs to the child and to the child’s parent(s) or legal guardian prior to the child’s admission, or within seven consecutive calendar days following the admission of the child.”) If a licensee is a religious or faith-based organization, that information should be made available and transparent to families.

Remaining sections involve facility maintenance and general safety, specific requirements for different types of facilities (including issues related to program-specific facility safety i.e. water safety around pools). These sections are highly technical and may require review by subject matter experts.

MEMBERSHIP COMMITTEE

Al Cavalier encouraged members to complete their Biographical Sketch if they have not done so already. Once all of the Bio Sketches are submitted, they will be uploaded to the GACEC website and shared on social media.

PERSONNEL COMMITTEE

There are no updates from the Personnel Committee currently. Al Cavalier would like to join Trenee Parker on the Personnel Committee to provide support.

DDOE REPORT

Bill Doolittle raised questions about disproportionate suspensions in school. When students are under suspensions both internally and externally, IEP meetings are not proposed interventions. Bill wanted to know if DOE is researching alternative interventions to ensure students aren’t missing more school days than necessary. Susan Veenema shared that data was pulled regarding the following: individual schools, LEAs, student ethnicities, students with or without disabilities, pre/post pandemic to evaluate disproportionalities amongst students. Susan Veenema thanked the Council for allowing her to present at tonight's meeting and offered to attend another in the future.

DIRECTOR’S REPORT

Pam Weir shared that Chairperson Ann Fisher approved the creation of an ad hoc committee for individuals with complex medical conditions around education. Jessica Mensack and Maria Olivere are leading that committee. A report will be shared shortly. As a reminder next month’s

Council meeting is hybrid, being held at the GACEC conference room and virtually. It is encouraged that at least one volunteer from each committee attends in person.

OUTSIDE COMMITTEE/ADHOC COMMITTEE:

Karen Eller represents the GACEC on the task force for making recommendations to improve school-based mentoring and literacy education efforts in Delaware. As Pam Weir mentioned it is established through House Joint Resolution 1. Karen shared that they are meeting weekly, assigning co-chairs within the task force, and discussing potential recommendations. The charge includes assessing the current state of school-based mentoring in Delaware. There have been discussions to get analysis on that by sending surveys out to schools. The next charge included concrete steps taken to expand the number of adults acting as volunteer mentors and steps taken towards more efficient provision of legally required background checks to ensure that important child protection measures are as convenient and inexpensive as possible for volunteer members. Delaware State Police provided a presentation for obtaining background checks more efficiently and smoothly. One improvement would be getting results between 2-3 days versus two weeks. There will be an increase in the fee charged. The group is looking into a bill to waive fees, while being mindful of the impact fiscally. Next, they are looking to improve the use of information technology to improve recruitment processes.

Vice Chairperson, Erik Warner thanked all the guest speakers present at the meeting and announced absent members. Erik reminded members to contact GACEC staff if they would like to see any of the letters written by the GACEC or responses. Bill Doolittle **made a motion** to adjourn the meeting with Kristina Horton seconding. The **motion passed** unanimously.