



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

DATE: January 26, 2016

TO: The Honorable Members of the Delaware General Assembly

FROM: Robert D. Overmiller, Chairperson
GACEC

RE: **House Bill No. 161 (Parent Empowerment Savings Account Act)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **House Bill No. 161**. As amended, this legislation would establish a system in which State educational funds could be used to cover the costs of some educational programming for students with disabilities. Council would like to share the following technical concerns but will not adopt a position on the legislation until the inconsistencies noted have been adequately corrected.

1. The bill was intended to become effective on August 1, 2015 (line 184). There are several references to "2015" and the "2015-2016 fiscal year" (lines 10, 92, and 99). All of these references will need to be updated.
2. Line 11 authorizes a parent to enroll a participating child "in a non-public school in any school district". This creates some ambiguity. Lines 25-26 define a "participating school" as a "nongovernmental primary or secondary school located in this State". To obviate any implication that the chosen school must be within the school district borders where the parent resides, it would be preferable to simply substitute "a participating school" in line 11 for "a nonpublic school in any school district".
3. If the intent of the bill is to only cover students with disabilities, there is a "disconnect" between the definitions of "parent" and "eligible student". Line 20 limits a "parent" to a person with a certain relationship to "a child between 5 and 16 years of age". This would omit a parent of a child older than 16. It would also omit Individuals with Disabilities Education Act (IDEA)-eligible children who are either eligible on their third birthday (line 35) or at birth (lines 35-36). See, e.g., 14 Del.C. §3101. The reference to "Title 14, Chapter 31" in line 36 may also be somewhat under inclusive since it would omit the statutory eligibility of infants who are blind pursuant to Title 31 Del.C. §2501.

4. It is unclear why line 27 only covers discrimination based on race, color or national origin. It would be preferable to at least clearly mention “disability”. The most prudent approach would be to incorporate the list of eleven covered classes based on 14 DE Admin Code 225.1.0.

5. The definition of “resident school district” (line 28) refers to the district “in which the student resides”. This is inconsistent with 14 Del.C. §202(e)(1) (students are residents of district in which parent resides). The sponsors may wish to consider cross referencing §202 rather than inserting a conflicting standard in the bill.

6. If House Amendment No. 1 is adopted, it will create two formatting problems as follows:

A. Since there is no subsection “(b)”, there should be no subsection “(a) (line 30);

B. The reference to “any of the following” (line 29) is no longer applicable since there is only a single reference, not an “(a)” and “(b)”.

7. The definition of an eligible student (lines 30-36) is convoluted and seemingly overbroad. For example, an eligible student is listed as an “exceptional child” as defined in Chapter 31 of Title 14 (line 30). That definition includes “a gifted and talented child”. Council suspects the sponsors do not intend to include gifted and talented children as eligible students under this bill. If the sponsors intend to cover IDEA-eligible students, it would be preferable to cross reference the definition of “child with a disability” in 14 Del.C. §3101(2). It appears that the sponsors intend that students identified under Section 504 of the Rehabilitation Act would also be “eligible students” (lines 30-36). However, the definition is inaccurate and reflects a misunderstanding of eligibility under Section 504. For example, there are no State Department of Education regulations defining eligibility under Section 504 (line 33). The cross reference to Chapter 31 of Title 14 (line 36) is also inappropriate since that chapter solely addresses IDEA-eligible children. The sponsors may wish to review the relevant Section 504 federal education regulation, 34 C.F.R. Part 104. If the sponsors wish to include students covered by Section 504, a more preferable approach would be to cross reference a federal standard rather than attempting to paraphrase the standard (lines 30-36). Consider the following definition: “A student identified as a qualified person consistent with 34 C.F.R. Part 104 implementing Section 504 of the Rehabilitation Act”. Alternatively, based on 34 C.F.R. 104.33, the following definition could be considered: “A student identified as a qualified person eligible for a free, appropriate, public education consistent with 34 C.F.R. Part 104 implementing Section 504 of the Rehabilitation Act.”

8. Lines 46-47 contain multiple grammatical errors (e.g. plural pronoun (“their”) with singular antecedent (“parent”) and inconsistent references to “parent” and “parents”. Consider the following alternative: “(a) Any parent of an eligible student shall qualify for the state to make a grant to the eligible student’s education savings account if the parent signs an agreement promising:”.

9. Lines 46-48 require a parent, as a condition of receipt of a grant, to promise that the eligible student will receive an education “in at least the subjects of reading, grammar, mathematics, social studies, and science.” There are multiple concerns with this provision.

A. Lines 58- 67, 76, and 102 authorize funds to be used for “tutoring” and college expenses. It is unlikely that a college student would be enrolling in courses teaching reading and grammar.

B. Students only need three credits in Social Studies and three credits in Science to earn a

diploma. See 14 DE Admin Code 505.4.0. Therefore, there may be years in which the student does not take courses in these contexts.

C. For students in a non-diploma track or with an IEP stressing functional skills, the student may not be taking courses in the listed subjects.

10. Line 52 and 74 contain a grammatical error [plural pronoun (“their”) with singular antecedent (“student”)] Substitute “the student” for “they”

11. Line 70 refers to a “multidisciplinary evaluation team plan”. This term is not defined and is unusual wording.

12. Line 71 refers to “an empowerment scholarship account”. This term is not defined. Based on the context, Council suspects the reference should be to a “savings account”.

13. In line 85, the reference to “prior” school district is problematic. A child could be identified as an “eligible student” who has never enrolled in the resident school district. Cf. 14 DE Admin Code 923.31. Consider substituting “resident school district”, the term defined at line 28 and used in line 81.

14. Council recommends capitalizing “fund” when referring to the “Parent Empowerment Education Savings Account Fund”. This would include references in lines 88, 89, 95, 97, 99, and 100.

15. The word “department” should be capitalized in lines 89 and 93.

16. In lines 95-100, the references to “State Treasurer” should be to “Treasurer”. See line 44.

17. In line 96, the reference to “Subsection 3, F of this Act” is unclear.

18. Lines 97- 98 refer to “empowerment scholarship accounts”. The term is undefined. Council assumes the term should be “empowerment savings accounts”.

19. In line 105, the reference to “article” is unclear. Furthermore, the recital that monies received under this program “do not constitute taxable income” may not be accurate. For example, if the student is not a degree candidate, the IRS may treat such funds as taxable income. See attached article.

20. Line 128 merits review. The reference to “42 USC 1981” is limited to discrimination based on race. Words have obviously been omitted from the end of the subsection. Consistent with Par. 4 above, it would be preferable to at least clearly mention “disability”. The most practical approach would be to incorporate the list of eleven covered classes based on 14 DE Admin Code 225.1.0.

21. In line 149, the word “department” should be capitalized.

22. Lines 151-160 are problematic and conflict with the non-discrimination provisions in lines 27 and 128. As a recipient of federal education funds, the State cannot contract with agencies or provide any benefit to agencies which discriminate. See 14 DE Admin Code 225.1.0 and 34 C.F.R. §104.4. Thus, if a private school only accepted students of a certain religion, that school should not be allowed to be a participating school.

23. Lines 172-173 merit reconsideration. For example, does the reference to “30 calendar days” mean from the date of Department decision?

24. The references to transportation in lines 180-183 are somewhat ambiguous. Furthermore, the standard transportation subsidy for private school students is not administered by districts. See 14 DE Admin Code 1150.26.0

25. Apart from the technical observations listed above, whether establishing the savings account/voucher program is a “good idea” merits additional discussion. The attached May 16, 2015 News Journal article and June 9, 2014 News Journal article (describing predecessor House Bill No. 353) describe the perceived advantages of the legislation. Other attached articles describe reservations. Voucher opponents argue that such programs divert resources from public schools and, to the extent they only cover partial tuition costs, are disproportionately beneficial to the wealthy who can afford to pay the difference between the subsidy and private school tuition costs.

The GACEC and others reviewed similar legislation in 2005 (House Bill No. 185) and 2004 (House Bill No. 440). Delaware previously offered school vouchers primarily for students with Learning Disabilities (LD) up to the 1977-78 school year. See attached Grymes v. Madden, 3 IDELR 552:183, 184 (D.Del. May 3, 1979). The partial tuition subsidy to attend a private school was approximately \$1,200. It cost the State approximately \$167,000 annually. See attached November 8, 1977 letter from Controller General. It ended after enactment of the federal IDEA and Senate Bill No. 353 on August 13, 1977.

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

Enclosures