



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: April 6, 2015

TO: Members of the Delaware House of Representatives
and Delaware State Senate

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: H.B. 45 Epilogue: DOE Flexible Funding Pilot

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's "flexible funding" initiative which has been authorized in the attached §353 of the FY16 budget bill epilogue. As background, the FY 15 budget bill epilogue established a working group to develop a pilot plan for submission to the Governor and Joint Finance Committee by December 1, 2014. The working group had no representatives of parent organizations, student organizations, or agencies [e.g. Parent Information Center (PIC); Governor's Advisory Council for Exceptional Citizens (GACEC)] which focus on special education. The initiative was advertised as not affecting special education funding. See attached June 20, 2014 News Journal article which recites as follows: "The group's plan would not change how special education funding is distributed and would not alter salary schedules." The Delaware State Education Association (DSEA) asked the JFC to "not accept" the pilot proposal in its comments in the DOE JFC budget hearing. See attachment.

SCPD has the following observations.

First, the epilogue does include an assurance that the pilot would not "trump" the existing statutory requirement of a school nurse in each facility. SCPD endorses this provision.

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

for “Intensive” and “Complex” units.

Third, H.B. 30 (with 32 sponsors) is currently pending. It would expand the “4-12 Basic Special Education unit” to a “K-12 Basic Special Education unit”. Enactment would cut the unit count for the covered K-3 special education students almost in half, i.e. from 16.2 to 8.4. It is somewhat anomalous to specifically focus additional resources on this population while contemporaneously authorizing a pilot to divert or reallocate the same funds.

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

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

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations or recommendations on the proposed legislation.

cc: The Honorable Matthew Denn, Attorney General
Delaware State Education Association
Mr. Dave Blowman
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 45 epilogue doe flexible funding pilot 3-30-15

1 use, without limitation, the combining of similar unit funded positions to pay for a shared position to perform the
2 services agreed to and payments between the districts for such shared services, provided that the memorandum of
3 understanding is also approved by the Secretary of the Department of Education, with the concurrence of the
4 Director of the Office of Management and Budget and the Controller General.

5 Section 350. To ensure that districts and charter schools are implementing the needs based funding system
6 appropriately, the Department of Education shall, in cooperation with the Governor's Advisory Council for
7 Exceptional Citizens, create a Certification of Earned Staff Units protocol. The results of all monitoring shall be
8 reported at least annually on the department's website.

9 Section 351. The provisions of 14 Del. C. c.1, and any implementing regulations in 14 DE Admin Code
10 that the Delaware Department of Education determines to be inconsistent with the Department's ESEA Flexibility
11 Request as approved by the U.S. Department of Education shall not be applicable to Delaware Public Schools and
12 School Districts during the flexibility waiver period, and the department is authorized to promulgate interim
13 regulations consistent with said application and approval which shall be effective during the flexibility waiver
14 period.

15 Section 352. Notwithstanding any language to contrary, for any appropriate purpose, the Department of
16 Education may use an alternative measure to determine low socio-economic status in lieu of the eligibility for free
17 and reduced priced lunch. The use of an alternative measure shall not affect any student's eligibility to receive free
18 or reduced meals.

19 Section 353. ~~The Department of Education is authorized to establish a working group to develop a pilot
20 plan for education funding flexibility for consideration to be implemented through the Fiscal Year 2016 budget
21 process. Said working group shall consist of the Secretary of Education (or designee), Director of the Office of
22 Management and Budget (or designee), the Controller General (or designee), two members of the Joint Finance
23 Committee appointed by the Co-Chairs, a representative from the Delaware State Education Association, a
24 representative from the Delaware Association of School Administrators, a member of the Delaware School Chiefs
25 Officers Association, and three members of the school business managers in which one of these members must
26 represent a vocational technical school district. The following parameters shall apply to said pilot plan:~~

27 (a) ~~Division I units and associated Related Services units earned in Intensive and Complex categories shall~~
28 be excluded;

1 ~~(b) All relevant salary schedules and supplemental compensation pursuant to 14 Del. C., c. 13 and the~~
2 ~~Annual Appropriations Act shall continue to be used for the purposes of salaries of employees;~~

3 ~~(c) Participating school districts and/or vocational technical school districts shall be limited to no more~~
4 ~~than 5 statewide, receive an affirmative vote of their local board of education to participate in the pilot~~
5 ~~program, and shall continue to be subject to financial reporting requirements pursuant to 14 Del. C. §~~
6 ~~1507 and § 1509; and~~

7 ~~(d) State appropriations for public education shall continue to be earned pursuant to 14 Del. C. c. 13 and c.~~
8 ~~17 and the Annual Appropriations Act in which said working group shall have the option to review and~~
9 ~~make recommendations on updating how units of funding are generated.~~

10 ~~The pilot plan for education funding flexibility shall be submitted to the Governor and the Joint Finance Committee~~
11 ~~by December 1, 2014.~~

12 The Department of Education is authorized and directed to implement the pilot plan of flexible funding
13 outlined in the report submitted December 1, 2014, by the Flexibly Funding Working Group. The pilot may include
14 up to five school districts beginning July 1, 2015. Notwithstanding any sections of the Delaware Code to the
15 contrary, the intent of such flexible funding plan shall be to provide participating school districts with the ability to
16 better coordinate resource allocation decisions with strategic planning and community input, build a system focused
17 on outcomes, foster a climate more conducive to innovation and creativity, increase student performance by
18 allowing the focus of resources on identified student needs, enable staffing decisions to occur at the earliest possible
19 time, promote collaborative procurement practices and allow decision making closest to the student.

20 The Department of Education shall establish written criteria for participation in the pilot program, using the
21 following basis for the flexible funding model:

22 (a) The flexible funding pilot shall exclude Division I units and associated Related Services units earned in
23 Pre-K, Intensive and Complex categories. Participating school districts are required to ensure compliance with levels
24 of special education and related services in all approved Individualized Education Programs for all students
25 receiving special education regardless of category and maintain compliance with levels of service required for
26 students with approved 504 plans.

27

1 (b) School districts participating in the flexible funding pilot shall continue to earn State appropriations
2 supporting public education, according to the provisions of 14 Del. C. c. 13 and c. 17 and the Annual Appropriations
3 Act.

4 (c) All relevant salary schedules and supplemental compensation contained in 14 Del. C. c. 13 and the
5 Annual Appropriations Act shall continue to be used for purposes of salaries of employees.

6 (d) Participating school districts shall continue to be subject to financial reporting requirements of 14 Del.
7 C. § 1507 and § 1509. The Department may coordinate with participating school districts to implement additional
8 reporting requirements as is deemed necessary and appropriate.

9 (e) Participating school districts shall continue to be subject to provisions of 14 Del. C. § 1310(b) regarding
10 school nurses.

11 (f) The Department shall establish an index value that is relative to that of a 1.0 teaching unit, for each unit-
12 generating, employee group earned according to 14 Del. C. c. 13. Participating school districts may utilize positions
13 among entitlement areas within their total weighted, earned unit entitlement for the school year.

14 (g) Participating school districts are authorized to receive cash for up to 10 percent of the total weighted,
15 earned unit entitlement. This option shall only apply if the district has not filled the position at any time during the
16 fiscal year in which it was earned, and if the district makes application to the Department of Education no later than
17 January 31st of the current fiscal year. This cash option value shall be the corresponding amount of a master's
18 degree plus 10 years of experience, as calculated in accordance with 14 Del. C. § 1305, inclusive of the appropriate
19 other employment costs.

20 (h) For a flexible funding management plan, State entitlement appropriations shall be consolidated into a
21 single appropriation line provided that the following line items are excluded from such consolidation: Unique
22 Alternatives, Division I - Personnel Costs and Cafeteria Funds, Minor Capital Improvement and Equipment, Pupil
23 Transportation and/or cycled funding, such as stipends and competitive grants.

24 (i) No later than December 31st of each year, school districts participating in the pilot shall provide the
25 Secretary of Education with a report identifying district expenditures and revenues, delineated by federal, state and
26 local funds, and an identification of the number and type of positions supported with state funding during the school
27 year as compared to the positions entitled for funding.

- 1 (j) The Department of Education shall annually review the academic progress of each participating district,
- 2 to ensure that achievement levels are maintained or improved, and to make a determination whether to continue the
- 3 flexible funding pilot at each district.

SYNOPSIS

This Bill is the Fiscal Year 2016 Appropriation Act.

6-20-14.05

Delaware devising a public school funding overhaul

By Matthew Albright
The News Journal

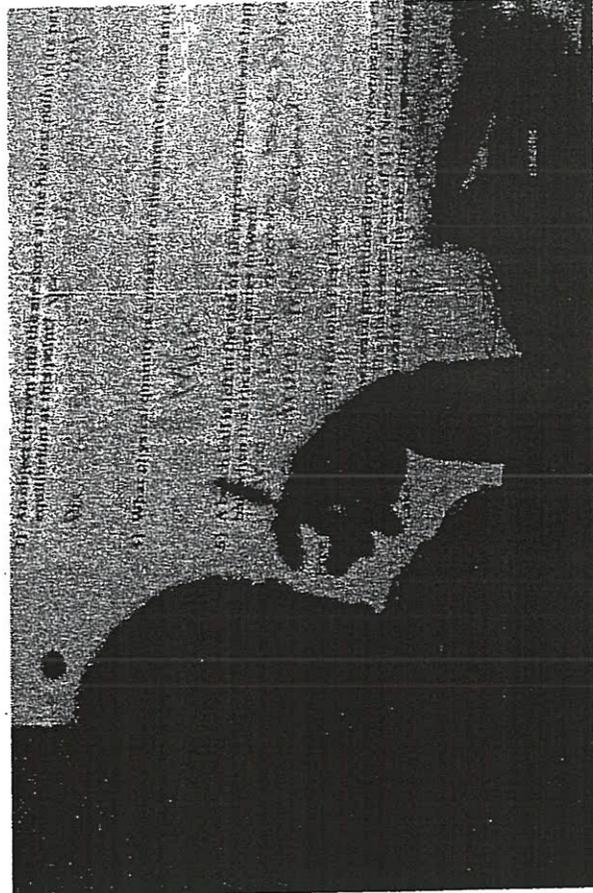
Delaware's state-centric model for funding schools could be headed for a change, as Gov. Jack Markell's administration plans to pilot a new system in two years.

Markell's administration has added to its proposed budget for next year a plan that would create a working group tasked with finding a different way to distribute money that would give districts and schools more spending flexibility.

The current system is highly prescriptive. Based on the number of students enrolled each year, districts get a certain number of "units" that can only be spent on specific things, like teachers, principals or specialists.

School leaders have long complained that this system is outdated and too restrictive, preventing schools from reacting quickly and creatively to challenges they face. Markell said in his State of the State speech this year that the process needed to change.

"We're currently trying to build world class schools with a funding system built in the 1940s, which gives school leaders little discretion in how they use their resources," Markell said in a statement. "We need to give our educators and administrators the flexibility to come up with innovative ways to best serve their students in 21st century classrooms."



uted and would not alter salary schedules. It would be due by Dec. 1.

Once the group drafts a new system, it would be implemented in five pilot school districts in the school year that starts in 2015. Those districts have not been chosen.

Red Clay School District Superintendent Merv Daugherty said some districts, especially smaller ones downstate, have expressed interest in joining the pilot. But at a meeting of school chiefs, most said they want to wait to see what specific plans are worked out.

"There's not a lot of detailed information at this time," Daugherty said. "We tend to be very cautious of our budgets, so there are a lot of questions we have to go through before we get on board with this."

Put broadly, though, the idea of more flexibility in spending is appealing to school officials. Schools have asked the state to allow them to do things like route money to fund "intervention" teachers that specifically target struggling students, even though those positions are not funded by unit count.

Daugherty cautions that flexibility will not in itself work miracles.

"If you've only got \$1,000 to spend, you can do some creative things with it, but in the end it's still only \$1,000," he said.

Contact Matthew Albright at malbright@delawareonline.com, 324-2428 or on Twitter @TNJ_malbright.

The new funding system would not change how special education funding is distributed, nor would it alter salary schedules. A draft is due Dec. 1 THE NEWS JOURNAL

The proposed working group would include representatives of the state Department of Education, Office of Management and Budget, and Controller General, along with the Delaware State Education Association union and school administrators, superintendents and budget officers.

State Rep. Debra Heffernan, D-Bran-dywine-South and a member of the Joint Finance Committee, said there's "pretty strong consensus" that the system needs an update.

"This funding system has been in place for a very long time," Heffernan said. "I think most people agree we need to take a serious look at ways to change it, and that's what this pilot will do."

The group's plan would not change how special education funding is distrib-



Delaware State Education Association
Moving Education Forward

2015 Joint Finance Committee
Comments by Frederika Jenner
President, Delaware Education Association

Good afternoon. As President of the Delaware State Education Association, I am honored to appear today on behalf of our more than 12,000 active and retired members. I want to thank you, members of this esteemed committee, for your past support for Delaware educators and community public schools across the state. DSEA members stand strong for student success.

Meeting the state's financial commitments to education is essential. At the same time, we recognize the continued challenges that this presents. Funding for annual step increases, as well as for additional units to support student growth, demonstrates confidence in the work educators do in support of Delaware's students.

There are many proposals that compete for state budget monies. Over the past four years, raising para-educator salaries to the federal poverty level has been one of our priorities. The days when para-educators served as teacher aides are gone. These individuals make it possible for disadvantaged students to succeed and for special needs students to even attend public school. We urge you to consider bringing this initiative to fulfillment.

In past testimony, I have spoken about the need to support education for the "whole child." We have yet to hear from districts, parents, and educators what they value and want to sustain from RTTT.

I was disappointed by the proposal for \$7.4 million dollars in RTT sustainability funds, primarily for administrative costs, while at the same time, allotting only \$2 million for academic excellence units which fund programs that directly impact kids and classrooms. I believe there needs to be additional funding available to support critical programs for RTI, ELL, and the implementation of CCSS.

Issues related to school funding are on everyone's mind, including Gov. Markell who, in his State-of-the-State address, announced the formation of a committee to examine ways to improve current funding, as well as explore other models. This is long overdue, and we look forward to participating.



Flexible funding is one remedy that has gained some traction. We foresee a number of potential dangers in this approach, including the privatization of critical services, loss of jobs for support personnel currently serving Delaware students, and impacts on arts education and programs like talented & gifted. DSEA is urging JFC to not accept this pilot proposal but rather to directly address the districts' concerns regarding fractional units and flexibility in cashing in units in Epilogue and to allow the Governor's committee to discuss how flexibility can play a role in an improved funding system for Delaware schools.

You and I believe that every student deserves a well-rounded and rich education—that every student deserves a fair shot regardless of zip code or socio-economic status. And I know we both believe students and educators deserve safe, secure, and supportive schools. Unfortunately, today's education policy and planning is not responsive to the recommendations of Delaware's district and school leaders. It does not value or recognize the experience of Delaware educators. We need a new path, one charted by educators who know best what it takes to help students succeed.

