



STATE OF DELAWARE
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MEMORANDUM

DATE: January 29, 2016

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

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

RE: H.B. 161 (Parent Empowerment Savings Account Act)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 161 provides opportunities to parents of special needs students to select the most appropriate and productive educational pathway for their children by using funds otherwise allocated to their residential school district. The goal of the Parent Empowerment Educational Savings Account Act is to increase educational opportunities for special needs students. As amended, the 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. SCPD has the following observations.

First, 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 would benefit from updating.

Second, 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 parent's school district borders, it would be preferable to simply substitute "a participating school" in line 11 for "a nonpublic school in any school district".

Third, 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 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 "underinclusive" since it would omit statutory eligibility of blind infants pursuant to Title 31 Del.C. §2501.

Fourth, it's unclear why line 27 only covers discrimination based on race, color or national origin. It would be preferable to at least explicitly mention "disability". The most prudent approach would be to incorporate the attached list of eleven covered classes based on 14 DE Admin Code 225.1.0.

Fifth, 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.

Sixth, if H.A. 1 is adopted, it creates 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 apt since there is only a single reference, not an "(a)" and "(b)".

Seventh, the definition of an eligible student (lines 30-36) is convoluted and ostensibly "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". SCPD 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 inapposite 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, the 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."

Eighth, 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:”.

Ninth, 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’s unlikely a college student would be enrolling in courses teaching reading and grammar.

B. Students only need 3 credits in Social Studies and 3 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.

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

Eleventh, Line 70 refers to a “multidisciplinary evaluation team plan”. This term is not defined and is “odd” wording.

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

Thirteenth, 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.

Fourteenth, SCPD 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.

Fifteenth, the word “department” should be capitalized in lines 89 and 93.

Sixteenth, in Lines 95-100, the references to “State Treasurer” should be to “Treasurer”. See line 44.

Seventeenth, in Line 96, the reference to “Subsection 3,F of this Act” makes no sense.

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

Nineteenth, in Line 105, the reference to “article” makes no sense. Moreover, 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.

Twentieth, 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 explicitly mention “disability”. The most prudent approach would be to incorporate the attached list of eleven covered classes based on 14 DE Admin Code 225.1.0.

Twenty-first, in Line 149, the word “department” should be capitalized.

Twenty-second, 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.

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

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

Twenty-fifth, apart from the above technical observations, whether establishing the savings account/voucher program is a “good idea” merits deliberation. The attached May 16, 2015 News Journal article and June 9, 2014 News Journal article (describing predecessor H.B. 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 SCPD reviewed similar legislation in 2005 (H.B. 185) and 2004 (H.B. 440). Delaware previously offered school vouchers primarily for LD students 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 S.B. 353 on August 13, 1977.

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

cc: Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 161 parent empowerment savings account 1-27-16

Your Search...



Phone Numbers

Mobile

Help

Size

Print

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Delaware General Assembly : Delaware Regulations : Administrative Code : Title 14 : 200

HOME

- Agency Information
- Office Locations
- Contact Information
- Related Links
- Site Map

SERVICES

- Register of Regulations
- Current Issue
- Previous Issues
- Subscription Services
- Administrative Code
- Delaware Code
- Laws of Delaware
- City & Town Charters
- Style Manual
- Cumulative Table
- Tour of Legislative Hall

INFORMATION

- Citizen Participation

PAGE < INDEX ≡ PAGE >

**Title 14 Education
200 Administration and Operations**

200 Administration and Operations

[Authenticated PDF Version](#)

225 Prohibition of Discrimination

1.0 Prohibition of Discrimination

No person in the State of Delaware shall on the basis of race, color, religion, national origin, sex, sexual orientation, genetic information, marital status, disability, age or Vietnam Era veteran's status be unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving approval or financial assistance from or through the Delaware Department of Education.

2 DE Reg. 1246 (01/01/99)

7 DE Reg. 1177 (03/01/04)

9 DE Reg. 1069 (01/01/06)

14 DE Reg. 554 (12/01/10)

Last Updated: November 07 2014 16:14:41.

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Rules for Exemptions in Taxability of Scholarships

When it comes to taxability of scholarships, it's better to find out well before your taxes are due rather than at the last minute whether or not your scholarships need to be accounted for on your tax forms.

Non-degree Candidates

If the student is not a degree candidate, the full amount of any financial aid is subject to federal income tax, even if it is spent on educational expenses.

Degree Candidates

If the student is a degree candidate, then scholarship and fellowship amounts used for tuition and REQUIRED course-related expenses (e.g., fees, books, supplies, and equipment) are exempt from federal income tax and may be excluded from gross income. Amounts used for living expenses (room and board) and other non-required expenses (computers, travel, etc.) are not exempt.

In most circumstances, federal and state educational grants are not taxable. (They are treated as scholarships, and are nontaxable to the extent that they were used for tuition and education-related expenses. Since most federal and state educational grants are restricted to being used for tuition, the usually end up being nontaxable.)

Student loans are also not taxable. If all or part of a student loan is cancelled or forgiven, the amount of debt forgiven may represent taxable income. See IRC section 108(f) for details.

Not Payment for Services

The scholarship or fellowship must NOT, however, be awarded in compensation for teaching and research services performed by the student. The portion of the award that represents payment for services is taxable. For example, a teaching assistantship or research assistantship is not necessarily exempt. If you are required to teach a class in exchange for your tuition waiver and stipend, it may be the case that the award is fully taxable. In such cases, for the tuition waiver portion of a TAship or RAship to be exempt, the rest of the stipend must represent fair compensation for the services rendered. Stipends paid for living expenses are, of course, always taxable. If the tuition waiver is exempt, then only the stipend portion of your award will be reported to you (and the IRS) as income on your W2 form.

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Some universities or departments work around the "payment for services" restriction by making teaching duties part of the educational program. For example, one department provides every graduate student in the department with a full fellowship, and requires each graduate student to TA two classes before they can graduate. Since the teaching and research duties are uniform for all students and are construed as educational requirements -- more for the benefit of the student than the university -- these duties do not represent payment for services. They are graduation requirements and not conditions for receiving the grant. These duties are an essential part of the students' graduate education; TAships provide the student with teaching experience necessary for their future careers as faculty, and RAships provide the student with the opportunity to conduct doctoral research and to work on their dissertation. After all, a PhD is a research degree, so it makes sense to require research experience as part of the degree program.

[The IRS recently started challenging the validity of such arrangements. According to the May 5, 1995, issue of the Chronicle of Higher Education, the IRS has asked the University of Wisconsin at Madison for \$81 million in back taxes, claiming that the work performed by research assistants is not part of their graduate education and hence subject to taxation like any other job. Note that the university was careful to distinguish between research assistantships intended to further the student's education and research assistantships aimed at assisting faculty with their own research. Federal income tax and Social Security tax was withheld from the latter but not the former. The university will be fighting the charges in US Tax Court.]

ROTC and Service Academies Exempt

ROTC scholarships and the service academies are specifically exempted from this requirement in the tax code, even though they could be considered payment for services. So the tuition, books, and the monthly stipend students receive from ROTC are exempt from tax. Pay for summer training, however, is taxable, and the student will receive a W2 for this work. (Veteran's educational benefits, however, may be taxable. Check with the VA for more information.)

Definition of Excludable

Excludable expenses are eliminated from gross income before any deductions. Thus you can exclude the exempt amounts and still take advantage of the standard deduction. Note that if you itemize your deductions, you cannot both exclude the educational expenses from gross income and deduct them -- no double dipping.

Scholarships and Fellowships Exempt from Social Security Taxes

The full amount of a scholarship or fellowship is usually exempt from FICA (social security) whether or not the student is a degree candidate.

Moving Expenses Not Deductible

Many new graduate students ask whether their moving expenses are tax deductible. Unfortunately they aren't, according to the IRS, because graduate students aren't really employees.

Reporting

Universities are not required to report scholarship or fellowship income for US students to the IRS via W2 or 1099 forms, nor do they have any responsibility for withholding estimated tax for these students. The only exception is assistantships where the compensation represents pay for services and must be reported on a W2. (According to IRS guidelines, students who receive pay for services should receive a W2 form, not a 1099 form.)

For foreign students, however, the university is required to withhold appropriate taxes. (Many universities are too conservative in the amount withheld, so foreign students should cite the terms of the appropriate tax treaty on their return to claim a refund of the excess taxes withheld.)

If you received a taxable scholarship or fellowship which was not reported to the IRS on a W2 or 1099 form, you are required to include it on line 7 and write "SCH" to the left. If you report taxable scholarship or fellowship income in this fashion, it is wise to attach an explanatory letter to your return, especially if you exclude any required educational expenses.

If your scholarship or fellowship was reported to the IRS on a W2 or 1099 and you wish to exclude additional required educational expenses (e.g., the university excluded tuition and fees but not required books), exclude the amount of the expenses from the amount reported on line 7 on Form 1040 or Form 1040A and line 1 of Form 1040EZ, and attach an explanatory letter. It is very important to attach such a letter, since the IRS computers will notice the discrepancy between the amounts reported to the IRS and the wages you listed on your return. Failing to attach such a letter will likely cause your return to be audited. (Some people recommend reporting educational expenses as a negative amount on the "Other Income" line, instead of subtracting the expenses from line 7. In either event, you should still attach an explanatory letter.)

[Home](#) | [Loans](#) | [Scholarships](#) | [Savings](#) | [Military Aid](#) | [Other Types of Aid](#) | [Financial Aid Applications](#)
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Mark Kantrowitz, Founder
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Education alternatives put power in hands of parents

DELAWARE VOICE

Recently there have been an increasing number of education alternatives proposed to the existing traditional system of Delaware's public schools. The nonpublic schools are an option that has been around for a long time. One of them actually predates the founding of our country.

Two other alternatives, home schooling and charters, are experiencing significant growth.

Our state legislature soon will be considering a new alternative for students with special needs, the Education Savings Account, which was initiated by Arizona in 2011.

It is a parent-empowerment piece of legislation designed to enable parents of children with special needs to customize their children's educational experience. The state portion of a child's education funding is placed in a state-controlled account which the parents can access for qualified education expenses. The district retains the local portion. Qualified expenses include such things as tuition at an approved participating school, textbooks, services from a licensed or accredited practitioner or provider, payment to a licensed or accredited tutor and, if any funds remain after high school, they could be put toward college tuition.

Another alternative is the Education Tax Credit Scholarship.

The Washington Center for Education Reform describes the concept as allowing individuals or businesses (or both) to claim a credit against their tax bill for donations made to authorized organizations that in turn use those donations to fund tuition scholarships for eligible students to attend a school of their choice. Even though this program reduces the amount of taxes collected, the net result is a savings to the state. This is because the tax revenue reduction is more than offset by the reduction in education expenditures. This is in addition to the significant benefit of shifting the power of choosing a child's education from the government to the child's parent. As of 2014, 14 states have enacted tax credit-funded scholarship programs. These programs now include approximately 190,000 students, a participation level that is surpassed only by enrollment in charter schools.

With a belief that "one size doesn't fit all" and "we can't take a cookiecutter approach to education," there is little doubt a demand exists for education alternatives. Perhaps the next education alternative on the horizon will focus on an alternative way to operate the current system.

Ronald R. Russo is senior education fellow with the Caesar Rodney Institute.

RONALD R. RUSSO

GENERAL ASSEMBLY

6-9-04 25

Fund would give parents school cash

By Matthew Albright
The News Journal

Parents would be able to spend the money that goes to their public school as they see fit under a new bill proposed in the legislature.

While they acknowledge it is unlikely to pass this session, the Republican leaders who proposed the bill say parents deserve more control in their children's education.

Called the "Parent Empowerment Education Savings Account Act," HB 353 would allow parents to place a percentage of the per-student funding that goes to a public school into accounts with the state treasurer's office. They could then spend the money from those accounts on whatever educational purposes they choose, as long as they do not enroll their student in a

See BILL, Page A7

Bill: Sponsors predict parents would support funding plan

Continued from Page A1

public school.

"We always talk about how, in Delaware, the money follows the child. But that's only true within the government schools," said House Minority Whip Deborah Hudson, one of the bill's sponsors. "That unnecessarily limits some kids, and we want to change that."

The families could use the money for things like tuition and fees at participating schools, textbooks, tutors, online learning programs and fees for exams like Advanced Placement or college admission exams like the SAT. If a family has any money left after paying for high school, they can use the money to pay tuition and fees at eligible colleges and universities.

The bill's sponsors say it would knock down financial barriers that prevent low-income parents from picking the school they want for their kids.

"When a family is challenged economically, they can be trapped in failing schools or in a school that doesn't meet what their kid needs," said Senate Minority Whip Greg Lavelle, another sponsor. "We want to give them the option to send their children to the school that is best for them."

Gov. Jack Markell does not support the idea, believing it is a form of school vouchers, in which the state reimburses parents for private school tuition.

"[The accounts] would not help strengthen our schools across the state, and would drain funding from our system at a time when more parents than in the past are choosing Delaware's public schools as the best education option for their children," Markell spokesman Jonathan Dworin said in a statement.

Hudson and Lavelle both recognized the odds are stacked against the bill right now. But they believe many parents would support the plan.

"This is not a bill I expect to pass this year, but it's the kind of bill the public needs to know about and think about," Hudson said. "I think parents need to know that there is a way for them to have more control over their child's education, and right now they don't have that option."

How much a family would receive depends on how much money they make.

Households with income low enough to qualify for free or reduced-price lunch would receive the same amount as a school district would get to educate their child. For last year, that means \$43,568 for a family of four. Families that earn less than 1.5 times that amount would get 75 percent; families that earn between 1.5 times and twice the amount to qualify would get half, and families that earn between 2 and 2.5 times the amount to qualify would get a quarter.

The remainder of that student's allotment would go to their home district as normal, Hudson said. Students whose families make more than 2.5 times the reduced-price lunch level would not qualify to receive money for one of these accounts.

"I don't want people to think this is just money going to rich kids going to a fancy private school," Hudson said. "This is an opportunity for kids to go to a school they couldn't get to in any other way."

One thing that needs to be worked out, Hudson said, is exactly how much the state spends "per student." When the state doles out money to districts, it does so through a complicated system called "unit count," in which certain numbers of students "earn" schools "units" for teachers, principals, assistant principals, etc.

The state also gives out additional money for students with special needs.

Delaware schools spend an average of \$12,622 per child statewide, according to Department of Education figures. On average, 59 percent of school funding comes from the state, the rest coming from local taxes and federal sources.

As a rough average, that means the state doles out something like \$7,446 a student.

That amount wouldn't cover tuition at many private schools: Salesianum's tuition this year was \$13,700; tuition at St. Mark's High School next year is \$10,500, and elementary tuition at Ursuline Academy is \$14,150.

It would, however, cover tuition at most elementary



State Sen. Greg Lavelle



State Rep. Deborah Hudson

schools operated by the Diocese of Wilmington, with some money left over.

Schools would have to meet certain requirements to participate. They would have to comply with all health and safety laws, hold a valid occupancy permit and comply with all non-discrimination policies.

To ensure financial accountability, schools would be required to provide parents with receipts for all expenses. They would also have to prove to the state that they are financially viable without the money from the accounts.

After a student graduates from college, or four years after they graduate high school, any money left over in the account would be returned to the state.

Delaware is one of several states mulling education savings accounts, or ESAs. Seven states have seen bills introduced to create them this year, including Oklahoma, Kansas, Iowa, Missouri, Mississippi and Tennessee, according to the Friedman Foundation for Educational Choice, a national group that supports the accounts.

Florida's legislature passed a similar bill this year, which is awaiting its governor's signature.

Arizona already has such a system in place, called Empowerment Scholarship Accounts. Launched in 2011, the state has gradually expanded the eligibility requirements so more students can access them.

In the past school year, 731 students used such an account to attend 75 participating private schools.

Arizona's system has seen some controversy. The state school board association, teachers union and association of school business officials sued to block the program. A court ruled the ESAs were constitutional, as did an appeals court, and the groups have appealed to the state Supreme Court.

Educational savings accounts are one of many possible policy tools supported by "school choice" advocates. Others include "tuition tax credits," which give businesses and individuals tax breaks for supporting funds that pay students' private school tuition, and vouchers, in which the state gives parents the money to pay private school tuition.

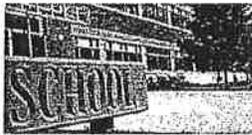
Contact Matthew Albright at malbright@delawareonline.com or at 374-7428.

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NATIONAL CONFERENCE of STATE LEGISLATURES

SCHOOL VOUCHERS



School vouchers, also referred to as opportunity scholarships, are state-funded scholarships that pay for students to attend private school rather than public school. Private schools must meet minimum standards established by legislatures in order to accept

voucher recipients. Legislatures also set parameters for student eligibility that typically target subgroups of students. These can be low-income students that meet a specified income threshold, students attending chronically low performing schools, students with disabilities, or students in military families or foster care.

History

The practice of state support for private school education has existed in Maine and Vermont for nearly 140 years. They have ongoing programs that provide public funding to private schools for rural students who do not have a public school in close proximity to their home. However, it was economist Milton Friedman's 1955 paper, "The Role of Government in Education", that launched modern efforts to use public dollars to pay private school tuition in hopes that competition among schools will lead to increased student achievement and decreased education costs.

In 1989, the Wisconsin legislature passed the nation's first modern school voucher program targeting students from low income households in the Milwaukee School District.

In 2001, Florida enacted the John M. McKay Scholarships Program for Students with Disabilities becoming the first state to offer private school vouchers to students with disabilities.

In 2004, the first federally funded and administered voucher program was enacted by Congress in Washington, D.C. It offered private school vouchers to low income students, giving priority to those attending low-performing public schools.

In 2007, the Utah legislature passed legislation creating the first statewide universal school voucher program, meaning it was available to any student in state with no limitations on student eligibility. A petition effort successfully placed the legislation on the state ballot for voter approval. In November 2007, the ballot measure was voted down and the new voucher program was never implemented. Utah's existing special needs voucher program was not affected by the vote.

In 2011, Indiana created the nation's first state-wide school voucher program for low income students.

Arguments For and Against

What the Proponents Say: Private school choice proponents contend that when parents can choose where to send their child to school, they will choose the highest performing options. Those schools performing poorly will be forced to either improve or risk losing students and the funding tied to those students. While public school choice policies like charter schools serve a similar purpose, private schools have more flexibility in staffing, budgeting, curriculum, academic standards and accountability systems than even charter schools. This flexibility, supporters argue, fosters the best environment for market competition and cost efficiency.

>What the Opponents Say: Opponents of private school choice raise a number of concerns. They argue shifting a handful of students from a public school into private schools will not decrease what the public school must pay for teachers and facilities, but funding for those costs will decrease as students leave. Some also see government incentives to attend private religious schools as violating the separation of church and state. Others believe the positive effects of school competition on student achievement are overstated by proponents.

What the Research Says

When compared to similar public school students, voucher recipients have generally performed at the same level on reading and math assessments according to the Center on Education Policy's review of school voucher research,

On This Page

History

Arguments For and Against

What the Research Says

What States Have Done

State-by-State Comparison of Voucher Laws

Webinar - School Vouchers: Legal and Constitutional Issues

NCSL Resources

School Choice and Charters

Scholarship Tax Credits

Education Bill Tracking Database

Comprehensive School Choice Policy: A Guide for Legislators

Accountability in Private School Choice Programs

The Fiscal Impact of School Vouchers and Scholarship Tax Credits

Private School Choice for Students with Disabilities

Other Resources

Friedman Foundation for Educational Choice

National Education

though some gains have been found among low income and minority students who receive vouchers.

Other research has found voucher recipients are more likely to graduate from higher school than their public school counterparts. School competition was also found to slightly improve student achievement in some Milwaukee schools that lost students to school vouchers and under Florida's tax credit scholarship program, although other researchers have questioned the ability to tie these improvements to school vouchers rather than other school reforms.

What States Have Done

There are 13 states plus the District of Columbia with school voucher programs. Of those, eight states offer vouchers to special needs students, four states plus D.C. offer them to low income students or students from failing schools, and two offer them to certain rural students. Louisiana and Ohio have programs for both low income and special needs students.

Compare how each state has approached their school voucher laws including which students qualify, how private schools are regulated, and the size of each state's voucher by visiting the [State-by-State Comparison of Voucher Laws](#) webpage.

Webinar - School Vouchers: Legal and Constitutional Issues

June 20th, 2013 - A presentation on the legal and constitutional issues surrounding the issue of school vouchers.

- Josh Cunningham**, Policy Specialist, NCSL - Presents the national policy landscape on private school choice and discusses major US Supreme Court decisions affecting school vouchers
- Anne Sappenfield**, Senior Staff Attorney, Legislative Council, Wisconsin - Explains the Milwaukee and Racine County Parental Choice Programs in Wisconsin and discusses the state-level legal challenges to the program.
- Allen Morford**, Attorney, Legislative Services Agency, Indiana - Explains the Indiana Choice Scholarship Program and the recent Indiana Supreme Court decision upholding the Constitutionality of the program.
- Julie Pelegrin**, Deputy Director, Legislative Legal Services, Colorado - Explains the Colorado Opportunity Contract Pilot Program and the 2004 Colorado Supreme Court decision that ruled the program unconstitutional. She also discusses the nation's first county-initiated voucher program in Douglas County, CO and the current legal challenge to that program.

[Click here for the full podcast of the webinar including slideshow and audio](#)

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**Association:
Vouchers**

Alexandra Usher and Nancy Kober. "Keeping Informed about School

Vouchers: A Review of Major Developments and Research," Center for Education Policy, July 2011

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New voucher plan for special-needs students revives dispute

By Erin Richards of the Journal Sentinel
Jan. 20, 2014

A proposal to allow special-needs students to attend private schools at taxpayer expense is being revived, the latest effort by Republicans in the Legislature to give parents more options outside traditional public schools.

The proposal is a revamped version of a measure that failed in Gov. Scott Walker's 2013-'15 budget.

That measure would have allowed 5% of students with disabilities to attend schools outside their home districts with the help of a taxpayer-funded voucher. As part of a broader compromise, the portion on students with disabilities was dropped in favor of a limited expansion of private school vouchers statewide.

The revived Wisconsin Special Needs Scholarship bill is scheduled to be introduced Tuesday by state Sens. Leah Vukmir (R-Wauwatosa) and Alberta Darling (R-River Hills) and Reps. John Jagler (R-Watertown) and Dean Knudson (R-Hudson).

The primary concern of those who oppose special-needs vouchers is that private schools are not obligated to follow federal disability laws. They point to examples in other states where — in their eyes — underqualified operators have declared themselves experts, opened schools and started tapping taxpayer money.

The operators of a private voucher school in Milwaukee that abruptly closed last month after receiving \$2 million in taxpayer money are now operating a private school in Florida — bolstered by taxpayer funds from that state's special-needs voucher program.

Only seven children are enrolled in the school, and only two are getting taxpayer money, but it's the kind of toehold that worries public-school advocates.

The spirit of the new proposal has revived tensions between familiar foes: Republicans and school-choice advocates who support the bill vs. the state's primary disability rights group and teachers unions that oppose it.

Supporters of the bill believe taxpayer-funded subsidies would allow parents to pursue an education better-suited for their special-needs child, potentially at a private school.

Opponents believe the proposal is another attempt by conservatives to siphon more funding into the private sector. They believe the most complete services for special-needs students are in the public schools.

"It's a battering ram at the public schoolhouse doors," Christina Brey, spokeswoman for the Wisconsin Education Association Council, the largest state teachers union, said Monday.

"The idea that we'll continue to see rewrites on legislation that has been dismissed shows a lack of respect for the will of the parents of special-needs children" who opposed the measure the first time it was introduced, Brey added.

Accountability issues

The revamped bill is likely to require that students first fail to get a public school placement outside their district through the state's open enrollment program before they are eligible for a special-needs voucher they could use in a private school.

But Lisa Pugh, the director of Disability Rights Wisconsin, said parents of children with special needs routinely get denied through open enrollment because districts often have limited open enrollment seats, and even more limited special-education resources.

Pugh said her group is working with the state to improve the open enrollment process for special-needs families. But, she said, placing special needs students in private schools is not the answer.

"We haven't seen support for real accountability in the private school sector that would ensure that students with disabilities would be protected," Pugh said Monday.

There has been a bill in the works for months that would place more accountability measures on the private schools that receive public dollars, but it has not yet been introduced.

In the meantime, private schools do not have to employ certified special education teachers, and they are not subject to the same mandates as public schools under the federal Individuals with Disabilities in Education Act.

Then there's LifeSkills Academy.

The private school participated in the longstanding Milwaukee Parental Choice Program before abruptly closing its doors in December and forcing children to find a new school midyear. Virtually no children there were proficient in reading or math, according to the past two years of state test scores.

But operators Taron and Rodney Monroe opened a new private school in Florida, LifeSkills Academy II, and got approved to accept taxpayer money for students through the state's special-needs voucher program.

A spokeswoman for the Florida Department of Education confirmed that the school in Daytona Beach had received about \$2,700 so far this year for students participating in the state's special-needs voucher program.

Though it's a small amount of public money, critics following the story from Wisconsin were aghast.

"The idea of such a school simply declaring (itself an) expert in special education should send shivers down the spine of every parent of a student with disability-related educational needs," said Joanne Juhnke, a Madison parent and the chair of a grass-roots group called Stop Special Needs Vouchers.

Florida and seven other states offer some kind of program for students with disabilities to attend private schools with public funding.

Supporters of special-needs vouchers, also called special-needs scholarships, say it comes down to flexibility and more options.

They say public funding would help schools receiving special-needs children — especially if they are private schools — have the resources necessary to serve the child adequately.

The American Federation for Children, a national school choice advocacy group, has said the proposal in Wisconsin would give the parents of children with special needs more choices to find the best fit for their child.

Jagler has a daughter with Down syndrome and said last year when the idea was first floated that most parents of special-needs children, including himself, are comfortable with services in the local public schools.

"But the school exerts control in the educational setting, and if they don't go forward with what's expected of them, or if you can't get the right teachers, a lot of times parents are stuck," he said at the time.

Knudson said Monday that the latest bill is more "narrowly tailored" than the previous proposal to help the small population of families who don't feel their children are getting the best services in public schools.

"We started from scratch and really tried to address the concerns we'd heard over the years," he said.

Find this article at:

<http://www.jsonline.com/news/education/gop-legislators-to-revive-proposed-vouchers-for-special-needs-students-b99187865z1-241190261.html>

Check the box to include the list of links referenced in the article.

Indiana public schools fight to keep kids

By Tom Coyne
Associated Press

SOUTH BEND, Ind. — Struggling Indiana public school districts are buying billboard space, airing radio ads and even sending principals door-to-door in an unusual marketing campaign aimed at persuading parents not to move their children to private schools as the nation's largest voucher program doubles in size.

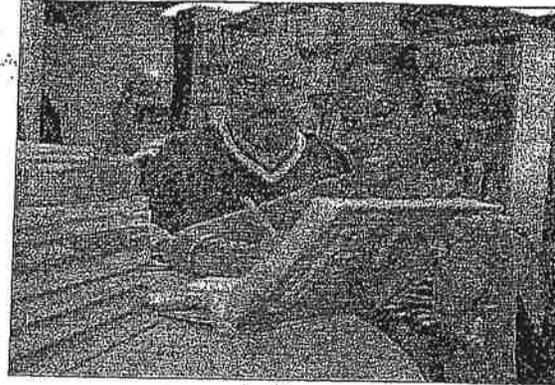
The promotional efforts are an attempt to prevent the kind of student exodus that administrators have long feared might result from allowing students to attend private school using public money. Millions of dollars could be drained from the state's public education system due to any exodus.

The Indiana voucher program, passed by the Legislature in 2011, is the biggest test yet of an idea sought for years by conservative Republicans, who say it offers families more choices and gives public schools greater incentive to improve.

But school officials worry about the potential loss of thousands of students.

A district loses \$5,300 to \$8,400 for each student who leaves.

Unlike voucher programs in other states that are limited to poor families and failing school districts, the Indiana sub-



Phillip Covington and his son, Giovanni, work on a math lesson at Todd Academy in Indianapolis.
MICHAEL CONROY/AP

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dies are open to a much broader range of people, including parents with a household income up to nearly \$64,000 for a family of four.

The median income for an Indiana family of four was just over \$67,000 in 2010, making many of the state's nearly 1 million public school students eligible.

Last year, the effect of the new vouchers was limited because the law passed just four months before the start of school, and many parents were still unfamiliar with the program.

But this year, more than 8,000 students have already applied for vouchers, and there is room for up to 15,000.

The number of participants could grow even more next year, when the ceiling on the number of vouchers is eliminated.

Leaders of poor urban schools, which suffered

the most defections last year, are especially worried.

After 113 of its students departed for private schools last year, the Evansville Vanderburgh district spent \$5,700 to erect two billboards and place ads at bus stops.

In Fort Wayne, public schools lost 392 students to vouchers last year, the most in the state.

That cost the district more than \$2.6 million in state aid and led officials to cut 10 teaching positions at elementary schools.

Principals have gone door to door in neighborhoods to make their case for the city's public schools.

The district has spent \$32,000 on a marketing campaign.

No one knows yet whether the marketing is paying off. Indiana schools won't count students until September.

Cite as 3 EHLR 552:183

JOHN M. GRYMES and JOYCE M. GRYMES, on their own behalf and as parents and next friend of JAMES GRYMES, a minor,
Plaintiffs

v.

KENNETH C. MADDEN, Individually and as Superintendent of Public Instruction and Secretary of the State Board of Education; THE STATE BOARD OF EDUCATION; ALBERT H. JONES, President; RICHARD M. FARMER, Vice-President; ROBERT W. ALLEN, HARRY CAMPER, ELISE GROSSMAN, KENNETH HILTON, and RAYMOND TOMASETTI, members of the State Board of Education, Individually and in their official capacities; RICHARD LINNETT, Individually and as Superintendent of Schools, Marshallton-McKean School District and Executive Secretary of the Marshallton-McKean School Board; THE MARSHALLTON-McKEAN SCHOOL DISTRICT; THE MARSHALLTON-McKEAN SCHOOL BOARD; and BRUCE FURAMN, MARY DIVIRGILIO, LEONARD MROZ, ERNEST LINDSAY, and ROBERT SHELLNBARGER, members of the Marshallton-McKean School Board, Individually and in their official capacities,
Defendants

Civil Action No. 78-105

In the United States District Court for the District of Delaware

May 3, 1979

Stapleton, District Judge

Counsel for Plaintiffs: Brian J. Hartman, Esquire, Community Legal Aid Society, Wilmington, Delaware

Counsel for "State Defendants": Regina M. Small, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware

Counsel for "Local Defendants": Edward W. Cooch, Jr., Esquire, Richard R. Cooch, Esquire, and Jeffrey L. Burtch, Esquire, of Cooch and Taylor, Wilmington, Delaware

Action to review a determination of the State Board of Education that a handicapped child was not entitled, under State law, to private placement with financial aid. Plaintiffs seek a declaratory judgment that the child is a "complex or rare handicapped person" under State law, the costs of tuition, transportation, and related services for the child's attendance at a private school, and costs and attorneys' fees.

HELD, plaintiffs are entitled, since they have received partial tuition reimbursement, to the difference between the reimbursement they have received and the financial aid to which they are entitled under State law, *e.g.*, full tuition, transportation and maintenance. Although hearing officer concluded that child did not meet one prong of definition of "complex or rare handicapped person," he made no finding as to whether the child met the second prong of the definition. The hearing officer was erroneous in his apparent belief that LEA could ascertain whether it could provide suitable program *after* the due process hearing. Because the LEA had the burden of justifying its refusal to approve private placement and because that necessarily required showing that the child could "benefit from the regularly offered free appropriate public educational programs," the hearing officer should have reversed the initial decision and order full tuition reimbursement.

OPINION

The parents of James Grymes brought this action on their own behalf and as parents and next friends of James against the Delaware State Board of Education, its Secretary and members in their official capacities (hereinafter referred to as "the State defendants"), and against the Marshallton-McKean School District and the Marshallton-McKean

School Board, its Secretary and members (hereinafter referred to as "the local defendants"),¹ to review a determination

¹ The New Castle County School District was substituted for the Marshallton-McKean School District and the Marshallton-McKean School Board, its Secretary and members. Doc. No. 28.

of the State Board of Education that James was not entitled to private placement with financial aid under 14 Del. C. § 3124(a) (1977 Supp.). Jurisdiction is predicated on 20 U.S.C. § 1415(e)(2) and (4). The relief they seek is a declaratory judgment that James is a "complex or rare handicapped person," as that term is used in 14 Del. C. § 3124(c) (1977 Supp.), the costs of tuition, transportation and related services for James' attendance at the Beechwood School and the assessment of costs and reasonable attorneys' fees.

Presently before the Court are the plaintiffs' motion, pursuant to F.R.Civ.P. 12(c), for judgment on the pleadings and the defendants' motion for summary judgment. Because I will consider the record of the State proceedings in ruling on the plaintiffs' motion, I will treat it as a motion for summary judgment. See F.R.Civ.P. 12(c); 5 C. Wright & A. Miller, *Federal Practice & Procedure* § 1366 (1969).

Until August 13, 1977, as part of its state appropriations to public education,² the Delaware General Assembly authorized partial tuition reimbursement for handicapped children, including learning disabled children, for whom there was no adequate public school program within reasonable transportation distance of their homes. 14 Del. C. § 1703(f) (repealed). The determination of entitlement to partial tuition reimbursement was to be made by evaluation and placement committees established by the State Board of Education. *Id.*

The evaluation and placement committee of the Marshallton-McKean School District recommended on January 6, 1977 that James Grymes be placed at Beechwood School with partial tuition reimbursement pursuant to Subsection 1703(f). As a part of its recommendation, the committee found that James was learning disabled and that Marshallton-McKean and surrounding districts lacked an adequate program for the child. On July 8, 1977, the local defendants forwarded the committee's recommendation to the State defendants.

On August 13, 1977, the Governor signed Senate Bill No. 353 which, among other things, repealed 14 Del. C. § 1703(f) and enacted 14 Del. C. § 3124 as part of a new subchapter dealing with handicapped persons. Section 3120 of the subchapter provides that the State shall provide handicapped persons with a "free and appropriate public education designed to meet his or her needs." Section 3121 contemplates the development and maintenance of "special classes and facilities [in the public schools] to meet the needs of handicapped persons . . ." As a complement to Section 3121, Subsection 3124(a) provides in pertinent part that "[p]rivate placement with financial aid shall be granted only to a 'complex or rare' handicapped person . . ."

By letter dated August 26, 1977, agents of the local defendants informed the Grymes that James was no longer eligible for private placement with financial aid under the new law. The Grymes challenged that action and, accordingly, a hearing was held pursuant to 14 Del. C. § 3124(b) on November 11, 1977. On November 16, 1977 the hearing examiner issued his ruling, in which he concluded that the decision to deny tuition to the Grymes had been a "proper judgment under the law."³ The Grymes appealed the ruling

pursuant to Section 3124(b) to the State Board of Education. The reviewing officer concluded that James Grymes should not be certified as a complex or rare handicapped person on the basis of "the record before the hearing examiner."⁴

James attended the Beechwood School during its summer program in 1977 and he continued to attend the school during the entire 1977-1978 school year.

On February 10, 1978 the Governor signed Senate Bill No. 402, reenacting the provisions of the repealed 14 Del. C. § 1703(f) for a one year period. Under that legislation, the Grymes received partial tuition reimbursement for the 1977-1978 school year.

It is undisputed that the nonindividual defendants have received Federal financial assistance under Chapter 33 of Title 20 of the United States Code. Having received such financial assistance, they are subject to 20 U.S.C. § 1415, which requires them to afford a due process hearing with written findings of fact and decisions in situations such as the present one. This Court has jurisdiction to review those findings of fact and decisions under 20 U.S.C. § 1415(e)(4), without regard to amount in controversy.

The standard of review in a case such as the present one is very broad:

the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the Court determines is appropriate.

20 U.S.C. § 1416(e)(2).

As discussed earlier, 14 Del. C. § 3124(a) authorizes full tuition reimbursement for "rare or complex" handicapped persons. Section 3124(a) provides a two-prong definition of "rare or complex." A person may be certified as "rare or complex" if he or she either (1) suffers from two or more handicaps⁵ or (2) "is so severely afflicted by a single handicap, that the total impact of the condition means that he or she cannot benefit from the regularly offered free appropriate public educational programs." *Id.*

When the Grymes were advised that their son did not qualify for private placement under this new standard, they invoked their right to a hearing under 14 Del. C. § 3124(b). Under the State regulations governing such hearings it is conceded that the school administration had the burden of

⁴ Doc. No. 16, Tab 5 at p.1.

⁵ The subsection refers to "the defined handicaps." The definitional section of the subchapter, Section 3101, contains no definition of "handicap" *per se*, but it defines "Handicapped person" as a person between the ages of 2 and 20 inclusive "who because of mental, physical, emotional or learning disability problems as defined by the State Board of Education, requires special educational services in order to develop his or her capabilities." Subsection 3101(4) (emphasis added) The Administrative Manual for Programs for Exceptional Children (October, 1977) lists and describes ten conditions contemplated by the repealed Section 1703. Learning disability is one of the conditions listed.

² Chapter 17 of Title 14 of the Delaware Code.

³ Doc. No. 16, Tab B at p.16.

Cite as 3 EHLR 552:183

justifying their refusal to provide full tuition for private placement under 14 Del. C. § 3124(a).⁶

Both the hearing examiner and the State Board of Education concluded that James Grymes did not suffer from two handicaps, such that he would be a "rare or complex" handicapped person within the first prong of the Section 3124(a) definition. The hearing examiner did find, however, and the State Board did not disagree, that James Grymes suffered from a single handicap as that word is used in Section 3124(a).⁷

Despite the fact that James was found to have a handicap, the hearing examiner made no finding as to whether the "total impact" of that condition was such that he could not "benefit from the regularly offered free appropriate public educational programs." Indeed, the hearing examiner could not have made such a finding because no information was supplied to him about the educational programs then available for children having learning disabilities like that of James. The decision that the denial of tuition had been proper was based, not on a factual finding that the District could presently meet James' educational needs, but rather on a conclusion that the District had a duty to attempt to meet those needs and that, if it turned out that the District was unable to do so, it must provide tuition relief.⁸

The hearing examiner appears to have been of the view that someone at some point after the Section 3124(b) due process hearing would determine whether the District could develop a program suitable for James. If so, he was in error. The statutory scheme contemplates that a determination will be made as to whether a child is a "complex and rare handicapped person" as defined in the statute and that, if there is a dispute about that initial determination, a hearing

will be held before an impartial hearing examiner and a final determination made. The supporting regulatory scheme also contemplates that this final determination will be made with reasonable speed. Section 2 of the "Hearing Procedures" provides, for example, that "the hearing process at the local level shall reach a final decision and a copy of findings of fact and decision be mailed to each of the parties or their representatives within 45 calendar days."

The Grymes had a right to tuition aid if their son was a rare and complex handicapped person. They had a right to have that issue determined promptly in a proceeding with certain procedural safeguards. The regulations provided for no such proceeding other than that which the hearing examiner conducted. During that proceeding the District provided no basis for concluding that it had the present ability to meet the special educational needs resulting from James' handicap. Because the District has the burden of justifying its refusal to approve private placement and because that necessarily required showing that James could "benefit from the regularly offered free appropriate public educational programs," it follows that the hearing examiner should have reversed the initial decision and ordered that full tuition be made available.

The defendants claim that, if there was error, it was harmless error because they could and would have proven the availability of a suitable program for James if they had known it was their burden to do so. In support of this contention, defendants have presented an affidavit describing the public education program available to James in the fall of 1977. As has already been indicated, however, Delaware's program for educating handicapped persons contemplates that within a relatively short period of time the District will be called upon to make a showing of what it has to offer the handicapped person. I believe one of the purposes of this requirement is to provide those responsible for a handicapped person's education with a basis for making an informed decision about where and how that education will take place. This objective of the program would be frustrated if the District were permitted to ignore its obligation altogether in the due process hearing and then attempt to justify its actions in court a year and a half later.

The defendants' argument that the error, if any, was harmless because the Grymes intended to send James to private school whether or not they received reimbursement is also unpersuasive. While it is true that the Grymes elected to keep James in private school after receiving notice that tuition reimbursement would be denied, there is nothing in the record to indicate what they would have decided had the District carried its burden of demonstrating an appropriate public program for James.

The relief contemplated by the statute is full tuition reimbursement, transportation and maintenance in accordance with the definitions contained in section 3124(c). The Grymes have received partial tuition reimbursement. They are entitled, therefore, to the difference between the partial tuition reimbursement that they have received and the financial aid to which they are entitled under Section 3124(c).

The parties shall agree on what the dollar figure is and notify the Court, so a final judgment can be entered.

⁶ The Administrative Manual for Programs for Exceptional Children (October, 1977) provides that "[t]he burden of sustaining the district or any other public agency proposal or refusal to act is upon the district and/or agency." *Id.* at 16.

⁷ The hearing examiner concluded that James had "a marked learning disability" and that if a suitable program could not be developed "tuition relief must be made available to the Grymes for Jimmy to continue at the Beechwood School until such time as placement is available in the . . . District."

⁸ The hearing examiner stated;

. . . In the event that the parents decide to return Jimmy to the public schools of the state, the Marshallton-McKean School District must be prepared to offer Jimmy instruction in one of the learning disability classes suitable to his need or to find suitable placement in the New Castle County Consortium. Whichever program is chosen, it shall be done after consultation with the Parents, Mr. and Mrs. John Grymes. If neither placement is available at present and additional units and support are not given to the district through a request to the State Department of Public Instruction, then some tuition relief must be made available to the Grymes for Jimmy to continue at the Beechwood School until such time as placement is available in the Marshallton-McKean School District.



STATE OF DELAWARE
OFFICE OF THE CONTROLLER GENERAL
LEGISLATIVE HALL
P.O. Box 1401
DOVER, DELAWARE 19901

November 8, 1977

Mrs. Phyllis Torres
Lay Advocate for Developmental Disabilities
Community Legal Aid Society, Inc.
913 Washington Street
Wilmington, Delaware 19801

Dear Mrs. Torres:

This will acknowledge receipt of your letter of November 4, 1977.

House Bill No. 300, as amended, the State's Operating Budget for the year ending June 30, 1978, provided a line item appropriation under (95-01-003) Educational Contingency as follows:

Learning Disabilities - Tuition	\$167,411*
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(* Reduced from \$169,000 per compliance with Section 95 of House Bill No. 300, as amended.

Furthermore, the Department of Public Instruction is charged with the administration of this appropriation under the terms and provisions of paragraph (f) of §1703, Chapter 17, Title 14, Delaware Code.

Senate Bill No. 353 was signed by the Governor on August 13, 1977, to be effective July 1, 1977. Section 2 of Senate Bill No. 353 strikes paragraph (f) of §1703, Chapter 17, Title 14, Delaware Code.

According to the Validity Balance Report dated November 4, 1977, no monies have been disbursed from the line item appropriation of \$167,411 for Learning Disabilities - Tuition.

Yours very truly,

Duane O. Olsen
Controller General

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