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Representative Stephanie Bolden
411 Legislative Ave.
Dover, DE 19901

Representative John Kowalko
411 Legislative Ave.
Dover, DE 19901

Representative Charles Potter
411 Legislative Ave.
Dover, DE 19901

RE: House Substitute 1 for House Bill 85

Dear Representatives Bolden, Kowalko, and Potter:

Thank you for your inquiry regarding House Substitute 1 for House Bill 85. We have interpreted your inquiry as being whether the bill comports with the United States Constitution and Delaware Constitution, as the General Assembly obviously has the authority to change laws provided that the new laws meet constitutional muster.

Although it may make exceptions, the Department of Justice generally does not issue formal advisory opinions in response to inquiries from individual legislators, as DOJ is not the legal advisor to individual members of the General Assembly. The House of Representatives retains a number of attorneys who provide that service to House members. In addition, under Title 10, Section 141 of the Delaware Code, the General Assembly may also by resolution ask the Justices of the Delaware Supreme Court to give an opinion in writing with respect to the proper construction of any provision in the Constitution of this State, or of the United States.

For purposes of assisting the House attorneys in providing you with an answer to your question, we do note that the Third Circuit Court of Appeals recently spoke directly to the issue raised in your letter in Doe 1 v. Lower Merion School District, 665 F.3d 524 (3d. Cir. 2011). Federal courts in other parts of the country may have different approaches to analyzing the issue.

Our office's deference to your House attorneys and the Delaware Supreme Court in assessing the constitutionality of H.S. 1 to H.B. 85 should not be misinterpreted as an endorsement of the enrollment preferences established by the bill. The Attorney General concurs with the overwhelming majority of the members of the Enrollment Preferences Task Force who agreed with giving preference in charter school admissions to students who lived within the school district encompassing the charter, but disagreed with giving preference to students who lived within a particular geographic radius of the charter school. Whether or not the views reflected by the majority of the Enrollment Preferences Task Force have sufficient support in the General Assembly to become law is a matter for legislators to determine.

Respectfully,



Matthew Denn
Attorney General