

The Aftermath: Developments From The 2019 Session of The Connecticut General Assembly Affecting the Schools

Education Law Notes

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The 2019 Regular Session of the Connecticut General Assembly concluded on June 5, 2019. The legislature passed significant labor and employment legislation that addressed, *inter alia*, remedies for sexual harassment and employment discrimination and increases in the minimum wage; these bills are summarized in posts on our firm's labor and employment blog, *Working Together*. In addition, our legislature passed significant legislation affecting Connecticut schools, such as changes in 1) the school climate/bullying laws, 2) various "special education" related laws (with respect to "anti-retaliation provisions" and responsibility for Section 504 accommodations at magnet schools), and 3) our expulsions statutes.

The following is a brief description of education bills that were passed by the General Assembly that may be of interest. Please stay tuned to posts on our firm's blogs and for our annual legislative summary/client alert for greater details and updates.

SCHOOL CLIMATE: Public Act 19-166 ("An Act Concerning School Climates") would make several changes and enhancements to the school bullying and safe climate statutes. The bill would create a 33-member "social and emotional learning and school climate advisory collaborative", which will be responsible for, among other things, developing a biennial state-wide school climate survey, a model positive school climate policy, a "plain language" notice of rights and remedies available for parents and guardians (which interestingly makes reference to the right to file a complaint with the State Board of Education under Connecticut General Statutes §10-4b), and a student suicide risk assessment. The bill would require the State Department of Education to post on its website by August 1, 2021 the model policy and school climate survey that the collaborative develops. In addition, boards of education will be required to post on their websites the "plain language" notice of rights and remedies available for parents and guardians by June 30, 2021. The bill (confusingly) requires boards of education, in consultation with the collaborative and the State Department of Education, to provide on the "department" website certain training materials to school administrators regarding bullying prevention and intervention.

The bill changes the definition of bullying to "an act that is direct or indirect and severe, persistent or pervasive, which 1) causes physical or emotional harm to an individual, 2) places an individual in reasonable fear of physical or emotional harm, or 3) infringes on the rights or opportunities of an individual at school. It is

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interesting that the term “student” has been replaced by “individual” and that the bill’s revised definitions of “school climate” and “positive school climate” now make reference to school employees; it is unclear whether this will lead to staff members being able to bring bullying claims. The bill further specifies that when contacting parents and guardians whose children have been involved in bullying, the schools must let the parents know “the results of the investigation” into the alleged bullying incident. Schools will also be required to inform these same parents or guardians that they may refer to the “plain language” notice of rights and remedies on their websites.

GRADUATION DATES AND SCHOOL CALENDARS: Public Act 19-195 (“An Act Concerning The Establishment Of A Firm Graduation Date And The Date For The First Day Of School Sessions”) would allow boards of education to establish a firm graduation date for students in grade twelve for that school year which at the time of such establishment provides for at least 180 days of school.

PHYSICAL EXERCISE AND “PLAY”: Public Act 19-173 (“An Act Concerning The Improvement Of Child Development Through Play”) would supplement the current physical exercise requirement for elementary schools students by providing that local or regional boards of education are also permitted (but not required) to include an additional amount of time, beyond the 20 minutes required for physical exercise, devoted to undirected play during the regular school day. The bill would also create a task force to study issues relating to and the feasibility of including time devoted to undirected play during the regular school day in public elementary schools, with the task force to then submit its findings and recommendation to the General Assembly by January 1, 2020.

SCHOOL COUNSELORS: Public Act 19-63 (“An Act Concerning A Comprehensive School Counselor Program”) would require the State Board of Education, in collaboration with the Connecticut School Counselor Association, to adopt guidelines for a comprehensive school counseling program by July 1, 2020. The guidelines would “ensure that all students have access to a comprehensive school counseling program that provides academic, social-emotional and post-secondary and career readiness programming by a certified school counselor with adequate training.”

HOMELESS STUDENTS: Public Act 19-173 (“An Act Concerning Homeless Students’ Access To Education”) would codify the protections that homeless students receive under the federal McKinney Vento and state student residency statutes. The bill would provide that with respect to a school district denying school accommodations due to a claim that the student is homeless, the party claiming ineligibility based on residency shall have the burden of proving that the party denied schooling is not a homeless child by a preponderance of the evidence. The bill would expressly provide that whenever a homeless child’s residency appeal is denied by a local or regional board of education, the child shall continue in attendance or be immediately enrolled in the school selected by the child in the school district. In those circumstances, the board of education shall 1) provide the homeless child (or his/her parent or guardian) with a) a written

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explanation of the reasons for the denial of accommodations that is in a manner and form understandable to the child or parent or guardian, and b) information regarding the right to appeal the decision of the denial, and 2) refer the child (or his/her parent or guardian) to the school district's McKinney Vento/homeless student liaison.

CURRICULUM: The General Assembly has passed several curriculum related bills. **Public Act 19-12 (“An Act Concerning The Inclusion Of African-American Studies In The Public School Curriculum”)**, which was signed by the Governor on June 21, 2019, adds African-American and black studies and Puerto Rican and Latino studies to the required programs of study for public schools and requires all boards of education to include these topics in their curriculum commencing with the 2021-22 school year. The title of **Public Act 19-128 (“An Act Concerning The Inclusion Of Computer Science Instruction In The Public School Curriculum, Programs Of Teacher Preparation And In-Service Training Programs For Teachers”)** largely speaks for itself.

“ACCOUNTABILITY”: **Public Act 19-130 (“An Act Concerning The Opportunity Gap”)** would, among other things, expand the use of priority school district grants so as to include scientifically based reading research and instruction, numeracy instruction, and support for chronically absent students and reducing the district chronic absenteeism rate. For a priority school district that does not see an improvement in its accountability index score, the Commissioner may then develop a plan for expenditure of such grants, including the use of grants the purposes set for the above. This bill requires the Connecticut Technical Education and Career System [“CTECS”] to identify and develop a list of careers in critical construction trades that are essential to the needs of the state. The CTECS are also required to a plan to create or expand existing programs to meet the identified needs.

MINORITY TEACHER RECRUITMENT AND EQUITY: **Public Act 19-74 (“An Act Concerning Minority Teacher Recruitment And Retention”)** would require the Minority Teacher Recruitment Policy Oversight Council, in consultation with the Minority Teacher Recruitment Task Force, to develop and implement strategies (and utilize existing resources) to ensure that at least 250 new minority teachers and administrators, of which at least 30% are men, are hired and employed by local and regional boards of education each year in the state.

The Act would require the Commissioner of Education 1) to enter into agreements with other states concerning educator certification reciprocity, and 2) establish or join interstate agreements to facilitate the certification of qualified educators from other states.

The Act would revise the minority educator loan reimbursement grant program administered by the Office of Higher Education so as to increase the amount such person could receive under the program. The Act would also extend access to the Connecticut Housing Finance Authority's teacher mortgage assistance program to those 1) who graduated from a public high school in an educational reform district, and 2) who graduated

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from a historically black college or university or a Hispanic-serving institution. The Act would also expand the exception to the provision allowing re-employment for one year (without the usual limitation on earnings) of retired teachers to such individuals.

The Act provides that the State Board of Education shall allow an applicant for certification (or a teacher) seeking to teach in a “subject shortage area” to substitute achievement of a satisfactory score (as opposed to the current “excellent” score requirement) on any appropriate State Board of Education approved subject area assessment for the subject area requirements for certification. The Act also provides that any person who held a valid teaching certificate issued by the State Board of Education and such certificate has expired shall not be required to successfully complete the subject matter assessment in the endorsement area for which such person is seeking renewal or advancement of such certificate if such person has either 1) successfully completed at least three years of teaching experience or service in a public school or a nonpublic school under a valid teaching certificate issued by the State Board of Education or issued by another state in the past ten years in such endorsement area, or 2) holds a master's degree or higher in the subject area for which such person is seeking renewal or advancement of such certificate.

This Act further amends the **teacher certification** requirements by authorizing the State Board of Education to issue an initial educator certification to an applicant who holds a bachelor's **or advanced** degree from a higher education institution that is regionally accredited **or has received an equivalent accreditation** and completes an approved teacher preparation (or alternate route to certification) program. The Act allows an applicant to substitute either a satisfactory score on a subject area assessment or relevant advanced coursework in place of an appropriate subject area major, rather than having to have both in order to substitute for the typical subject area major requirement.

Public Act 19-100 (“An Act Concerning The Inclusion Of Instruction In Culturally Responsive Pedagogy And Practice In The Preservice Training, Professional Development And In-Service Training Provided To Teachers”). The Act would require a person seeking an initial educators’ certificate to complete a course providing instruction in “culturally responsive pedagogy and practice”; in addition, any program of school and district leadership preparation leading to professional certification would have to include instruction in “culturally responsive pedagogy and practice”. The Act would also mandate the inclusion of such instruction in professional development and in-service training provided to teachers.

BACKGROUND CHECKS/“MISCELLANEOUS”: Public Act 19-91 (“An Act Concerning Various Revisions And Additions To The Education Statutes”) would revise the laws concerning employee fingerprinting and background checks so as to cover any school or school district authorized to receive national criminal history record information from the Federal Bureau of Investigation, and would explicitly include as such covered “eligible school operators” local and regional boards of education, the Technical Education and Career System, state or local charter schools, cooperative arrangements and inter-district magnet school operators

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(other than those operators who are a third-party not-for-profit corporation approved by the Commissioner of Education). This Act would require applicants seeking a position with these schools to identify specifically any criminal charges that are pending against them. This Act would provide that even where a regional educational service center arranges for such finger printing, it is the State Police Bureau of Investigation that will directly provide the results of the background check to the school. The Act clarifies that nothing in the background check statutes should be construed as causing a school to disseminate the results of any national criminal history records check (as opposed to information regarding the applicant's eligibility for employment or prior involvement in abuse or neglect). In addition to "eligible school operators", this Act would require background checks for employees of a "nongovernmental school operator", which is defined as an operator of an interdistrict magnet school that is a third-party not for-profit corporation approved by the Commissioner of Education, a state or local charter school, an endowed or incorporated academy approved by the State Board of Education, a private special education facility approved by the State Board of Education, or the supervisory agent of a nonpublic school. The Act would require the State Department of Education to conduct a study concerning the authorization of towns and cooperative arrangements to be considered a "local education agency" for purposes of regional cooperation and in order to maximize efficiencies and cost-savings without establishing a regional school district.

This Act would require the State Department of Education to update the health education component of the Healthy and Balanced Living Curriculum Framework to include "sexual harassment and assault, adolescent relationship abuse and intimate partner violence, and human trafficking and commercial sexual exploitation". The Act would extend the term limits for school governance council voting members from two terms to four terms. This Act would require each local and regional board of education to make its grade level curriculum available on its website by August of each year (beginning with the 2020-2021 school year). Finally, and very importantly, this Act would amend the **expulsion statutes** by providing that an expulsion for on school grounds activity due to a violation of school policy may only take place if there also is a serious disruption of the educational process.

SPECIAL EDUCATION: Public Act 19-184 ("An Act Concerning Various Issues Relating To Special Education") would prohibit a board of education from disciplining or otherwise punishing any teacher, administrator or school paraprofessional who 1) discusses or makes recommendations concerning the provision of special education and related services for a child during a planning and placement team meeting, or 2) discusses or makes such recommendations to the parent or guardian (or the child) outside of a planning and placement team meeting. The bill would establish a working group to study issues relating to the gap of services for children three to five years of age, during the period in which such children are no longer eligible for services provided by the birth-to-three program, and not yet eligible to receive special education and related services until such children are enrolled in kindergarten. The working group would review and evaluate the eligibility criteria for special education that creates a gap and prevents children from experiencing a continuity of services.

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The bill would revise statutory provisions regarding the language and communications plans for hearing impaired students. The bill would expressly provide that such plans shall not only be included in individualized education programs, but also in accommodations plans developed pursuant to Section 504 of the Rehabilitation Act. The bill would mandate that such language and communications plans ensure procedures for alerting the child of an emergency situation and for ensuring that the specific needs of the child are met during the emergency. The bill would 1) require school security and safety plans for each school to include provisions relating to emergency communication plans for students identified as deaf, hard of hearing or both blind or visually impaired and deaf, 2) revise the school safety infrastructure criteria for school building projects to include provisions relating to such emergency communication plans for such students, and 3) require the State Department of Education to establish a working group on language assessments (and programs and interventions for such students).

The bill would apply the same division of responsibility between interdistrict magnet schools and sending school districts for special education students to Section 504 students, with the sending districts responsible for the additional “reasonable” costs for educating a student, but the magnet school responsible for ensuring that the student receives the services mandated by the Section 504 plan (whether the services are provided by the magnet school or the sending school district).

Furthermore, the bill would require boards of education to electronically notify parents or guardians if their child has been identified as gifted and talented (along with contact information with respect to, among other things, person responsible at the school district and the State Department of Education for gifted and talented students. The bill would require the State’s IEP Advisory Council to study the authorization of private therapists to provide special education and related services directly to students at school during the regular school day. The bill would require any private special education provider that has a contract with a local or regional board of education to inform the board about complaints of mistreatment of students against the provider.

Public Act 19-49 (“An Act Concerning Transitional Services For Children With Autism Spectrum Disorder”) which was signed by the Governor on June 21, 2019 and takes effect on July 1, 2019, amends the state special education laws so as to explicitly provide that commencing not later than the date on which the first individual education program [“IEP”] takes effect for a child who is at least 14 years of age and diagnosed with autism spectrum disorder, such IEP shall include 1) “appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills”, and 2) “the transition services, including courses of study, needed to assist a child in reaching those goals”. The Act states that nothing in it shall be construed as requiring the Department of Rehabilitation Services to lower the age of transitional services for a child with disabilities from 16 to 14 years of age.

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YES-MORE TASK FORCES AND STUDIES: The General Assembly approved bills that continue to display legislative affinity for task forces and further study of issues. For example, **Special Act 19-8 (“An Act Establishing A Task Force To Analyze The Implementation Of Laws Governing Dyslexia Instruction And Training”)** would establish a task force to analyze and make recommendations on issues relating to the implementation of the laws governing dyslexia instruction and training in the state. Furthermore, **Public Act 19-68 (“An Act Establishing The Connecticut Apprenticeship And Education Committee”)**, which was signed by the Governor on June 26, 2019 and took effect upon passage, modifies the Commissioner of Education’s committee to coordinate education for public school students on manufacturing careers by: 1) renaming it the “Connecticut Apprenticeship and Education Committee;” 2) broadening the Committee’s scope to include additional industries, including insurance, health care, financial technology, biotechnology, STEM, construction trades, hospitality industries, and other appropriate industries; 3) revising the Committee’s membership; and 4) modifying the information included in the Committee’s required annual report to the General Assembly and extending the first reporting date to July 1, 2020.

EARLY CHILDHOOD: **Public Act 19-34 (“An Act Concerning The Staff Qualifications Requirement For Early Childhood Educators”)**, which was signed by the Governor on June 26, 2019 and took effect on July 1, 2019, again delays and revises the imposition of certain qualifications for early childhood educators. **Public Act 19-61 (“An Act Requiring The Office Of Early Childhood To Develop An Early Childhood Educator Compensation Schedule”)** would require the Office of Early Childhood to 1) develop an early childhood educator compensation schedule for early childhood program providers and 2) submit this schedule with recommendations to the General Assembly by January 1, 2021. **Public Act 19-121 (“An Act Implementing The Recommendations Of The Office Of Early Childhood”)** is an omnibus bill that would implement various recommendations of the Office of Early Childhood; we will provide greater detail as events unfold.

MISCELLANEOUS: As its title would suggest, **Public Act 19-31 (“An Act Concerning The Legislative Commissioner’s Recommendations For Technical Revisions to the Education and Early Childhood Statutes”)**, which was signed by the Governor on June 26, 2019 and took effect upon passage, makes technical changes to various education and early childhood related statutes (including the removal of obsolete references). **Public Act 19-139 (“An Act Concerning Education Issues”)** repeals an expedited teacher tenure provision for teachers or administrators who were previously tenured in one district and subsequently transfer into a priority school district. The bill further establishes a working group to study issues related to implementing the pre-service teacher performance assessment known as “edTPA,” which was adopted by the State Board of Education. Finally, the bill will continue to permit “non-Sheff” magnet schools that are not in compliance with the state’s minority student enrollment requirements to continue to be eligible for magnet school operating grants for the 2019-2020 and 2020-2021 fiscal years if such a school submits a compliance plan to the Commissioner of Education (and the Commissioner approves it). **Public Act 19-122 (“An Act Concerning An Exemption From The Licensing Requirements For Child Care Services”)** would amend the statute that exempts certain child care services from state licensing requirements if they

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are administered by, among others, public school systems and municipalities so as to also include services provided by Leadership, Education, and Athletics in Partnership, Inc., which is a New Haven based nonprofit youth development organization.

Public Act 19-164 (“An Act Concerning Social Workers”) would prohibits any person one from using the title “social worker” (or any associated initials) or advertising services as a social worker unless he or she 1) has a bachelor’s or master’s degree in social work from a program accredited by the Council on Social Work Education [“CSWE”]; 2) a doctorate in social work; or 3) if educated outside of the U.S. or its territories, completed an education program CSWE deems equivalent. The bill exempts from the prohibition 1) state employees with the title social worker and 2) municipal employees with this title hired before July 1, 2019. In addition, any person who holds a professional educator certificate issued by the State Board of Education with a school social worker endorsement, can continue to use the title of school social worker to describe such person's activities while working in a public or nonpublic school in our state.

Public Act 19-146 (“An Act Requiring The Provision Of Information Concerning Domestic Violence Services And Resources To Students, Parents And Guardians”) would require the State Department of Education to publish information that it receives from the Judicial Branch’s Office of Victim Services concerning services and resources available to victims of domestic violence on its website and disseminate it to local and regional school districts. In turn, these school districts would be required to provide such information to 1) any students, parent or guardian who expresses safety concerns at home due to domestic violence and 2) any parent or guardian of a student who authorizes the transfer of such student’s education records to another school.

Public Act 19-103 (“An Act Establishing A Pilot Program For The Expansion Of Advanced Manufacturing Certificate Programs”) would require the Board of Regents for Higher Education (on or before January 1, 2020) to establish a pilot program for the expansion of the advanced manufacturing certificate programs to public high schools. The Board of Regents shall establish the criteria for selecting the schools, which shall include, among other things, a focus on economically distressed communities and areas where there is a need for a workforce trained in advanced manufacturing. The Board of Regents may not select more than one public high school per year in which to establish such a program. Any local or regional board of education, separately or jointly may apply to participate in the pilot program; each board of education selected to participate in the program shall then enter into a memorandum of understanding for the operation of the advanced manufacturing certificate program with the Board of Regents. Beginning in the fall of 2020, each advanced manufacturing certificate program shall enroll 1) public high school students in grade eleven or twelve from the school districts that have entered into the memorandum of understanding to simultaneously earn high school credits from the public high school and college credits and an advanced manufacturing certificate from the regional community-technical college or independent institution of higher learning chosen by the Board of Regents to operate the program, and 2) adults for classes during the evening and

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weekend hours to earn such an advanced manufacturing certificate. The Board of Regents for Higher Education shall report annually to the General Assembly on the operation and effectiveness of the pilot program and any recommendations to expand the program.

AND FINALLY, “THE BUDGET IMPLEMENTER”: Whenever a budget is enacted, the General Assembly must pass a bill to “implement” the budget (i.e., the so-called “Implementer”). The 2019 Implementer, which is 580 pages long, and is officially entitled **Public Act 19-117 (“An Act Concerning The State Budget For The Biennium Ending June Thirtieth, 2021, And Making Appropriations Therefor, And Implementing Provisions Of The Budget”)**, contains many provisions that will affect Connecticut’s schools (besides just the budget). The following is a cursory description of significant related highlights contained in this year’s Implementer.

Choice Programs And Equity: The Act would increase the per pupil funding for interdistrict magnet school programs by 2%. It would also extend the Commissioner of Education’s authority to award magnet school transportation grants.

Unexpended School Budget Funds: The Act would increase the amount of unexpended education funds that a town could deposit into a non-lapsing account at the end of each fiscal year to 2% of the total budgeted appropriation for education (from the current 1%). This Act would also require that any expenditure of funds from this account be authorized by the local board of education of the town and be for educational purposes only.

Minimum Budget Requirement: The Act would extend the minimum budget requirement [“MBR”] through the 2019-2020 and 2020-2021 fiscal years. The Act would modify the MBR by allowing towns to use a five-year look-back period for reductions in student enrollment for purposes of permitted reductions to the MBR. The Act would also permit a school district that has 1) elected to act as a self-insurer, 2) experienced a loss incurred as a result of one or more catastrophic events during the prior fiscal year, and 3) increased its budgeted appropriation for education during said prior fiscal year as a result of such loss to NOT include the amount of such increase in the calculation of its budgeted appropriation for education for the subsequent fiscal year. The Act further requires the State Department of Education to 1) compile a MBR calculation worksheet for each school district, 2) provide the worksheet to the appropriate school district, and 3) make each worksheet available on its website. The Act also provides waivers for the Towns of Plymouth and Portland for meeting the MBR in 2018-2019 and reduces the penalty for towns that failed to meet the MBR in 2018-2019 (with such towns having a year to make up the shortfall, and if even if they do not, the penalty will merely be the amount of the shortfall, as opposed to twice the shortfall).

Posting Of Budget Information: The Act requires each local and regional board of education to each quarter 1) post its current and projected expenses and revenue on its website, and 2) submit a copy of such expenses and revenue to the municipal legislative body or board of selectmen, as applicable.

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Regionalization Task Force: The Act establishes a 32-member task force to study ways to encourage greater and improved collaboration among the state and municipal governments and regional bodies. Any recommendations from the task force must be optional for municipalities. Among other things, the task force shall exam 1) the functions, activities, or services that municipalities currently perform individually but that the State's Office of Policy and Management might perform more efficiently on behalf of those willing to opt in; 2) the functions, activities or services currently performed by the state or municipalities that may be provided in a more efficient, high-quality, cost-effective, or responsive manner by regional councils of governments, regional educational service centers, or other similar regional bodies; 3) cost savings of government services, including joint purchasing, for municipalities and their respective local or regional school districts; and 4) cost savings through the sharing of government services, including joint purchasing, among municipalities.

Grants: The Act would renew numerous education grants provided by statute (e.g., *Sheff* magnet schools, no nexus and excess cost special education grants, vo-ag grants), although it would accelerate the ECS rate adjustment for certain towns. In addition, certain of these grants remain subject to "available appropriations."

"Dalio Foundation" And Funding: The Act establishes "The Partnership for Connecticut, Inc." as a nonprofit corporation. The Act requires that the corporation be funded in 2019-2020 with 1) \$20 million from the philanthropic enterprise and (2) upon confirmation of this contribution, \$20 million from the state. The same funding levels will be maintained through the 2023-24 fiscal years. This corporation will be subject to Connecticut statutory provisions governing nonprofit corporations. In an apparent attempt to avoid the Freedom of Information Act, the Act specifies that the corporation must not be construed 1) as a department, institution, public agency, public instrumentality, or political subdivision or 2) to perform any governmental function. The main purposes of this "philanthropic enterprise" are to 1) strengthen public education in Connecticut, 2) support financial inclusion and social entrepreneurship, (2) provide a philanthropic designee of the enterprise, 3) promote upward mobility in the state by connecting at-risk high school-aged youth and young adults to educational and career opportunities; 4) support economic development in under-resourced communities through microfinance and social entrepreneurship, 5) promote and expand on the collaboration between the state and one or more philanthropic or nonprofit entities designated by the enterprise to carry out the bill's purposes; and 6) provide additional resources for the above purposes..

Technical Education: This Act would delay by two years the "independence" of the Technical Education and Career System from the State Department of Education.

Preschool/Early Childhood: The Act also would require the Office of Early Childhood to conduct a study on enrollment and availability of slots in preschool programs.

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Minority Educator Incentives: The Act establishes the minority educator loan reimbursement grant Program as part of the existing Connecticut minority teacher incentive program the Office of Higher Education administers. The Act also expands the existing Connecticut minority teacher incentive program to provide grants, within available appropriations, to minority students enrolled in alternate route to certification programs.

Teacher Retirement: The Act would create a Connecticut Teachers' Retirement Fund Special Capital Reserve Fund in order to provide further security to Fund bondholders. Finally, while this summary is not meant to discuss the many changes to various taxes and fees, it is worth noting that the Act would delay for two years the scheduled increase in the **teacher pension** income tax exemption from 25% to 50.

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