



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904  
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June 26, 2018

Department of Education  
Office of the Secretary  
Attn: Regulation Review  
401 Federal Street, Suite 2  
Dover, DE 19901

**RE: 21 DE Reg. 941/14 DE Admin. Code 225 [DOE Proposed Anti-Discrimination Regulation (June 1, 2018)]**

Dear Secretary Bunting:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to provide guidance to school districts and charter schools (collectively "schools" or "districts") on establishing anti-discrimination policies. Council supports the new regulations and would like to share the following observations.

First, Section 4.1, end of the section, currently reads ". . . assisting students with a disability." It should read ". . . assisting students with disabilities."

Second, section 10.1 on the formal student complaint procedure envisions a school staff member who will "address the formal student complaint at each level" and a "final decision-maker at the school or School District levels." 10.1.2.3.2. It is unclear whether the final decision-maker must be at the district level in school districts or whether the school or district can decide to have that be a school-level position. For charter schools not in districts, the final-decision maker would have to be a school-level position. It can be extremely problematic to have school employees handling investigations about discrimination, and making the final decision-maker a district-level position (when possible) does not remove the problem.

If there has been discrimination, the school may have financial liability. This is problematic. Having school staff handle the investigation may be acceptable if the perpetrator is another student (because the school might not have liability unless there was a failure to address a known problem), however, it creates a conflict of interests if the alleged perpetrator is an employee of the school. The school employee, if he or she finds that there has been discrimination by another employee, is opening the school up to a lawsuit. This creates an incentive to find that there was no discrimination. Even if the employee is being perfectly fair, the relationship would inherently taint any finding that there was no discrimination. Using staff from the school district is better, but still does not really fix the problem, because the liability flows to the district as well. In charter schools without a district, there is no way to even limit the appearance of the conflict of interest.

Third, also, in section 10.1.2.3.3, Council would like the DOE to consider shortening the sentence so that it is clearer. Council would suggest the following re-write:

*A provision that the submitted formal student complaint shall be addressed by the school. If requested by the student, a conference with the student and parent will be held within five (5) school days of its receipt. If a conference is held, a written determination shall be issued within five (5) school days after the conference.*

Fourth, in section 10.2, the regulation contemplates the posting of information on a website for the 2018-2019 school year because the regulations go into effect in the middle of the year. Hard copies are to be provided upon request. This is, presumably, to avoid the expense of reprinting handbooks or codes of conduct in the middle of the year. As always, care should be taken to ensure that persons without access to the internet are informed about the new regulations. Also, Council requests that all versions of the information posted, to include the online version, be checked for accessibility and be provided in multiple languages.

Thank you for the opportunity to share our observations with you. Please contact me or Wendy Strauss at the GACEC office if you have any questions on our comments.

Sincerely,

Terri A. Hancharick  
Vice Chairperson

TAH: kpc

CC: Dr. Dennis L. Loftus, State Board of Education  
Mary Ann Mieczkowski, Department of Education  
John Wolgamot, State Board of Education  
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