



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Lookerman St., Dover, DE 19904
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

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. 947/14 DE Admin. Code 608 [DOE Proposed Unsafe School Options 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 amend the Unsafe School Choice Option Policy. Council **does not support** the portion of the proposed amendment that changes the definition of "unsafe incidents" nor do we support changes that would no longer guarantee students the right to move to a school that "is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring." We would like to share the following observations.

In Delaware, a school is "persistently dangerous" if it "has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years." 14 *Del. Admin. C.* 608. The current version of 608 defines "unsafe incidents" as any of the following: (1) the out-of-school suspension or expulsion of a student for a gun free schools violation; (2) the out-of-school suspension or expulsion of a student for the commission on school property of a crime that must be reported, pursuant to 14 *Del. C.* § 4112; (3) a non-student commits a crime on school property that must be reported, pursuant to 14 *Del. C.* § 4112; (4) the out-of-school suspension or expulsion of a student for terroristic threatening. The threshold for schools to qualify as unsafe is too high using the current formula. Council would ask that the DOE reconsider the numbers used and the three year timeframe.

The proposed amendment would remove suspension or expulsion for terroristic threatening from the definition of unsafe incidents. The synopsis to the proposed regulation states that the definition of terroristic threatening is being removed because 14 *Del. C.* § 4112 no longer includes it as a mandatory report offense. However, changes to 14 *Del. C.* § 4112 do not require terroristic threatening be removed from the definition of “unsafe incidents.” It should be noted that no Delaware code could be located that defines “unsafe incidents.” The present version of 14 *Del. Admin. C.* 608 makes it clear that unsafe incidents are not, by definition, only mandatory report crimes.

The definition of unsafe incidents means *any* of the following:

- The school suspended or expelled a student for a gun free schools violation; *or*
- The school suspended or expelled a student for a crime committed on school property which is required to be reported under 14 Del.C. §4112; *or*
- The school reported a crime committed by a non-student on school property that is required to be reported under 14 Del. C. § 4112; *or*
- The school suspended or expelled a student for terroristic threatening as that term is defined in 11 Del. C. § 621.” (emphasis added)

In other words, an unsafe incident may be expulsion or suspension for mandatory report crimes *or* it may be expulsion or suspension for terroristic threatening. Furthermore, no other provision in the amendment compels a reading that limits “unsafe incidents” to those involving suspensions or expulsions for mandatory report offenses. “Persistently Dangerous Schools” are identified by DOE “using data reported to it pursuant to the provisions of 14 Del. C. § 4112, 14 *DE Admin. C.* 601, and any expulsion and suspension data as required by the Department.” 14 DE Admin. Code 608.2.1 (emphasis added). 14 DE Admin. C. 601 requires school districts and charter schools to report “incidents of misconduct,” including terroristic threatening to DOE.

The removal of terroristic threatening could have a large impact on the number of “unsafe incidents” that occur. During the 2016-2017 school year, 315 terroristic threatening incidents with a student as the victim occurred throughout the school districts in the State. There were 292 terroristic threatening incidents with an employee as the victim. Finally, there were 695 total mandatory report incidents. In total, 607 terroristic threatening incidents occurred, which almost equals all mandatory report crime incidents that occurred. Removing terroristic threatening from the definition of “unsafe incidents” might give schools the ability to expel or suspend students without having to worry about being labeled a persistently dangerous school. Please note it is not possible to determine how many of these incidents qualify as “unsafe incidents” because the data does not show how many of these incidents resulted in out-of-school expulsions or suspensions. An incident would not qualify as an “unsafe incident” if there were no out-of-school expulsion or suspension unless it was committed by a non-student. *See* 14 DE Admin. Code 608. Removing terroristic threatening might also encourage school districts to utilize out-of-school suspensions and expulsions to address terroristic threatening incidents because they will not have to worry about being labeled a “persistently dangerous school.”

Under the proposed amendment, a student who is choosing to leave a school that is persistently dangerous or who is leaving because they were the victim of a violent felony would no longer be guaranteed the option to move to a school that “is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.” This is problematic as it may make it more difficult for a child in an unsafe school to leave that school.

Lastly, both words in the term “Safe School” should be capitalized throughout the document, not just the word “Safe...”

Thank you for the opportunity to share our observations and opposition 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
Mr. Chris Kenton, Professional Standards Board
Terry Hickey, Esq.
Valerie Dunkle, Esq.