



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Lookerman St., Dover, DE 19904
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September 27, 2019

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

RE: 23 DE Reg. 149/14 DE Admin. Code 611 [DOE Proposed Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems Regulation (September 1, 2019)]

Dear Secretary Bunting:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to amend 14 DE Admin C. 611, which defines student eligibility for Consortium Discipline Alternative Programs (CDAP). Council supports the proposed changes; however we would like to share the following observations and requests for additional information.

First, the present version of Section 611 and the proposed version do not allow students into CDAP who have been expelled or suspended pending expulsion for certain behaviors "equivalent to or greater than" the criminal offenses listed in the regulation. The "equivalent to or greater than" language is in the current regulation. Council would like additional information on how it is decided whether an incident is equal to or greater than one of the offenses listed.

Second, the proposed version of Section 611 eliminates from the list of offenses 16 *Del. C.* § 4753A, trafficking in marijuana, cocaine, etc., which was repealed. The proposed regulation also adds drug dealing offenses (16 *Del. C.* §§ 4752 – 4754) to the list of disqualifying behaviors. Since 16 *Del. C.* §4754 does not specify a minimum amount of drugs that one must sell, it may be that a student whose behavior is "equivalent to" selling a very small amount of drugs will be excluded from this program. Council is concerned about limiting the available educational opportunities for students in this situation.

Third, Council would like more information about the proposed change to Section 2.2. According to 14 *Del. C.* § 1604(8), CDAP placement is presumed appropriate for a student who is 16 years old or younger, and who is expelled or suspended pending expulsion so long as

another statute or regulation does not render the student ineligible. The school district or charter school has the burden of establishing that CDAP is not an appropriate placement. Id. If the district cannot show by a preponderance of the evidence that placement is inappropriate, the student shall be placed in CDAP. Id. The current regulation states that the school district must consider whether there is space available in the program and the student's age. The proposed amendment adds two additional factors: the educational and behavioral modification needs of the student. Since students with disabilities often require these modifications, Council would ask that DOE provide more information about the addition of these factors and what, if any, anticipated effects there will be for students with disabilities.

Thank you for the opportunity to share our support of the proposed amendments and our comments with you. Please contact me or Wendy Strauss at the GACEC office if you have any questions.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc

CC: Whitney Sweeney, State Board of Education
Mary Ann Mieczkowski, Department of Education
Chris Kenton, Professional Standards Board
Jenna Ahner, State Board of Education
Valerie Dunkle, Esq.