



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Lookerman St., Dover, DE 19904  
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November 26, 2019

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

**RE: 23 DE Reg. 353/14 DE Admin. Code 8511 [DOE Proposed Comprehensive Health Education Program Regulation (November 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. Code 851, which requires school districts and charter schools [hereinafter: school districts] to establish a comprehensive health education program and outlines the requirements for such program. The regulation is being amended to include definitions related to drug use prevention and sexual consent to align with Senate Bill 78 of the 150<sup>th</sup> General Assembly [hereinafter SB 78], and to indicate that the hours of health education included within are minimum requirements. Council supports the proposed amendments, but would like to share the following observations and recommend the following changes.

First, in section 1.0 Definitions, Council would ask that the DOE revisit the definitions of "Evidence-based, Evidence-informed and Promising Practices, and separate the definitions of evidence-based and evidence-informed.

The Every Student Succeeds Act ("ESSA") requires that school districts shall "develop, implement, and evaluate comprehensive programs and activities that may include... drug and violence prevention activities and programs that are *evidence based*[" 20 U.S.C. §7118(5) (*emphasis added*). This can include such programs as those outlined in the proposed amended regulation sections 2.1.7 and 2.1.8. In addition to the ESSA, the Individuals with Disabilities Education Act (IDEA) references nearly 30 years of research and experience demonstrating that "educating children with disabilities can be made more effective by...including the use of scientifically based instructional practices, to the maximum extent possible." 42 U.S.C. §1400(c)(5)(E).

‘Evidence-based’ or ‘Evidence-informed’ means strategies, activities, or approaches, which have been shown through scientific research and evaluation to be effective at preventing or delaying a negative outcome. ‘Evidence-informed’ is very similar, but in some instances, appears to provide more flexibility regarding the nature of the evidence and its use; therefore, Council would suggest separating the two definitions.

‘Promising Practices’ encompasses programs and strategies that are not yet evidence-based because there is not yet enough research, data, or replication to show that the particular program can have those positive outcomes generally. However, in amended sections 2.1.7 and 2.1.8, “evidence-based” and “evidence-informed” is further defined to include “*Promising Practices* and components such as guest speakers, those with lived experience and may be taught through other subjects.” (*emphasis added*). Because Promising Practices does not include programs that are evidence-based or evidence-informed as defined in amended section 1.0, Council recommends the DOE not include “Promising Practices” in the definition of evidence-based or evidence-informed practices and strike the references to “Promising Practices” from the proposed amendment. The duplicative sentence in 2.1.7 and 2.1.8 would then read:

*“Evidence-based may include components such as guest speakers, those with lived experience, and may be taught through other subjects.”*

Although there are currently a smaller number of evidence-based programs available to teach students about consent, they do exist and should be used by Delaware school districts. One example is Illinois-based Rape, Advocacy, Counseling & Education Services (RACES). RACES is an organization that has developed evidence-informed sexual violence and prevention programs that are accessible to students in grades K-12 ([cu-races.org/education](http://cu-races.org/education)). For violence and drug prevention, there are many evidence-based programs available to schools. As an example, LifeSkills® Training is a classroom based prevention program for ages 11-18, which has been rated as “effective”, based on several studies (<https://www.crimesolutions.gov/ProgramDetails.aspx?ID=186.youth.gov>). A directory of more than 200 programs, a majority of which have been rated as “effective” or “promising” can be found at <https://youth.gov/evidence-innovation/program-directory>. Council would suggest the DOE consider using programs that are evidence-based or evidence-informed to the maximum extent possible.

Second, section 2.1.8, requires that “[i]nclusion of Evidence-informed, age- and developmentally-appropriate instruction on the meaning of Consent and respecting others’ personal boundaries shall be provided by each school district and charter school serving one (1) or more of the grades 7 through 12 no later than the 2020-2021 school year.” As demonstrated by the program through RACES, consent is a topic that can be taught to and understood by students in grades below seventh. Although those discussions in the younger grades do not typically involve the topic of sexual consent, children are capable of understanding and need to understand the concept of giving permission. Beginning in the younger grades can teach students “about personal boundaries, how to say no, and how to respect no—and in the unfortunate case that students do experience sexual abuse or harassment, how to ask for help.” See <https://www.edutopia.org/article/teaching-consent-elementary-students>.

In addition to understanding the concept of consent, it is important to instruct students below seventh grade on this crucial topic because approximately 35% of survivors of sexual assault are between the ages of 0 and 11. Howard Snyder, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, Bureau of Justice Statistics, U.S. Department of Justice (July 2000) (<https://www.bjs.gov/content/pub/pdf/saycrle.pdf>).

Furthermore, nearly 50% of all forcible and unwanted fondling is done to survivors between ages 0 and 11. *Id.*

Alarming, the rate of nonfatal violent crime and rape or sexual assault against individuals with disabilities was 1.5 times higher and two times higher, respectively, than the rate for persons without disabilities. Michael R. Rand and Erika Harrell, *Crimes Against People with Disabilities, 2007*, Bureau of Justice Statistics, U.S. Department of Justice (October 2009) (<https://www.bjs.gov/content/pub/pdf/capd07.pdf>). Although the 2009 report does not include rates for children below the age of 12, a probable assumption could be made that children with disabilities below the age of 12 are experiencing instances of sexual violence at an exceedingly high rate.

Based on these statistics, Council recommends that the DOE explicitly include evidence-based and evidence-informed, age- and developmentally-appropriate consent education for grades below seventh.

Modifications to the amended 2.1.8 could read as follows:

*“Beginning in the 2020-2021 school year, each school district and charter school shall provide Evidence-informed, age- and developmentally-appropriate instruction on the meaning of Consent and respecting others’ personal boundaries as part of its comprehensive health education program. Instruction on consent and personal boundaries shall be sequential and be provided in grades K-12.”*

Additionally, given the higher rates of violent crime, and rape or sexual assault against individuals with disabilities, Council recommends that the DOE explicitly promote participation by students with disabilities and ensure students with disabilities are not excluded from accessing such content at levels appropriate for their age and cognitive/language functioning.

Thank you for the opportunity to share 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  
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