



Governor's Advisory Council for Exceptional Citizens (GACEC)
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November 30, 2022

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

RE: 26 DE Reg. 358/14 DE Admin. Code 915 DDOE Proposed James H. Groves High School regulation (November 1, 2022)

Dear Secretary Holodick:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Department of Education (DDOE) proposal to amend 14 Del. Admin. C. §915, which describes the operation of the James H. Groves High School, an adult education high school. DDOE is proposing to amend this regulation to add a defined term in Section 1.0, replace "State Director" with "Director of Adult and Prison Education Resources", and to strike the standardized assessment requirement from subsection 2.1.1.1.2. Council would like to share the following observations.

First, proposed 14 Del. Admin. C. §915.1.0 would add an additional definition for "In School Credit Program" which is described in existing 14 Del. Admin. C. §915.2.2. The proposed language defines the In School Credit Program as an "alternative program operated by the James H. Groves High School that provides an opportunity for students who are age 14 or older and enrolled in their local day school to attain credits needed to fulfill high school graduation requirements." Council would like to recommend that DDOE include the word "education" between "alternative" and "program" in order to clearly identify this as an alternative education program and not an alternative program for students facing disciplinary actions.

Second, proposed 14 Del. Admin. C. § 915.2.1.1.1.2 removes the standardized assessment requirement as part of the application for enrollment at Groves. Specifically, that section would be changed as follows (indicated by strikethrough): "Qualify as meeting secondary level skills, as determined by the Department, ~~on a standardized assessment.~~" With the change, it is now unclear how DDOE would measure whether a student would qualify as meeting secondary level skills. Furthermore, it could lead to students being measured against different criteria, which can lead to inequitable outcomes. Council recommends that DDOE not remove this requirement or

if it chooses to remove the specific requirement of a standardized test, that it identify other ways of meeting this secondary skill level.

Council notes that there are additional concerns with the regulation outside of the proposed amendments that we would like to address. First, the admission criteria do not contemplate those students in the prison education program specifically. Students in prison who are seeking their high school diploma or GED are automatically enrolled in Groves, yet there is no indication in section 915 that there is an exception to the admission criteria for those students (or that students enrolled in prison education are enrolled in Groves). Therefore, Council would recommend that DDOE include language in this regulation that identifies Groves as providing education to incarcerated students and that those students are otherwise exempt from the admission criteria.

Second, current Section 2.3 disallows enrollment of students who have been expelled or are pending expulsion unless he or she receives a waiver from DDOE. Title 14 Del. C. § 4130(d) explicitly exempts Groves from the prohibition on enrolling expelled students. Council recommends DDOE reconsider its position on whether expelled students can enroll at Groves without a waiver. The GACEC previously made this recommendation in 2006 (10 Del. Register of Regulations 988 (December 1, 2006) and 18 Del. Register of Regulations 561 (January 1, 2015).

Third, current Section 4.2 states that “[s]tudents enrolled in James H. Groves High School courses which have an attendance requirement, shall attend a minimum of 85% of the course hours to receive a unit of credit. No provision is made for excused absences.” The Disabilities Law Program’s (DLP’s) Policy and Law Memo to the Councils in October 2006 shared the following thoughts:

Although not a paragon of clarity, the last sentence could be construed as precluding credit if a student has less than 85% attendance regardless of good cause. This would have a disproportionate impact on students with disabilities, particularly those with chronic health conditions or frequent flare-ups of symptoms. A no-exceptions policy may violate Section 504 and unnecessarily limit the discretion of IEP teams to accommodate students with disabilities. For example, if a student with disabilities achieved A’s in all tests and assignments, but attended only 84% of classes due to a hospitalization, Groves would have no discretion but to deny credit based on the strict regulation. Even on a practical level, Section 3.0 authorizes Groves to grant credit for a lengthy list of non-traditional work with no explicit attendance standards. In contrast, imposing a no-exceptions 85% attendance limit in Section 4.2 appears overly prescriptive.

Council would therefore recommend again that the DDOE consider whether having an outright “no excused absences” policy is appropriate in light of federal and state law and regulations regarding the rights of people with disabilities to be free from discrimination.

Thank you for this opportunity to share our observations and concerns with you. Please contact Pam Weir or me at the GACEC office if you have any questions on our comments.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc

CC: Shawn Brittingham, State Board of Education
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Dale Matusевич, Department of Education

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