



**Governor's Advisory Council for Exceptional Citizens (GACEC)
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January 30, 2023

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

RE: 26 DE Reg. 512/14 DE Admin. Code 275 DDOE Proposed Charter School regulation (January 1, 2023)

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. § 275, which governs Delaware Charter Schools. The proposed amendment will remove references to the Delaware Comprehensive Assessment System (DCAS); update the definition of a charter school to align with 14 Del. Admin. C. § 255 and clarify language referencing debts of a charter school. Council would like to share the following observations.

DDOE proposes to modify the definition of a charter school to "a public school that is operated under a charter granted by, or transferred to, the Department or other authorizing body pursuant to 14 Del.C. Ch. 5." This is consistent with how the term is currently defined.

DDOE also proposes to remove the mention of DCAS since Delaware no longer uses the DCAS as its statewide assessment tool.

Our primary observation is in reference to the change in proposed §275.8.0 concerning enrollment preferences, solicitations, and debts. Current § 8.3 states the following:

Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

DDOE is proposing to add §§ 8.3.1-8.3.3. Proposed § 8.3.1 merely restates the current § 8.3. Proposed § 8.3.2 adds the same notification requirement to those entities entering a contract or legal settlement with the charter school. And proposed § 8.3.3 adds a requirement that a charter school must disclose any debts, liabilities, or legal settlements in excess of \$10,000 to DDOE in its annual report.

Current §8.3 and proposed §§ 8.3.1-8.3.2, as written, are currently at odds with federal court precedent related to a State Educational Agency's (SEA) responsibilities when a Charter School is unable to continue. In *M.K. v. Prestige Acad. Charter Sch.*, the District Court of Delaware held that an SEA, with ultimate responsibility under the Individuals with Disabilities Education Act (IDEA), must "step into the shoes of the defunct charter school to honor its obligations." 470 F. Supp. 3d 417, 426 (D. Del. 2020) (citing *Charlene R. v. Solomon Charter Sch.*, 63 F. Supp. 3d 510, 519 (E.D. Pa. 2014)). Therefore, Council would like to recommend that the SEA not be held responsible for assumption of debt incurred by a charter when it ceases to operate, except when the financial obligation is related to student protections under IDEA.

Though it is not a part of the proposed amendment, Council would like to take this opportunity to request that the proposed regulation affirm that charter schools may not discriminate against students with disabilities in their application processes or other operations.

Thank you for allowing us the opportunity to share our concerns and observations 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
Kathleen Smith, State Board of Education
Dale Matusевич, Department of Education
Emily Cunningham, Department of Education
Linnea Bradshaw, Professional Standards Board
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