



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

May 30, 2023

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

**RE: 26 DE Reg. 105/DE Admin. Code 105 DDOE Proposed 935 DELACARE: Regulations for Residential Child Care Facilities and Day Treatment Programs regulation (May 1, 2023)**

Dear Secretary Holodick:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Department of Education (DDOE) proposal to transfer 9 DE Admin. Code 105 to 14 DE Admin. Code by creating 935 DELACARE: Regulations for Residential Child Care Facilities and Day Treatment Programs. This is part of the transfer of The Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth, and Their Families (DSCYF) to the Delaware Department of Education (DDOE). The Department of Education proposes to strike the entirety of the previous 105 regulations to account for changes in federal requirements and changes acceptable practices regarding restrictive procedures.

Council **supports** the proposed regulations as there are many changes that increase safety requirements, clarify approval and grievance procedures, remove ambiguity and opportunity for OCCL staff discretion, increase transparency, and change standards for disciplinary methods to diminish use of restrictive procedures and clarify safety practices. However, there are also areas that Council would recommend the DDOE revisit to provide additional clarity and strengthen safeguards for our children. We would like to share our observations and questions with you on those areas.

In section 3.0 Definition of Terms, the definition of "least restrict environment" has been removed. Council questions the rationale on this and if the definition is referenced somewhere else. Council is also concerned that there is no definition of "agitated child". Is it defined elsewhere? The determination of whether or not a child is "agitated" is *vital* to the "involuntary injection" of a drug into a child by an adult. Without an operational definition, the interpretation of this term and the determination to inject or not is left totally to the subjectivity -- and possible personal bias -- of the adult with the child.

The proposed regulations require that governing discipline and behavior supports include the model, program, or techniques used based on a child's needs, developmental level, and behavior" and its use of

de-escalation tactics, positive supports, time-outs, physical escort, chemical restraint, physical restraint, and seclusion (if applicable). The policies must specify specific procedures for time-out techniques (outlined in detail in the proposed regulations), including time limitations and time-outs and documentation requirements. Council appreciates these proposed changes. Council is concerned however by the potential for the use of physical or chemical restraints. The standard for justifying the use of those strategies does not appear to be very rigorous. Given that individuals in childcare facilities and day treatment programs may not have the same level of sophistication regarding behavioral interventions as school personnel; it would appear to be unsafe if the regulation is not clear on the types of consultation and oversight required for such interventions to be utilized. Also, Council notes that although restraints are allowed in the proposed regulations, the use of chemical and mechanical restraints is prohibited in Title 14 Section 610 of the Delaware Code.

Council notes the requirement of the licensee in 17.1.10.8.1 to conduct a review to determine if the child is suitable for the facility or if something should be changed in the child's service plan. The requirement for the facility to review the competency or fidelity with which the staff are implementing the time out procedure or other aspect of the child's service plan is lacking. There is ample research evidence to show that treatment fidelity is a major issue for clinical facilities and that time-out is a complicated and challenging procedure to implement correctly. Council would advise that this safeguard be strengthened.

Council notes that there are few substantive changes in Section 24 on Allegations of Abuse or Neglect against a Staff Member; however the proposed regulations do add pro-active language requiring that "a licensee shall ensure children are not abused or neglected." It is our hope that this is not merely a 'good faith' statement but actual sufficient mechanisms are in place to accomplish the objective of ensuring that children are not abused or neglected.

Council would like the DDOE to be aware that the comments and observations provided should not be considered comprehensive, as we did not have time to obtain more in-depth analysis of the remaining sections involving facility maintenance, general safety, and specific requirements for different types of facilities. These sections are highly technical and require additional time and possible review by subject matter experts.

We do appreciate this effort to improve conditions and standards for our children and hope that the DDOE will consider our request to revisit the items of concern and questions listed above.

Thank you for this opportunity to share our 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 Matusevich, Department of Education  
Emily Cunningham, Department of Education  
Caitlin Gleason, Department of Education  
Linnea Bradshaw, Professional Standards Board  
Carla Jarosz, Esq.  
Alexander Corbin, Esq.