



**Governor's Advisory Council for Exceptional Citizens (GACEC)**  
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October 25, 2023

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

**RE: 27 DE Reg. 217/14 DE Admin. Code 608 DDOE Proposed Unsafe School Choice Option Policy regulation (October 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. § 608, which describes the unsafe school choice policy in Delaware. Council would like to share our observations and recommendations with you.

First, "Unsafe incidents" means any time the school (1) suspended or expelled a student for a gun free schools violation; (2) suspended or expelled a student for a crime committed on school property, which is required to be reported under 14 *Del.C.* § 4112; or (3) reported a crime committee by a non-student on school property which is required to be reported under 14 *Del.C.* § 4112. A "Gun Free Schools Violation" is defined as the "prohibited bringing to school, or possession while in school of a firearm by a student."

In the proposed new language, DDOE removes (1) above and replaces it with the following two instances: an unsafe incident is one where the school (1) "suspends or expels a student for bringing a firearm to school in violation of 11 *Del.C.* § 1457A" or (2) "suspends or expels a student for possessing a firearm while in school in violation of 11 *Del.C.* § 1457A."

Under 11 *Del.C.* § 1457A(b), "[a]ny person who knowingly possesses a firearm while in or on a Safe School Zone shall be guilty of the crime of possession of a firearm in a Safe School Zone." There are exceptions provided for individuals such as police officers, constables, and holders of a valid license to carry a concealed deadly weapon if the firearm is in a vehicle. 11 *Del.C.* § 1457A(c). Council considers the definition of "unsafe incident" to be ambiguous because Title 11 only applies to "knowingly possessing a firearm".

Council recommends that DDOE use language for the definition of an “unsafe incident” to be consistent with the definition in Title 11. For example, the language could be amended to state the following: “The school suspends or expels a student for knowingly being in possession of a firearm in violation of 11 *Del.C.* § 1457A.” Alternatively, the language could state, “The school suspends or expels a student for a violation of 11 *Del.C.* § 1457A for possessing a firearm in a Safe School Zone.”

Second, if a school fails to comply with reporting requirements under 14 *Del.C.* § 4112 (reporting crimes to law enforcement), 14 *Del. Admin. C.* § 601 (reporting crimes to DDOE), and/or fails to provide any expulsion or suspension data required by DDOE, the school is considered “persistently dangerous” for that school year “until such time as it may be determined, in the sole discretion of” DDOE, that the school meets the reporting requirements. 14 *Del. Admin. C.* § 608.3.3. What this means is that if a school, two years later, complies with the reporting requirements, DDOE could, in its discretion, retroactively remove the school’s designation of a “persistently dangerous school” for that particular year. DDOE is proposing to amend this regulation to remove this possibility of retroactive removal of the designation. This change would ensure that parents and students are consistently aware of when schools are designated as “persistently dangerous”; although it is unclear whether DDOE will otherwise identify which schools are so designated because of the number of unsafe incidents or for failing to comply with reporting requirements.

Council supports the proposed change to remove the possibility of retroactive removal of a persistently dangerous school designation because it will ensure that parents and students are consistently aware of when schools are designated as “persistently dangerous”. However, we would like to recommend that DDOE otherwise identify which schools are so designated because of the number of unsafe incidents or for failing to comply with reporting requirements.

Currently, a student who is the victim of a violent felony while in or on the grounds of a school in which he is enrolled is entitled to choice into a “safe school” in the same school district, including a charter school. 14 *Del. Admin. C.* § 608.5.1. DDOE is proposing to amend this to add the words “and attending”. The proposed language would then require that the student who is a victim of a violent felony while in or on the grounds of a school, be both enrolled *and attending* the school before he is entitled to choice into a “safe school.”

The Act requires that a student be allowed to attend a safe school if he “becomes a victim of a violent criminal offense . . . while in or on the grounds of a public [school] that the student attends[.]” 20 U.S.C. § 7912(a).

Council asks that the DDOE clarify the difference between the definitions for “attendance” or “enrollment”. Council notes that DDOE cannot be more restrictive in its requirements than that of the Act. By requiring *both* enrollment and attendance (if those terms differ), DDOE is adding a more restrictive element to this requirement, which would be a violation of the Supremacy Clause of the United States Constitution. A State can provide *greater* protections than the federal government, but it cannot provide *less* protections. Council recommends that DDOE amend the proposed regulation to be consistent with the language in the Act.

Lastly, Council would like to recommend DDOE include additional reporting on unsafe incidents for student victims with disabilities.

Thank you for allowing us the opportunity to share our observations and recommendations 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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