



Governor's Advisory Council for Exceptional Citizens (GACEC)
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December 29, 2023

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

RE: 27 DE Reg. 370 DE Admin. Code 105 DDOE Proposed Residential Child Care Facilities and Day Treatment Programs regulation (December 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. DDOE previously proposed these regulations in the May 2023 and August Delaware Registers of Regulations. Council provided commentary on those proposed regulations in a letter dated 5-30-2023 and again in a letter dated August 29, 2023.

Since Council previously provided commentary on these proposed regulations and the DDOE made changes based on some of those comments, this letter thanks the DDOE for the changes made and will only reiterate those concerns that Council continues to have in relation to the proposed changes.

In general, DDOE rejected the majority of comments from the Council on these proposed regulations. The reason primarily given for refusing to make changes is that a draft of these regulations was discussed by a "task force of stakeholders, licensed facilities and agency representatives." Council is not aware of any advocacy or parent groups that were a part of this task force and questions why the GACEC as not invited to be at the table during these discussions. Without additional information on the makeup of the taskforce, Council considers it a possibility that the taskforce may not have received any input from families, consumers or advocates.

There were a number of suggested changes that were not made that Council would like to once again bring to your attention as a concern.

First, the DDOE did not amend the proposed regulation to require OCCL or facilities to inform parents or referring agencies when interviewing youth, indicating that such notification might hinder an investigation. We inquire again as to the reason why OCCL should not inform families unless doing so would hinder an investigation and request that non-notifications be clearly limited to inspections only.

Second, DDOE did not amend the proposed regulation to limit authority to use photos, videos, etc. without parental consent for research, fundraising or public relations, indicating “that there may be situations where the referring agency would need authority to provide consent.” DDOE gives no examples of this; and one wonders when it would be appropriate to release a photo or video for fundraising or public relations without getting parental consent. Council suggests that release without consent could be limited to those very unlikely scenarios instead of giving the referring agencies carte blanche.

Third, DDOE did not amend the proposed regulation to disallow any use of group or collective punishment because the task force wished to keep it. Council reiterates our concern that this practice is obscure and out of favor.

Fourth, the proposed regulations were not amended to require teachers to be qualified for the specific age group, only that they be certified for the age range that the facility is licensed for. The reason being that because of the possibility of mixed age groups in classes, it would be burdensome for the facility to have to hire staff for each group. This begs the question about the appropriateness of mixing ages in classrooms at all. Council requests additional information about having mixed aged classes in the first place, and suggests that, even so, in facilities where ages are not mixed, that a teacher be certified for the age group that they are actually teaching.

Fifth, although DDOE did amend the proposed regulation to include a requirement that a licensee provide reasons for refusal to admit a child orally, with a written explanation upon request, Council reiterates that it is reasonable and not difficult for licensees to provide a written explanation of refusals to admit to parents and referring agencies. Such a requirement will avoid confusion and misunderstanding and may help to prevent arbitrary and potentially discriminatory actions by licensees.

Sixth, DDOE did not amend to require direct workers for Parenting Adolescents to have any specialized training, as it would be burdensome for the facility. There was no discussion about quality of care being a factor in this decision. Council reiterates our recommendation that the regulations be amended to require specialized training for direct workers.

Seventh, in Section 93.6 related to restrictive procedures, although DOE changed the definition of what “seriously disruptive” means, Council would like to suggest that the definition is not sufficiently narrow. DOE proposes to change the language to say that “behavior is seriously disruptive [when] the conduct is so unruly, violent or abusive *that it interferes with* a staff member’s ability to communicate with a child or children, with a child’s ability to learn, or with the effective operation” of the facility. The italicized language requires a qualifier that reflects the extreme circumstances when a restrictive procedure is necessary. Most behavioral outbursts or difficulties can interfere with communication, learning, or operations and they do not warrant restrictive measures. Council would therefore suggest a strong qualifier be added such as significant, or substantial.

Lastly, DDOE did not amend 93.2.8 to add prone restraints to the list of prohibited interventions, explaining that licensees must get permission to use any restraint. This implies of course that OCCL would and could approve prone restraints, which misses the point of our concerns. A rather large number of states prohibit prone restraints. The U.S. Department of Education recommends that they be banned. They are banned in a number of correctional settings. Prone restraints are too dangerous to ever be utilized. Several years ago, a teenager died in a Delaware facility after a prone restraint. Council reiterates that prone restraints must be clearly prohibited.

We do appreciate this effort to improve conditions and standards for our children and the earlier recommendations that Council requested that were accepted by the DDOE. However, we also hope that the DDOE will consider our request to revisit the items of concern and questions listed above and invite the GACEC to be a part of any taskforce or workgroup developed that will impact the education of our children, particularly students with disabilities.

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 Gleeson, Department of Education
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