



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. 383/14 DE Admin. Code 902 DDOE Proposed Gifted and Talented Education Plan regulation (December 1, 2023)

Dear Secretary Holodick:

The Governor's Advisory Council for Exceptional Citizens (GACEC) reviewed and provided comments on an earlier iteration of this proposed regulation in October 2023. See attached. Council supported the proposed change to include charter schools in the language used in the regulation but voiced concern that the new language would essentially water down or lessen the degree of obligation schools will have to provide plans for gifted and talented students. We restate our concerns as articulated in October and ask DDOE to provide objective criteria and resources so that gifted students, wherever they live, have access to appropriate educational services that meet their needs.

DDOE indicates that the reason that the proposed changes are being republished is to provide "additional clarification... to explain that both school districts and charter schools must have a gifted and talented education plan, but school districts and charter schools could determine the extent of the plan and the areas of giftedness covered."

First, the regulation places the definition of "capacity," which is critical to the entire regulation, in the purpose section of the document. Council believes it should be in the definitions section.

Second, the definition of "capacity" is problematic. Capacity is not what services that a district or school can provide after rational assessment. Capacity "is the 'way' in which a school district or charter school chooses to identify its areas of giftedness and the types of services they choose to provide." DDOE may instead be referring to 'method'. Regardless, the use of capacity in the regulation appears completely unrelated to actual ability to provide services. The regulation does not set any data-based or reasonable criteria for assessing what services a school or district provides. Here, Capacity is not what a school or district can do, it is what they want to do. And per this regulation, they can do as much or as little as they want to do.

Second, while 3.1 indicates that the district or charter school “must” have a plan, it is entirely up to the district or charter school to decide what the plan is, without reference to current or potential student needs. A poorer district (or actually any district) could decide that its capacity is providing an enhanced gym program as its gifted education plan (as “psychomotor ability” is considered a form of giftedness), and that it need not provide any additional services to academically gifted students.

Finally, as was pointed out in the October comments, this approach leads to greater inequities in districts that “have” versus districts that do not. Schools or districts with resources will provide more robust gifted education services than schools lacking those resources. Instead of enabling this inequity, Council recommends the DDOE address these discrepancies, so the quality of student education is not completely dependent on where a student happens to live. If DDOE recognizes that students who are gifted require differentiation or services beyond the normally provided ones in order for those students to receive an appropriate and meaningful education, why punt on the issue of the services necessary to reach that goal. That is precisely what this regulation does.

Thank you for allowing us the 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
Linnea Bradshaw, Professional Standards Board
Carla Jarosz, Esq.
Alexander Corbin, Esq.

Attachment