



Governor's Advisory Council for Exceptional Citizens (GACEC)
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February 28, 2024

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

RE: 27 DE Reg. 474 DE Admin. Code 922 DDOE Proposed Children with Disabilities Subpart A, Purposes and Definitions regulation (January 1, 2024)

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. § 922, which include the purposes and definitions for Delaware's special education regulations (Delaware's equivalent to the federal Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, *et seq.*). DDOE is proposing to amend this regulation to add definitions, which are intended to help clarify changes made to 14 Del. Admin. C. §§ 923 and 925. As the IDEA state advisory panel for Delaware, Council would like to share the following observations and recommendations on the proposed amendments.

First, DDOE seeks to add the term "**Homebound or hospital placement**" which it has defined as:

special education instruction is provided to a child with a disability in the home, hospital, or other non-school location as determined by the IEP team. This placement could be the result of medical, disciplinary, or mental health needs. Note that this definition is distinct from supportive instruction provided to general education students as defined in 14 DE Admin. Code 930.

The addition of this definition is largely unnecessary and, more importantly, problematic. IDEA was enacted to combat the perception (and reality) that youth with disabilities were either completely excluded from schools or were languishing inside regular classrooms. IDEA

mandates that students with disabilities be educated in the least restrictive environment (LRE). That is to say, students with disabilities *must* be educated with students who are not disabled, to the maximum extent appropriate and that removal from this inclusive setting only occur where the “nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2).

DDOE is confusing stakeholders and students still with its continued use of “**supportive instruction**” and “**homebound instruction**” interchangeably. Despite this proposed definition including a clarification that it is “distinct from supportive instruction . . . as defined in 14 DE Admin. Code 930”, the title of section 930 is “Supportive Instruction (Homebound)”. It is possible that DDOE is attempting to introduce an actual definition of homebound instruction as it pertains to IDEA-eligible students; however, the terminology and definition employed is problematic. First, IDEA does not include “homebound” instruction as an LRE placement. Instead, IDEA uses the term “home instruction.” See 34 C.F.R. § 300.115(b)(1). Second, by explicitly including behavior as a possible reason for this placement, DDOE is condoning a practice that it should be prohibiting. This is one of, if not, the most restrictive placement options available and it should be reserved for those students whose physical or mental health prevents them from otherwise being in a classroom setting or environment. This setting should not be available for districts to use as a method to exclude students with behavioral challenges – a method districts already overuse for this specific purpose.

Therefore, Council recommends that DDOE remove this proposed addition (both term and definition) and urges the Department to more explicitly delineate and separate home instruction (under the IDEA) and supportive instruction. Council also would encourage the DDOE to look at how sister states have separated these two similar, but markedly different, educational options. See *e.g.* PA Basic Education Curricular, *Instruction Conducted in the Home*, issued September 1, 1997 and reviewed June 2018.¹

Second, DDOE proposes to amend the definition of Individualized Education Program to add the language “in a meeting” to explicitly state that this document is the result of a meeting. This is inconsistent with the rights in 14 Del. Admin. C. § 925.11.4, which allows revisions to happen without a meeting. Council queries why this additional language is necessary and recommends DDOE remove the proposed language.

Third, DDOE proposes to add the term “Individualized Family Service Plan” which it has defined as:

a written plan for providing early intervention services to eligible children and their families that is: A. Based on the evaluation and assessment; B. Implemented with the informed written parental consent for any new service, update, refusal, or removal of a service or goal; C. Developed in accordance with IDEA, Part C, and its implementing regulations at 34 CFR: 1. §303.342 - Procedures for IFSP development, review, and evaluation; 2. §303.343 - IFSP Team meeting and periodic review; and 3. §303.344 - Content of the IFSP. D. Includes early intervention services that are implemented as soon as possible, but no later than 30 days from the date informed written parental consent is obtained for each of the early intervention services in the IFSP.

¹ <https://www.education.pa.gov/Policy-Funding/BECS/FederalCode/Pages/InstructionConductedHome.aspx#:~:text=Homebound%20Instruction%20is%20described%20in,but%20the%20term%20'urgent%20reasons'>

This proposed definition is mostly consistent with how “IFSP” is defined in the IDEA at 34 C.F.R. § 303.20. However, Council recommends that DDOE structure the definition consistent with the structure in IDEA, including the language used. Council also recommends that DDOE include a reference to § 303.345 (concerning interim IFSPs), consistent with the definition in IDEA.

Fourth, DDOE proposes to add a definition for print disability, which it has defined as “a child who is identified with a disability and receiving special education services who requires instructional materials in accessible format. This is not a unique disability classification as referred to under 14 DE Admin. Code 925, subsections 6.6 through 6.17.” Council is unclear why this definition is needed. If it is necessary that the definition be retained, Council recommends adopting the more contemporary definitions of accessible materials and print disability from the Marrakesh Treaty Implementation Act.

We hope that the DDOE will take our recommendations in the spirit that they are being provided and respond in a manner that will benefit students with disabilities in Delaware. As the IDEA state advisory panel for Delaware, we strive to live up to the mandates of an advisory panel and hope to work as efficiently and effectively as possible on issues impacting students with disabilities. We look forward to being able to discuss our thoughts on collaboration and being a true ‘thought partner’ with the DDOE in the near future. As always, we 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
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