



**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>**

April 26, 2024

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

**RE: 27 DE Reg. 730 DE Admin. Code 603 DDOE Compliance with the Gun-Free Schools Act regulation (April 1, 2024)**

Dear Secretary Holodick:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Department of Education (DDOE) proposal to

➤ **PROPOSED DEPARTMENT OF EDUCATION (DDOE) REGULATION AMENDING 14 DE ADMIN. CODE 603 COMPLIANCE WITH THE GUN-FREE SCHOOLS ACT, 27 DEL. REGISTER OF REGULATIONS 730 (APRIL 1, 2024)**

With this notice, the Department of Education (DDOE), is proposing amendments to 14 *Del. Admin. Code* 730 regarding gun free schools. The proposed regulation adds a new section 1.0 that ties the regulation to the DDOE's regulatory authority to protect the health and physical welfare of students and adds a new section 2.0 for definitions. DDOE's proposed regulation uses the same meaning for "firearm" as that term is defined in the federal Gun-Free Schools Act, 20 U.S.C. § 7961(b)(3), which in turn uses the definition from 18 U.S.C § 921(a)<sup>1</sup> The proposed amendment makes technical updates including to statutory citations.

Substantively, in section 3.0, the proposed amendment adds a provision requiring the school district or charter school to include a copy of their written Gun-Free Schools policy in their Student Handbook or Code of Conduct. DDOE also moves the discretionary ability to modify an

---

<sup>1</sup> 18 U.S.C § 921(a)(3): "The term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm."

expulsion requirement from the “chief school officer” and gives it instead to the local school board or charter school’s board of directors. This change was made to be consistent with 11 Del. Code § 1457A(f), which places that discretion with school boards and charter school board of directors. **Of note, § 1457A(f) is not consistent with the Gun Free Schools Act, which gives that discretion to the “chief administering officer of a local educational agency.”** 20 U.S.C. § 7961(b)(1). Also of note: while our State law, at 11 Del. Code § 1457A(f), requires a minimum term of expulsion of 180 days, rather than the one year minimum which appears in the proposed regulation, the Gun Free Schools Act requires a one year minimum. 20 U.S.C. § 7961(b)(1). Finally, the regulation removes the requirement to record the expulsion modification in writing and instead requires simply it to be reported to DDOE, while the federal Gun Free Schools Act requires that any modification be “in writing.” 20 U.S.C. § 7961(b)(1). **This could be fixed by adding that the reports required in section 4.0 of this proposed regulation must be in writing. DDOE may wish to review section 3.0 because presently the proposed regulation is inconsistent within section 3.0 with whether it is following the federal or state language.**

DDOE cleans up language and citations in section 4.0 and adds that when school districts and charter schools provide descriptions of expulsions imposed due to firearms, that the district/charter must provide a description of the circumstances surrounding the expulsion, including: 1) the name of the school; 2) the number of students expelled; and 3) the type of firearms. This is required by the federal Gun-Free Schools Act, 20 U.S.C. § 7961 (d).

Section 5.0 is not substantively changed and reminds districts and charter schools that the regulation does not alter their duties under the Individuals with Disabilities Education Act.

### **Recommendations:**

- 1. This proposed regulation makes changes mostly consistent with the federal Gun Free Schools Act and thus generally speaking does not pose new concerns for students with disabilities.**
- 2. However, Councils may wish to recommend that DDOE review section 3.0 because presently the proposed regulation is inconsistent within section 3.0 with whether it is following the federal or state language. Specifically,**
  - a. state law and this proposed regulation differ from the Gun Free Schools Act in that they give modification of expulsion discretion to school and charter boards, while in the federal law that discretion lies with the “chief administering officer of a local educational agency.” 20 U.S.C. § 7961(b)(1).**
  - b. the regulation removes the requirement to record the expulsion modification in writing and instead requires simply it to be reported to DDOE, while the federal Gun Free Schools Act requires that any modification be “in writing.” 20 U.S.C. § 7961(b)(1). This could be fixed by adding that the reports required in section 4.0 of this proposed regulation must be in writing.**
  - c. This regulation would permit students carrying a weapon to be expelled for a minimum of 180 days, where the state and federal statutes mandate that expulsions be a minimum of one year.**

The GACEC hopes that the DDOE will take our inquiries in the spirit that they are being provided and respond in a manner that will benefit students with disabilities in Delaware. We look forward to being able to discuss our thoughts on a stronger collaborative effort and becoming 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 questions.

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  
Linnea Bradshaw, Professional Standards Board  
Carla Jarosz, Esq.  
Alexander Corbin, Esq.