



Governor's Advisory Council for Exceptional Citizens (GACEC)
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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. 740 DE Admin. Code 1028 DDOE Proposed Student Athlete Eligibility: Enrollment and Attendance 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 amend regulations related to eligibility for interscholastic athletics. Council would like to express our concerns about the provisions in Section 3.3, related to the exclusion of students who are placed in alternative schools or programs for disciplinary reasons through the Comprehensive School Discipline Program, (14 Del. Code 1601 et seq.). The provision reads as follows:

3.3 A student with a disability who is placed in a school or program by the student's school district or charter school shall be eligible to participate in interscholastic athletics as set forth in subsections 3.3.1 through 3.3.4. Subsection 3.3 does not apply to students who are placed in alternative schools or programs for disciplinary reasons through the Comprehensive School Discipline Improvement Program (14 Del.C. §§ 1601 - 1607).

Council suggests this section be redrafted to reflect that a. some students are placed in alternative schools for reasons other than discipline and should not be excluded; and b. individual considerations may allow a student with a disability who has been placed in an alternative school for discipline to participate in interscholastic sports. This would include any student placed pursuant to an IEP and on an individual basis a student who has been placed as discipline for behaviors that are a manifestation of their disability.

The benefits of participation in athletics and sports for students with disabilities is well documented. “The benefits of sports participation are significant for people with disabilities. Physical activity improves academic success, builds self-esteem, and prevents health problems.”

The United States Department of Education has directed districts to ensure that students with disabilities have equal access to such programs. Students with IEPs must be afforded an equal opportunity to participate in extracurricular activities, including with supplementary aids and services deemed appropriate and necessary by their IEP team. 34 CFR § 300.107.

Because some students are placed in alternative schools through the IEP process, and not for disciplinary reasons, it is important that the regulation clearly indicate that such students are not excluded from participation in interscholastic sports. The current language does not adequately clarify this distinction.

We know that some student populations in Delaware are disproportionately disciplined for behaviors. These groups include students of color and students with disabilities. Categorical exclusion of students placed in alternative schools for disciplinary reasons can further marginalize students already subject to discriminatory disciplinary practices.

Thank you for this opportunity to share our concerns with you. We hope that the DDOE will take our observations in the spirit that they are being provided and respond in a manner that will benefit all students but especially students with disabilities in Delaware. We look forward to being able to discuss our thoughts on a stronger collaborative effort with you. Please contact Pam Weir or me at the GACEC office if you have any questions on our observations.

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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