



Governor's Advisory Council for Exceptional Citizens (GACEC)
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August 30, 2024

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

RE: 28 DE Reg. 11 DE Admin. Code 922 DDOE Proposed Children with Disabilities Subpart A, Purposes and Definitions regulation (July 1, 2024)

Dear Secretary Holodick:

The Governor's Advisory Council for Exceptional Citizens (GACEC) 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.*) in January of 2024. The DDOE has now re-published the proposed regulations in July of 2024. The GACEC has once again reviewed the proposed regulations and would like to submit our observations.

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

a special education setting where 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.

This is only slightly different from the proposed definition published in the January 1, 2024 Register. That definition included an additional sentence at the end stating the following: "Note that this definition is distinct from supportive instruction provided to general education students as defined in 14 DE Admin. Code 930." By removing the last sentence, Council hopes that the DDOE has begun to differentiate between supportive instruction and hospital instruction. The IDEA mandates that students with disabilities be educated in the least restrictive environment (LRE). Students with disabilities must be educated with students who are not disabled, to the maximum extent appropriate; removal from this inclusive setting should 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).

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). By explicitly including behavior as a possible reason for this placement, DDOE is condoning a practice that should be prohibited. "Homebound" is one of, if not, the most restrictive placement options available and should be reserved for those students whose physical or mental health prevents them from otherwise being educated 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.

Council would therefore like to recommend that DDOE remove this proposed addition (both the term and definition).

Second, in January, DDOE proposed to add a definition for print disability, which it 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.” This same proposed added definition is included in the July Register. Therefore, Council again inquires why DDOE feels it is necessary to include this definition.

Council recommends that “child with a print disability” be defined instead, using the criteria for the Accessible Instructional Material program, located at <https://www.aimdelaware.org/wp-content/uploads/2023/01/AIM-Student-Eligibility-Verification-Form-1-20-23.pdf> (Student who: 1) is blind; 2) has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or 3) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading).

Lastly, Council has reviewed and supports the individual parent feedback sent to the DDOE by GACEC member and parent, Jessica Mensack. With Ms. Mensack’s permission, a copy of that letter is attached for your reference. The GACEC Individuals with Complex Medical Conditions and Education (ICE) Ad Hoc committee was developed to research and provide feedback on ways to improve educational outcomes for children with complex medical issues. The ICE Committee feels strongly that the regulations, as written, have the potential to negatively impact students with complex medical needs in terms of receiving needed educational services in the least restrictive environment.

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. Thank you for this opportunity to once again share our observations and recommendations on these proposed regulations. 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
Caitlin Gleeson, Department of Education
Linnea Bradshaw, Professional Standards Board
Carla Jarosz, Esq.
Alexander Corbin, Esq.

Attachment