



**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. 14 DE Admin. Code 925 DDOE Proposed Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs regulation (July 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. § 925, which describes the requirements for conducting evaluations, determining eligibility and developing Individualized Education Programs (IEP) for students with disabilities under 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 "ensure alignment with current practice" and have proposed revisions to several sections, which have been reviewed by Council in January and now in July of 2024. Council would like to share the following observations and recommendations on the proposed regulations. In the interest of making these comments and observations as brief and succinct as possible, we will only mention those items that Council would recommend changes. There are a number of changes to the regulation that Council appreciates but those items will not be mentioned here.

### **Section 5.0 - Additional Requirements for Evaluations and Re-Evaluations**

In January, DDOE proposed to amend § 925.5.5.2 to add a sentence stating that local education agencies (LEA) may use the "summary of performance form provided by [DDOE]" when a student is being exited from services due to aging out. This proposed change does not appear in the July Register.

### **Section 6.0 - Determination of Eligibility**

DDOE proposes to amend Section 6.3.2 to require that all eligibility determinations include a certified school psychologist as a member of the IEP Team. This proposed change could help ensure that the individuals attending the meeting are able to interpret the information provided to the parents adequately.

**Council supports this proposed change but would recommend that language be added to state a preference that the school psychologist who actually conducted the testing for the particular student is the psychologist who attends the eligibility meeting.**

Having the school psychologist who actually did the evaluation attend the meeting will help both school staff and parents get the full picture because they will be able to answer the more student-specific questions that may be posed.

In January, DDOE proposed to amend the age of eligibility section for each educational classification to clarify that a child is eligible for services under IDEA until receipt of a high school diploma or until August 31 of the school year in which the student turns 22.

This change makes the student's eligibility dependent on the calendar of the LEA in which the student is enrolled and introduces confusion over when a student will lose their eligibility. This is especially true for students with unstable home lives or considered under McKinney-Vento. Council queries why the DDOE felt this change was necessary. This proposed change is also included throughout the eligibility criteria in Section 6 for each eligibility classification by adding a reference to 6.5.5.1 when defining the age of eligibility.

**Council would therefore recommend that DDOE instead provide language to ensure consistency across the state by identifying the school year as running from September 1 through August 31.**

DDOE proposes to amend Section 6.10 (related to the educational classification of hearing impairment) by removing subsection 6.10.1.2 in its entirety. Section 6.10.1.2 described the examples of adverse effects on educational performance for this particular educational classification. This may lead to IEP teams considering adverse impacts beyond those listed despite the existing language already clarifying that the list includes only examples and will bring this section of the regulation in line with the other sections describing the eligibility criteria for the different educational classifications. **Council supports the proposed change but queries whether DDOE will provide guidance to LEAs on what may constitute an adverse impact.**

Section 6.11.1.3 shows both "team" and "Team" as struck through. This may be a minor editing error in which DDOE meant to underline "Team" rather than strike through. **Council suggests the DDOE review the section for accuracy.**

DDOE proposes to amend 6.17.7 (related to the required IEP team members for eligibility determinations for the educational classification of visual impairment) by removing the requirement that an orientation and mobility specialist be a member of the student's IEP team for purposes of eligibility determination. A certified orientation and mobility specialist (COMS) "is a highly trained expert who specializes in working with individuals who are blind, low vision or who have functional visual limitations, and empowers them to achieve their life goals for education, employment, avocation and independence [and] address[es] nonvisual, visual, physical, cognitive, and psycho-social aspects related to mobility training for individuals of all ages, as well as diverse needs and abilities." It does not appear as though a COMS would be necessary to determine whether a student meets the educational classification of Visual Impairment, but may prove to be a desired team member for IEP planning purposes. **Council supports this proposed change. However, Council recommends that DDOE include clarification in the final regulation, or otherwise, that COMS involvement in IEPs generally are not modified by this change.**

### **Section 10.0 - When IEPs Shall Be In Effect**

DDOE proposes to amend this section by adding a requirement that, when a student transfers from one Delaware public agency to another, the receiving agency must "[a]dopt the child's Evaluation Summary Report from the previous public agency or conduct a new evaluation that meets the applicable eligibility requirements in 14 DE Admin. Code 925, Section 6.0." This additional requirement may pose an undue burden upon receiving agencies with little to no benefit for students with disabilities. In adopting a student's Evaluation Summary Report (ESR), the receiving public agency would be making another eligibility determination, thus requiring specific individuals to attend the meeting where they otherwise would not be necessary. This may have the unintended consequence of delaying necessary meetings and taking District staff away from other important duties and responsibilities.

When a student transfers from one Delaware public agency to another, the receiving public agency must, within 60 days, either adopt the student's previous IEP or develop and implement a new one. This review necessarily requires a review of a student's ESR and puts the onus on the receiving public agency to determine whether updated evaluations are warranted. An additional requirement that the receiving agency adopt the student's ESR is unnecessary and may lead to negative consequences.

**Therefore, Council recommends that DDOE remove this proposed additional requirement.**

The second proposed change to this section is to current 10.4.1.1 (which is proposed to be renumbered to 10.4.1.2). Specifically, DDOE seeks to make the following changes (noted in underline and strikethroughs): "Review and adopt the child's IEP from the previous public agency at an IEP meeting convened for that purpose, or develop, and adopt, and implement a new IEP that meets the applicable requirements in Sections 7.0 through 11.0." The second change, replacing the comma after the word "develop" with the word "and" makes the sentence grammatically confusing.

**Council recommends that DDOE not replace the comma after the word "develop" with the word "and."**

### **Section 11.0 - Development, Review, and Revision of IEP**

DDOE is proposing a single change to this section related to the special factors that IEP Teams must consider in developing a student's IEP. Specifically, it is proposing to change the language in 11.2.6, which concerns students who may need course materials in alternative formats. The current language is "In the case of a child who is blind, visually impaired, or has a physical or print disability, consider whether the child needs accessible instructional materials."

**Council supports this proposed change with a request that DDOE clarify that it is not just "grade-level textbooks and other core materials" that districts must consider and adapt – instead, it should be anything that the student would need to enable access to the general education curriculum.**

### **Educational Placement in the Least Restrictive Environment (Section 13.0)**

In January, DDOE proposed several changes to Section 13.0 concerning education in a student's LRE, including adding a separate section for students aged 3-5. The proposed language regarding LRE for students aged 3-5 was removed. However, DDOE removed or moved most of what was in this Section.

DDOE proposes to remove the entirety of Sections 13.1.1 through 13.1.8, which describes the different placement options. These are being replaced with the same proposed section 13.1.1 from January: "Except as provided in 14 DE Admin Code 925, subsection 11.12 (regarding children with disabilities in adult prisons), each public agency shall meet the least restrictive environment requirements of 14 DE Admin. Code 923, Sections 14.0 through 20.0." The language in 13.1.1 is consistent with language found in IDEA at 34 C.F.R. § 300.114(a)(1).

**Council would like to reiterate our recommendation that DDOE replace the reference to subsection 11.12, which concerns students in adult prisons participating in general assessments and transition services, with subsection 11.13, which concerns a public agency's ability to modify the IEP of an incarcerated student (including LRE) where there is a bona fide security or compelling penological interest which cannot otherwise be accommodated. Council would also like to inquire why DDOE is proposing to remove the language identifying the different placement options available. Council is curious as to whether and how this is going to impact placement options currently available on student IEPs.**

DDOE is proposing to move current 13.3, concerning students with disabilities considered to be a danger to themselves or whose disruptive behavior interferes with their learning or the learning of others by the LEA, to Chapter 923.

**Council asks that the DDOE consider comments made in our letter on the 923 regulations on this proposed change and the negative impact this change may have on LRE.**

We hope that the DDOE will take our recommendations and requests for additional information in the spirit that they are being provided and respond in a manner that will uphold the rights of 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 share our observations, recommendations and inquiries on these proposed regulations again. 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  
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