GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING
7:00PM May 20, 2025
VIRTUAL MEETING

MEMBERS PRESENT: Al Cavalier, Nancy Cordrey, Bill Doolittle, Karen Eller, Ann Fisher, Tika Hartsock, Kristina Horton, Thomas Keeton, Jessica Heesh Mensack, Molly Merrill, Beth Mineo, Maria Olivere, Trenee Parker, Erika Powell, Jennifer Pulcinella, Stefanie Ramirez, and Brenné Shepperson.

OTHERS PRESENT: Marissa Band/Disability Rights Delaware (DRD), Craig Clizbe, Matthew Clizbe, Mindi Failing, Laura Hattier, Maxwell Lasher, Dale Matusevich/Delaware Department of Education (DDOE), Lillian McCuen, Theresa Muschiatti (ASL interpreter), Ozetta Posey, Kathi Stephan/DDOE, Peg Stewart (ASL interpreter), Mike Tholstrup/Department of Natural Resources and Environmental Control (DNREC), Hope Vella/DRD, Marissa Band/DRD and Mary Whitfield/DDOE.

STAFF PRESENT: Pam Weir/Executive Director, Kathie Cherry/Office Manager, Lacie Spence/Administrative Coordinator and Theresa Moore/Administrative Support Specialist.

MEMBERS ABSENT: Matt Denn and Erik Warner (Resignations pending), Corey Gilden (requested leave of absence), Maria Olivere, Molly Merrill, and Meedra Surratte

ADMINISTRATIVE ACTIONS: Ann Fisher called the meeting to order at 7:04 pm. There was a quorum of members present. The motion to approve the May agenda was made by Jennifer Pulcinella and Bill Doolittle seconded the motion. The motion passed unanimously. Jennifer Pulcinella made a motion to accept the April minutes and Kristina Horton seconded the motion. There was discussion around the Vice Chair election report out and the Policy and Law Committee report. A motion was made by Al Cavalier and seconded by Bill Doolittle to accept the April minutes after staff reviews the recording to make sure the minutes reflect the correct information from the meeting and make corrections to the Vice Chair election results. The motion to accept the amended minutes passed. Jennifer Pulcinella made a motion to approve the April Financial report. The motion was seconded by Thomas Keeton. The motion passed. At the end of the meeting Bill Doolittle made a motion to communicate with the sponsor of House Bill 79, that it is important to ensure that the Local Educational Agencies (LEAs) and State Educational Agency (SEA) continue to understand that in any case, school resource officers (SROs) must have adequate training to ensure the safety and well-being of students with disabilities. The motion was seconded by Beth Mineo. The motion passed.

PUBLIC COMMENTS: There were no public comments tonight.

DELAWARE STATE PARKS UPDATE: Mike Tholstrup, the planning manager for Delaware State Parks, provided an update on accessibility improvements since 2021-2022. He highlighted various completed projects, including new parking lots, ramps, restrooms, and trails, as well as ongoing initiatives like the construction of accessible cabins and a track chair program. Mike also discussed the completion of a statewide outdoor recreation plan with recommendations for improving accessibility and mentioned that the Division complies with the Americans with Disabilities Act (ADA) requirements for new and existing facilities. Mike shared Delaware State Parks' accessibility initiatives, including their website improvements and trail accessibility features. He mentioned they are working on updating their ADA plan and seeking endorsement from the Governor's Advisory Council for Exceptional Citizens (GACEC). The group discussed the need for more comprehensive user survey data to measure the effectiveness of accessibility improvements, with Al suggesting he contact Dr. Peter Doehring for research on park accessibility metrics. Mike confirmed that while federal funding through the Land and Water Conservation Fund remains stable, the impact of proposed federal budget cuts remains uncertain. Ann thanked Mike for his presentation.

COMMITTEE REPORTS:

POLICY AND LAW COMMITTEE: The Committee met tonight and reviewed the Legal Memo dated May 20th. The Legal Memo can be found at the end of the minutes. Council approved the following recommendations from the Policy and Law Committee. Nancy Cordrey abstained from this vote.

The Committee recommends endorsement of the following DRD recommendations:
- Support for Proposed Division of Professional Regulation Amendment regarding Licensure of Speech Language Pathologist Assistants
- Support for HS1 for HB48 regarding accessible parking

The Committee recommends endorsement of the following DRD recommendations with modification:
- Proposed DDOE Regulation on Uniform Definitions for Student Conduct Which May Result in Alternative Placement of Expulsion: Recommending taking no position but

Conveying the following language: Given the potential impact of these changes on students and all education stakeholders, and in light of the GACEC's responsibilities as the State Advisory Panel for agencies providing educational services and programs to children (birth through age 26) in Delaware through the Individuals with Disabilities Education Act (IDEA), we recommend consideration of the following observations and concerns with the proposed regulation: follow this with a rewording of recommendations into observations/concerns. In addition, we recommend that all regulations such as this include the following language: "Nothing in this regulation shall alter a district's or charter school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities."

- HB118, which would allow Exceptional Care for Children (ECC) to be paid the pediatric rate for the adults it will serve through its new Bridge Unit (currently under construction). Rather than opposing the bill, the Committee recommends asking for more information regarding the questions posed in the Policy & Law memo along with two additional questions:
o What processes will be in place to ensure that transition from ECC to other settings that meet the individual's needs continues to be explored?
o Will the Bridge Unit encourage the same engagement of families in care planning as ECC pediatric services currently do?

You can find a copy of Council's letters in reference to this legal memo at the following links on the GACEC website:

- Regulatory letters, visit https://gacec.delaware.gov/regulatory-letters/.
- Legislative letters, visit https://gacec.delaware.gov/legislative-letters/.

INFANT AND EARLY CHILDHOOD COMMITTEE: The Committee discussed the following. On 5/16/25 SB 153 was introduced and assigned to the Education Committee in the Senate. This Act updates the membership and functions of the Interagency Resource Management Committee (IRMC) by adding the Lieutenant Governor as Chairperson, the Chair of the Early Childhood Council (ECC) as a voting member, and members of the General Assembly as nonvoting members. Additionally, this Act clarifies staffing of the IRMC through the Early Childhood Support team in the Department of Education and the Office of the Lieutenant Governor.

CHILDREN AND YOUTH COMMITTEE: The Children and Youth Committee discussed progress on their current goals and discussed strategically planning for future meetings. Some of the success they have made with their recent goals have now fostered the development of some ad hoc committees. They acknowledged the conversation around standing alone committees versus issue area committees and what that might look like for the upcoming year. The Committee also discussed and received an update from the Restraint and Seclusion & School Resource Officer Ad hoc committee. The ad hoc committee highlighted some of their current efforts and progress made towards their goals. Regarding the Committee's goals around due process, they revisited their discussion around reviewing the due process cases and the rubric that they plan to use. The Committee discussed using the existing rubric for all members to analyze a specific case and to use that as a guiding start to roll into next year as a continued monitoring phase. It would allow for some consistent framework for the analysis.

ADULT AND TRANSITION SERVICES COMMITTEE: Tonight, Marissa Band and S. Hope Vella gave a presentation on the Alternatives to Guardianship to the Committee.

CHAIR REPORT: Ann announced the guests and those Council members who were absent.

DIRECTOR'S REPORT:

- Pam shared that she has been working to enhance the relationship between the disability serving councils and committees, such as the State Council for Persons with Disabilities

and the Delaware Developmental Disability Council, the Arc, and several others. We've been working on this for well over a year. Pam added that for the past year we've been really trying to enhance that work. The recent issues at the Federal level have shown everyone that maybe we need to take more time to work together to support the disability community. Marissa Band from Disability Rights Delaware put together a group of agencies, and we've been talking about meeting with the Governor's office to really make them aware of who these agencies and councils and support services are. The group met with a representative of the Governor's office on Friday. Unfortunately, Pam was unable to be there due to illness, but the meeting went well. They are going to continue to meet as a collaborative group and follow up with the Governor's office. Romaine Alexander was very attentive and helpful, and very interested in what the councils had to say. He seemed very open to continuing to work with us moving forward.

- Pam met with the leadership of the Special Education Strategic Planning Advisory Council (SESPEC) to talk about how we can work more collaboratively and support students with disabilities by working with the Exceptional Children's Work Group and the DDOE. Pam will have Lacie reach out to the GACEC Leadership Committee to start scheduling a meeting with the SESPAC Leadership Committee and the Exceptional Children's Work group.

AD HOC COMMITTEE REPORTS:

INDIVIDUALS WITH COMPLEX MEDICAL CONDITIONS AND EDUCATION:

- Jessica Mensack said the Committee is still working with Dale at DDOE, school nursing partners, Cassandra Codes-Benjamin and a few others.
- They are still discussing the data button and check box that Council had voted on. Still hoping to get it put into Health Accounting.
- They had discussions regarding 1:1 nursing service for students who need nursing services in order to access their school environment and opportunities for Medicaid cost recovery.

OUTSIDE COMMITTEE REPORTS:

EDUCATIONAL EQUITY COUNCIL: The Route 9 Community Development Corporation will be sending up to date accurate information out soon. As soon as it is released Jessica Heesh Mensack will upload it to Teams.

ADJOURNMENT: Bill Doolittle made a motion that was seconded by Jen Pulcinella to adjourn the meeting. The motion passed and Ann adjourned the meeting at 8:28 pm.

POLICY AND LAW MEMO

Date: 5/20/2025

Re: May 2025 Policy and Law Memo

I. PROPOSED REGULATIONS

➔ **PROPOSED Division of Professional Regulation Amendment to Delaware Administrative Code 3700, Licensure Of Speech Language Pathologist Assistants, 28 DE REG. 802 (05/01/25)**

The Division of Professional Regulation Delaware Board of Speech Language Pathologists, Audiologists and Hearing Aid Dispensers proposes to issue regulations creating a licensure category for speech/language pathologist assistants ("SLPA"). This is a revised proposed regulation superseding one issued in December 2024. A public hearing was held on January 21, 2025.

This regulation is being proposed to implement SB 320 passed in June 2024 and signed into law September 19, 2024, codified in Title 24, Chapter 37. The bill's purpose is to help address shortfalls in supply of SLPs. Specifically, this bill created the SLPA designation, §3702(13)[1] and lists tasks that a

[1] (13) "Speech/language pathology assistant" means a person licensed by the Board who performs tasks prescribed, directed, and supervised by a licensed speech/language pathologist.
a. A speech/language pathology assistant may do all of the following under the supervision of a licensed speech/language pathologist:
1. Conduct speech and language screenings without interpretation, using screening protocols specified by the supervising speech/language pathologist.
2. Provide direct treatment assistance identified by the supervising speech/language pathologist by following written treatment plans, individualized education programs, individual support plans, or protocol developed by the supervising speech/language pathologist.
3. Document patient, client, or student progress toward meeting established objectives as stated in the treatment plan, individual support plan, or individualized education program without interpreting the findings and report this information to the supervising speech/language pathologist.
4. Assist the supervising speech/language pathologist in collecting and tallying data for assessment purposes, without interpreting the data.
5. Assist with informal documentation during an intervention session by collecting and tallying data as directed by the supervising speech/language pathologist, preparing materials, and assisting with other clerical duties as specified by the supervising speech/language pathologist.
6. Schedule activities and prepare charts, records, graphs, or other displays of data.
7. Perform checks and maintenance of equipment.
8. Participate with the supervising speech/language pathologist in research projects, in-service training, and public relations programs.
9. Sign and initial treatment notes for review and co-signature by the supervising speech/language pathologist.
b. A speech/language pathology assistant may not do any of the following:

SLPA may and may not do. The bill also defines a "supervising speech/language pathologist" in §3702(16). The bill goes on to discuss certification requirements and empowers the Board to issue licenses and integrates the SLPA into all aspects of the Board's oversight.

The proposed regulation delineates in great detail the supervision requirements for SLPAs and the standards both for certification and for the practice of speech language pathology. Generally speaking, supervision is required at a minimum of every 90 days, but in every case, the supervising SLP must ascertain and establish the scope of practice or the SLPA based on skill and needs, and is ultimately responsible. Of particular note is the requirement that a supervising SLP can only supervise one SLPA "at any given time." It is somewhat unclear whether this means simultaneously or whether this means in the entire scope of an SLP's practice. While common sense suggests the former, the language is vague.

The Board reissued these regulations based on public comment. In particular, the Board considered and rejected the suggestion that the regulation clarified that SLPAs can attend IEP meetings. The Board indicated that the regulation covers all settings, not just educational ones. However, the Board should have indicated that the statute prohibits participation in IEPs by SLPAs, unless the supervising SLP is also in attendance.

The Synopsis for SB 320 indicates that the bill is meant to address shortages of SLPs, "particularly in public schools." It is quite clear that the intention is for SLPAs to work in the educational environment. However, the statute very clearly indicates that SLPAs may not "participate in parent conferences, case conferences or any interdisciplinary team meeting without the presence of the Supervising speech/language pathologist." Moreover, an SLPA cannot develop, modify or write and IEP. An SLPA could attend an IEP meeting but only if the Supervising SLP is also in attendance. It is also worth noting that an SLPA cannot administer diagnostic tests or evaluations.

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1. Conduct swallowing screening, assessment, and intervention protocols, including modified barium swallow studies.
2. Administer standardized or nonstandardized diagnostic tests or formal or informal evaluations or interpret test results.
3. Participate in parent conferences, case conferences, or any interdisciplinary team meeting without the presence of the supervising speech/language pathologist.
4. Write, develop, or modify a patient's, client's, or student's treatment plan, individual support plan, or individualized education program, whether or not prepared by the supervising speech/language pathologist.
5. Provide intervention for patients, clients, or students without following the treatment plan, individual support plan, or individualized education program prepared by the supervising speech/language pathologist.
6. Sign any formal documents, including treatment plans, individualized education programs, reimbursement forms, or reports.
7. Select patients, clients, or students for services.
8. Discharge patients, clients, or students from services.
9. Unless required by law, disclose clinical or confidential information orally or in writing to anyone not designated by the supervising speech/language pathologist.
10. Make a referral for any additional service.
11. Communicate with the patient, client, or student or with the family or others regarding any aspect of the patient, client, or student status without the specific consent of the supervising speech/language pathologist.
12. Claim to be a speech/language pathologist.
13. Write a formal screening, diagnostic, progress, or discharge note.
14. Perform any task without the express knowledge and approval of the supervising speech/language pathologist.

The Board also rejected the request that the required 1:1 supervision ratio be loosened. The Board did accept the suggestion to add a definition of "medically fragile." Medically fragile is defined as an individual who is acutely ill and in an unstable health condition. Supervision for SLPAs for medically fragile students, patients or clients is required to be 100% direct (which means contemporaneous supervision, in person or via telecommunication technology.)

The Board also accepted suggested changes related to definitions of competency evaluations and ongoing education.

Recommendation:

Council may wish to endorse the regulation with the following suggestions:

a) **It might be beneficial for the regulation to clarify whether the 1:1 supervision requirement is a temporal one, or whether a SLP can only supervise one SLPA in their practice.**
b) **Although the regulation only addresses supervision and licensure, it might be beneficial if the regulation incorporated the statutory provisions restricting the scope of SLPA practice. It is not always the case that a supervising SLP delineates scope of practice for an SLPA, as the statute has very clear prohibitions. This may help to avoid any confusion regarding appropriate activities for a SLPA.**

➔ **Proposed DDOE Regulation on Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion, 28 DE Reg. 783 (5/01/25).**

With this notice, the Delaware Department of Education ("DDOE") is proposing to amend 14 Del. Admin. C. § 614 which concerns the definitions for student conduct which may result in alternative placement or expulsion. The proposed amendments do four things: (1) adds suspensions to the title of the regulation and in Section 1.0; (2) updates definitions in Section 2.0; (3) adds definitions to Section 3.0 related to Attorney General's reports ("AG Reports"); and (4) adds Section 4.0 which updates definitions used in student codes of conduct. DDOE's authority derives from 14 *Del.C.* 122(b)(26) which states that DDOE shall prescribe rules and regulations

> [e]stablishing, for purposes of student discipline, uniform definitions for student conduct which may result in alternative placement or expulsion, uniform due process procedures for alternative placement meetings and expulsion hearings, and uniform procedures for processing Attorney General's reports. Such regulations shall apply to all districts and charter schools. This paragraph shall not be interpreted to restrict the ability of district and charter schools to determine which student conduct shall result in expulsion or an alternative placement[.]

<u>Section 1.0</u>
DDOE proposes to add "suspension" to those actions covered by the 614 regulations. It is unclear whether DDOE has the authority to expand the application of regulation 614 to suspensions. The statute vests DDOE with the authority to establish definitions related to conduct which may result in, specifically, alternative placement or expulsion. DDOE's expansion of the regulation to encompass suspensions likely goes beyond its statutory authority.

If DDOE does have the authority to expand the 614 regulation to suspensions, **Council may wish to recommend that DDOE make clear that its application pertains to both short- and long-term suspensions.**

Section 2.0

DDOE proposes to remove several terms and add other terms in what appears to be an effort to turn this section into generally applicable terms. Specifically, it proposes to remove terms related to criminal offenses while proposing to add definitions related to the imposed discipline. Several of the definitions are inconsistent with the definitions found in other parts of the 600 regulations. For example, DDOE proposes to add the term "alternative placement" as defined as "the removal of a student from the student's school on a temporary basis and assignment to an alternative program for a duration not to exceed the total number of student days in a school year from the date of approval by the district or charter school level coordinator." This same term is defined in the 616 regulations[2] as "the removal of a student from his/her school on a temporary basis for a period of time as determined by the Alternative Placement Team and assignment to an Alternative Program." The inconsistency introduced by this new definition could cause concern as there is now ambiguity on *when* the alternative placement time begins and who makes that determination – the definition in the 616 regulations do not indicate that approval by a district or charter school level coordinator is either required or that it triggers the beginning of the alternative placement.

Another inconsistency concerns the proposed definition for "long-term suspension" which appears to require some form of disciplinary hearing if the long-term suspension is not connected to an expulsion or alternative placement. The current 616 regulations do not require a formalized hearing for long-term suspensions. Instead, long-term suspensions as defined in the 616 regulations apply only when a student is facing expulsion and agrees to waive their right to formalized due process. If DDOE is intending to create more stringent requirements for LEAs intending to impose long-term suspensions by removing the requirement that students waive due process, this is a big step in the right direction. However, **Council may wish to push DDOE to consider going further and to provide students facing a long-term suspension (which could be anywhere from 11 days to an entire school year) or alternative placement (which could be anywhere from 45 days to an entire school year) with the same appeal rights as those students facing expulsion (to include appeals to school boards and to the Delaware State Board of Education).**[3]

The proposed definition for short-term suspension also presents an inconsistency with the current 616 regulations. The current 616 regulations define a short-term suspension as anywhere between one school day and ten school days. The proposed definition in the 614 regulations would expand the definition of short-term suspension to encompass removals anywhere between one-half and ten school days.

Council may wish to recommend that DDOE reconcile the inconsistencies between the proposed definitions in the 614 regulations with the current definitions in the 616 regulations. Additionally, Councils may wish to recommend that DDOE include a definition for "informal school removal" and a prohibition on the practice.

Section 3.0

DDOE is proposing to amend Section 3.0 to encompass those definitions that apply specifically to AG Reports. The rules related to the processing of AG Reports are found in 14 Del. Admin. C. § 613. DDOE proposes to describe AG Reports as

> reports received by school districts and charter schools when a student has engaged in alleged criminal conduct, regardless of jurisdiction, which demonstrates the propensity to

[2] These definitions are also consistent with those found in the 613 regulations.

[3] In many instances, parents and students do not fully understand what they are agreeing to by waiving their right to due process. Oftentimes LEAs will push this when it is likely to lose at an expulsion hearing because it failed to provide the student with the required due process.

show disregard for the health, safety and welfare of others, including serious acts of violence, weapons offenses, and drug offenses.

There are significant problems with how DDOE is describing an AG Report. First, it states that it is a report received when a student "has engaged in alleged criminal conduct." This language presupposes that a student has engaged in activity and the only thing alleged is whether the conduct was criminal in nature. Second, it describes the report as "demonstrat[ing] a propensity to show disregard for the health, safety and welfare of others." Merriam-Webster[4] defines propensity as "an often intense natural inclination or preference." An AG Report, which is oftentimes based on a single incident, is unlikely to show a propensity for anything. Therefore, **Council may wish to recommend that DDOE amend its description of an AG Report consistent with the following (strikethroughs to show deletions and underlines to show additions):**

> **reports received by school districts and charter schools when a student has <u>allegedly</u> engaged in ~~alleged~~ criminal conduct, regardless of jurisdiction, which ~~demonstrates the propensity to~~ show<u>s</u> disregard for the health, safety and welfare of others, including serious acts of violence, weapons offenses, and drug offenses.**

The remaining proposed definitions within Section 3.0 consist of references to the Criminal Code (Title 11). Some of the references to Title 11 are inaccurate. For example, "Criminal Deadly Weapons/Dangerous Instrument Offense, Commission of" is defined as the commission by a student of an offense prohibited by 11 *Del.C.* §§ 1442-1463. However, the following sections do not include offenses: § 1448C (relates to procedures for relinquishing a firearm, projectile weapon, or ammunition); § 1448D (relates to handgun qualified purchaser permits as requirement to purchase a handgun); and § 1449 (relates to wearing body armor during the commission of a felony). **Council may wish to recommend that DDOE review the citations to the Criminal Code used throughout Section 3.0 and amend any proposed definitions with inaccurate references.**

<u>Section 4.0</u>

DDOE's proposed Section 4.0 encompasses those uniform definitions which must be used whenever such conduct is the basis for suspension, alternative placement, or expulsion. Proposed Section 4.0 seems to be current Section 3.0 with added terms, amended definitions, and removed terms. As a whole, the changes to current Section 3.0 (new 4.0) are extensive and a complete analysis is beyond the scope of this memo; however, the more concerning proposed changes are addressed below.

Much of the identified conduct which could form the basis for suspension, expulsion, or alternative placement is open to interpretation and requires a subjective analysis on the part of the educator or school personnel interacting with the student. By being open to interpretation, the conduct requires a subjective judgment on the part of the school personnel – conduct that may be referral-worthy for one educator may not be for another. This "subjective discipline" disproportionately impacts students of color and students with disabilities.[5] In Delaware's School Discipline Improvement Program Report[6] for the 2020-21 school year, LEAs reported a total of 71 "school crimes," 666 "DDOE offenses," and 4,375 "school code violations." School crimes are those required to be reported to law enforcement under 14 *Del.C.* § 4112;

[4] https://www.merriam-webster.com/dictionary/propensity.

[5] https://www.apa.org/pubs/journals/features/spq-spq0000178.pdf (study published in 2016 finding that subjective discipline accounted for the majority of the variance in disproportionality between Black students and white students); https://hechingerreport.org/vague-school-rules-at-the-root-of-millions-of-student-suspensions/ (2024 Hechinger Report reporting the same).

[6] https://education.delaware.gov/wp-content/uploads/2021/11/20.21_discipline_improvement_report.pdf.

DDOE offenses are those required to be reported under 14 Del. Admin. C. § 601; and school code violations are those specified in a particular District's student code of conduct. Assuming the same data was reported to the U.S. Department of Education for its Civil Rights Data Collection, the data shows that there were two reports of sexual assault, five reports of physical attack or fight with a weapon, 116 reports of physical attack without a weapon, three reports of threats of physical attack with a weapon, twelve reports of threats of physical attack without a weapon, and one report of possession of a firearm or explosive device.[7] The SDIP report further shows that during the 2020-21 school year a total of 754 students were suspended for a combined total of 6,023 days[8]. Despite being barely 30% of the student population, Black students made up 46% of the suspended student population. Even though students with disabilities made up less than 20% of the student population, they accounted for 48% of the students who were suspended. With the limited numbers of weapons violations, what are our students actually being removed for? And are we doing a disservice to them? Without the data, we cannot answer the first question. But the second question can be easily and sadly answered with a resounding yes.

As an example of the subjective discipline, DDOE identifies "defiance of school authority" as conduct which could form the basis for suspension, expulsion, or alternative placement and proposes to define the term as a

> verbal or non-verbal refusal to comply with a reasonable request from school personnel, or refusal to identify oneself at the request of school personnel, or refusal to comply with disciplinary action that causes either a substantial disruption or material interference with school activities. This does not include a student who walks away to deescalate or to manage the student's emotions.

This proposed definition[9] calls for a subjective judgment – what is a "reasonable" request? What is considered a "refusal"? What is a "substantial" disruption? What is a "material" interference? Every educator will likely have a different answer to each of these questions. And therein lies the problem. Removal from the school environment should be reserved for those instances of conduct which have objective definitions not open to interpretation and are related to behavior which can cause serious or significant harm to self or others. As the Hechinger report notes, "[d]ecades of research have found that students who are suspended from school tend to perform worse academically and drop out at higher rates. Researchers have linked suspensions to lower college enrollment rates and increased involvement with the criminal justice system."

The proposed Section 4.0 includes a plethora of terms with definitions open to interpretation. **Council may wish to recommend that DDOE remove from the regulations any conduct which could be considered "subjective."** These include the following:

1. "careless and reckless behavior" (new)
2. "defiance of school authority"

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[7] https://civilrightsdata.ed.gov/estimations/2020-2021 (click on "offenses" and a downloadable excel spreadsheet becomes available).

[8] The report notes that there were a total of 972 suspensions which means an unknown number of students were suspended more than once.

[9] The current regulations define defiance of school authority as

> (1) A verbal or non-verbal refusal to immediately comply with a reasonable request from school personnel, or refusal to identify oneself at the request of school personnel, and/or refusal to comply with disciplinary action; or (2) A verbal or non-verbal display of disrespect and/or uncivil behavior toward school personnel which either causes a substantial disruption or material interference with school activities.

3. "disruptive behavior" (new)
4. "dress code violation" (new)
5. "safety violation" (new)
6. "unsafe item" (new)

DDOE proposes the addition of approximately twenty-two new terms as conduct which could form the basis for a student's suspension, expulsion, or alternative placement. In some instances, the proposed term could be likened to a current term, so it is hard to discern which terms are actually new or are just re-named. Of concern are the following:

A. Subjective and open to interpretation:
    a. Careless and reckless behavior
    b. Disruptive behavior
    c. Dress code violation
    d. Safety violation
    e. Unsafe item
B. Further removing from class as discipline for not being in class:
    a. Leaving school grounds without permission
    b. Skipping and leaving class
    c. Tardiness to school and class
C. Vague:
    a. Other school crime

One other term that DDOE proposes to add is "[p]hysical restraint – no code violation" which it proposes to define as the physical restraint of a student where no code of conduct violation occurred. This term is concerning for a number of reasons. First, a physical restraint should only occur where a student's behavior poses a significant and imminent risk of bodily harm to self or others unless there is a clear and unavoidable emergency such as a physical assault. 14 Del. Admin. C. § 610.3.2. It is thus unclear when this term would be applicable. Second, if it is an attempt by DDOE to get LEAs to appropriately track physical restraints, this would be better served within the 610 regulations (concerning the use of restraint and seclusion). **Council may wish to request that DDOE provide an example(s) of how and when this term would apply or to otherwise remove this term and definition from the proposed regulations.**

Finally, many of the terms proposed to be removed include those found within the criminal code such as arson, breaking and entering, extortion, and gambling. Other terms proposed to be removed include cyberbullying, disorderly conduct, repeated violations of the student code of conduct, and violation of behavior contract. **Council may wish to commend DDOE for removing "disorderly conduct" as it is a step toward removing subjective discipline as the basis for suspension, expulsion, or alternative placement. Council may also wish to commend DDOE for proposing to remove "repeated violations of the student code of conduct." However, Council may wish to recommend that DDOE confirm with LEAs that repeated violations are not being used as a basis for further removal of students.[10] Lastly, Council may wish to inquire as to why DDOE proposes to remove cyberbullying and recommend that it be added to the proposed definition of "bullying" for purposes of this regulation.**

Recommendations: Councils may wish to **oppose or take no position** on the proposed regulation for the following reasons:

[10] At least one District has doubled down on the current regulations allowing for alternative placement or expulsion for repeated violations by sending notice to all families of its commitment to use this provision.

- **Council may wish to push DDOE to provide students facing a long-term suspension or alternative placement with the same appeal rights as those students facing expulsion.**
- **Council may wish to recommend that DDOE reconcile the inconsistencies between the proposed definitions in the 614 regulations with the current definitions in the 616 regulations.**
- **Council may wish to recommend that DDOE include a definition for "informal school removal" and a prohibition on the practice.**
- **Council may wish to recommend that DDOE amend its description of an AG Report consistent with the following (strikethroughs to show deletions and underlines to show additions):**

> **reports received by school districts and charter schools when a student has allegedly engaged in ~~alleged~~ criminal conduct, regardless of jurisdiction, which ~~demonstrates the propensity to~~ shows disregard for the health, safety and welfare of others, including serious acts of violence, weapons offenses, and drug offenses.**

- **Council may wish to recommend that DDOE review the citations to the Criminal Code used throughout Section 3.0 and amend any proposed definitions with inaccurate references.**

- **Council may wish to recommend that DDOE remove from the regulations any conduct which could be considered "subjective." These include the following:**
  a. **"careless and reckless behavior" (new)**
  b. **"defiance of school authority"**
  c. **"disruptive behavior" (new)**
  d. **"dress code violation" (new)**
  e. **"safety violation" (new)**
  f. **"unsafe item" (new)**

- **Council may wish to request that DDOE provide an example(s) of how and when this term would apply or to otherwise remove this term and definition from the proposed regulations.**
- **Council may wish to commend DDOE for removing "disorderly conduct" as it is a step toward removing subjective discipline as the basis for suspension, expulsion, or alternative placement.**
- **Council may also wish to commend DDOE for proposing to remove "repeated violations of the student code of conduct." However, Councils may wish to recommend that DDOE confirm with LEAs that repeated violations are not being used as a basis for further removal of students.**
- **Lastly, Council may wish to inquire as to why DDOE proposes to remove cyberbullying and recommend that it be added to the proposed definition of "bullying" for purposes of this regulation.**

II. LEGISLATION

➔ HS 1 for HB 48

HS 1 for HB 48 amends Titles 21 and 9 to do the following:

- incorporates federal standards for accessible parking spaces found in the Americans with Disabilities Act and applicable regulations;

- adds a requirement for a van accessible space reserved for wheelchair/scooter users only in large parking lots (one such designated spot for every three federally required van accessible space)
- increases the penalty associated with violating the statute that prohibits individuals who do not possess a parking placard or special license plate from parking in accessible parking spaces, or in the access aisles located next to accessible parking spaces.
- adds provisions in Titles 9 and 22 to require county and municipal governments to adopt regulations and ordinances incorporating these requirements for accessible parking spaces, including the requirement that local governments require property owners to have a permit and to develop a process to ensure compliance for new or modified accessible parking spaces, in order to increase compliance and uniformity statewide.

People with disabilities find that many locations have non-compliant accessible parking. This may include not having any spots at all, spots in the wrong places, insufficient numbers or types, or that accessible spots are not properly marked by signage and paint. In addition, people are often frustrated by poor enforcement of existing parking laws limiting access to these spaces to people with appropriately issued placards and tags. One reason sometimes given by law enforcement for refusing to enforce parking rules for accessible spaces is that the spaces do not comply with legal standards.

Another frustration is that ADA enforcement requires filing a federal complaint or lawsuit, and that many times the United States Department of Justice will reject parking complaints because of their capacity, and their priorities. This leaves individuals with almost no recourse, either against the violator who parks illegally, or the business or other location that has not provided parking consistent with either ADA standards or local building codes. Ensuring accessibility through lawsuits and complaints is inefficient. Getting a head of the problem through the permitting process, and ensuring parking lots are accessible at the start of the process, gets ahead of the problem and both ensures access and protects businesses from suits.

HS1 for HB 48 attempts to address these concerns in a number of ways. First, it amends 21 Del Code §4183 to define an "accessible parking space". It then greatly simplifies §4183's parking violation section by making it illegal for any vehicle "other than a vehicle being used by a person with a disability" to park in an accessible parking space. It clarifies that it is illegal to park in access aisles. It increases the maximum fines to $250 and $500. Importantly it states that minor variations in parking space features, including the lack of a sign, are not a defense to a charge of parking illegally in an accessible parking space.

New Section §4183A(b) states that parking spaces must comply with ADA standards.[1] There is specific language in (c)1-7 regarding signage and markings. Almost all spaces must have a sign that clearly marks the space as an accessible space, and that lists the fine. Van accessible spaces must be marked as such. Access aisles must be painted blue with lines. It clearly states that access aisles cannot be blocked.

Section 4183A(d) incorporates ADA standards for required numbers of spaces, but adds the requirement that for every 3 required van accessible spaces,[2] the lot must include, in addition to any required spaces, one van accessible space that is marked as reserved for wheelchair and scooter users only. This goes beyond what is required under ADA and building codes. Finally , this section requires maintenance of spaces including removal of ice and snow.

Section 4183A (e)(1) requires compliance for all new spaces as of the effective date and to any existing spaces whenever they are restriped, repainted, resurfaced or altered, or within 5 years of effective date, whichever is sooner. There is an exception to the five-year rule for national register or historic sites and for lots of less than 25 spaces. This section does not apply to on-street parking.

The most significant changes are found in §§4183A(f) which require local authorities to issue a permit or require a certification from a licensed engineer or surveyor that a parking plan meets the requirements of the statute. There is the possibility of a fine of up to $500 for a person who restripes, repaints or otherwise alters a parking lot without following the permit/certification process. Once a permit has been issued, the issuer must verify compliance by use of documentation and photographic evidence, provided that evidence is sufficient to confirm compliance. Any facility[3] covered by the Architectural Accessibility Act, uses that process rather than the municipal/county process.

Recommendation: **Lack of accessible parking is a constant barrier for people with disabilities and impedes community life and access. HS 1 for HB 48 aims to clarify and strengthen the requirements regarding the features of these spaces, and then creates a new, local mechanism to enforce them and hopefully stop compliance issues before they ever start - by requiring permitting. Council may wish to endorse.**

➔ HB 118

This Act would allow for Exceptional Care for Children (ECC) to continue receiving an exemption from the nursing facility quality assessment. It is intended to be a technical clean-up bill to continue ECC's exemption once the Bridge Unit is open. The Bridge Unit will allow ECC to help a small number of individuals, who turn 21 while in ECC's care, transition from a pediatric setting to an adult setting. The bill is not clear as to how long this transition would last.

This change is being proposed so that Exceptional Care for Children (ECC), the state's only pediatric nursing facility, currently licensed as a skilled nursing facility by DHCQ for 46 Medicaid beds, can be paid the pediatric rate for the adults it intends to serve in its new 22 bed, $26 Million "Bridge Unit," currently under construction. [1]According to an ECC press release, the Bridge Unit is meant to serve medically complex teenagers and young adults as they transition into the adult care system.[2] This service expansion has been pitched as good for economic development and providing $1 Million cost savings to the state by allegedly avoiding hospitalizations of these young adults with disabilities. The Press Release notes that "The project's long-term sustainability is assured through Medicaid revenues."[3] The expansion of pediatric nursing facilities into adult skilled nursing care appears to be an industry trend.[4]

Each individual with disabilities has different needs, but many people with complex medical needs thrive in less restrictive settings than a nursing home. The expansion of ECC to serving adults is without any obligation to assist these individuals in exploring less restrictive settings, and without a firm requirement that adult services are transitional only. This will lead to some residents at ECC spending their entire adult lives in the facility. This is a concerning trend that runs counter to concepts of community integration and *Olmstead*, and not one that DMMA should be embracing, especially in the current regulatory void.

Recommendations: Council may wish to consider oppose the bill as written, or take no position, and should ask for more information related to the below.

1. The bill does not clearly establish that only individuals who have been residents as children can remain at ECC into adulthood, and be paid for under pediatric rates.

2. It is unclear why ECC cannot just claim the adult nursing home per diem for adult residents. Councils question why this is the case.

3. This bill places no limit on the age or duration of adult stays.

4. What comparable investment is Delaware doing into community based services for this demographic? How does Delaware intend to demonstrate *Olmstead* and community integration compliance otherwise?