



Governor's Advisory Council for Exceptional Citizens (GACEC)
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September 29, 2025

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

RE: 29 DE Reg. 177/14 DE Admin. Code 616 DDOE Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings regulation (September 1, 2025)

Dear Secretary Marten:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Department of Education (DDOE) proposal to amend 14 Del. Admin. C. § 616 which concerns procedures for implementing alternative placement or expulsion as discipline for violations of the student code of conduct. This is a republication with amendments following public comment. Council would like to share the following recommendations and requests in reference to this version of the regulations.

Section 2.0 and 5.0

There are some inconsistencies with the definition provided for long-term suspension and the application of long-term suspension under section 5.1.2. The definition in Section 2.0 explicitly provides that the long-term suspension is approved by the Superintendent upon recommendation of the principal or pending a decision by the district/charter level alternative placement coordinator, the Board of Education's decision regarding an expulsion hearing, or other formalized disciplinary action hearing for the student. Section 5.1.2 does not include the approval by the Superintendent and is otherwise phrased in a way that may be confusing.

Additionally, the proposed definition of long-term suspension in Section 2.0 is inconsistent with the way that term is defined in the 613 regulations. In the 613 regulations, long-term suspension is defined as a disciplinary action that is approved by the superintendent upon recommendation of the principal, district or charter school's alternative placement team (APT). **Council recommends that DDOE reconcile the inconsistencies between the proposed definition of long-term suspension in 616 subsection 2.0 and 5.1.2, and the definition of long-term suspension provided in regulation 613.**

Section 3.0 and 4.0

Proposed changes to preliminary discipline investigations and initial due process post preliminary discipline investigations identify that a principal may remove allegedly offending students from the general student population during the preliminary investigation if the principal believes the student's presence poses a threat to health, safety, welfare or property in the school environment. The amended sections do not describe what qualifies as a "threat to health, safety, welfare of persons or property in the school environment," leaving the determination of "threat" open to interpretation and requires the

principal perform a subjective analysis. Conduct considered “threatening” for one principal may not be for another. Is a disruption to the learning environment enough to threaten the welfare of the school? Would repeated drawing in school issued textbooks qualify as a threat to school property? Would a student showing up to school unclean multiple times due to environmental or financial issues qualify as a threat to the health of the school? It is possible each principal would answer these questions differently and highlight the problem with subjective discipline practices. Subjective discipline disproportionately impacts students of color and students with a disability. **Council requests that DDOE provide examples of how and when this term would apply.**

New Section 6.0

Proposed amendment 6.1.5 provides principals with the authority to refer a student for alternative placement upon release from a facility operated by the Department of Services for Children and Their Families (DSCYF). Council is very concerned with this section for a number of reasons. As written, this section condones the continued punishment of a student who has already, according to the court, served their adjudication. Moreover, there is no indication that “return from a facility operated by DSCYF” would be a violation of a student code of conduct for which a student *could* be alternatively placed especially when there is already an allowance for alternative placement when connected to an attorney general’s report (*see* proposed 6.1.3). Instead, this regulation would allow a principal to not only illegally remove a student returning from a facility operated by the Division of Youth and Rehabilitative Services, but also any of the psychiatric facilities operated by the Division of Prevention and Behavioral Health Services (DPBHS) or housing/facilities for dependent, neglected, or homeless youth that are operated by DSCYF. A student may not be in a DSCYF-operated facility because of a charge of delinquency nor one that would be considered to pose a threat to the school environment; children might be in DSCYF care because they were a victim of domestic violence, or to receive treatment for mental or emotional traumatic stress associated with a life changing family event. This proposed change also appears to ignore the entire initial due process procedure, including the principal performing an investigation into why the child should be placed in alternative placement and allows the principal to combine the transition meeting and the APT meeting. These actions deprive students released from a DSCYF facility of some of their due process rights. **Council recommends that DDOE remove this provision in its entirety. It should definitely not apply to psychiatric placements within DPBHS, which could be considered discriminatory.**

Alternative Placement Procedures Receipt of Notice

Proposed amendment 6.2.6.1.2 states that APT meetings are to be held no more than twenty business days after the student or parent receives the written notice. The proposed amendment further specifies that written notice is deemed to have been received on the fourth business day following the day of mailing. Generally, it is common practice to deem written notices as received on the date of mailing; frequently referred to as the “mailbox rule.” **Council requests DDOE provide their reasoning on the selected timeframe or conform to current common practice. Council would also like to recommend that DDOE significantly shorten the timeframe for holding the APT meeting, especially for students who are facing a long-term suspension in the interim.**

Alternative Placement Procedures When the Student is a Threat

Amended section 6.2.6.3.2 allows for an APT meeting to be held without the student and/or the student’s parent being in attendance if the student is a threat to the health, safety or welfare of others and the student, or student’s parents, received notice of the APT meeting occurring. Removal of a student and their parents from an APT meeting could result in a violation of the student’s due process rights as outlined in section 4.0 of this regulation and further assured in section 6.2.2 of Alternative Placement Procedures. By not being present at the meeting, the student may not be able to adequately convey the student’s side of the story or provide their own evidence. The removal of the student and parent from APT meetings could also greatly impact any grievances the parent and the child choose to file after the APT has finalized their decision. Rather than having the meeting without the student and their parents, **Council recommends the schools provide an alternative means of participation for students who the school considers**

a threat such as by phone, or virtual meeting platform; and provisions to reschedule based on parent availability.

Alternative Placement Procedures When the Student and Parents Do Not Attend

Proposed section 6.2.3.3 states that if a student and their parents do not attend the APT meeting the student and their parents will be verbally notified of the recommendations of the APT team within one business day of the meeting. However, if a student and their parent failed to attend the meeting because they never received proper notice that an APT meeting was being scheduled, their exclusion from the APT meeting would be unjustified and in violation of the student's rights. Also, the language of the regulation could be read to allow districts to conduct the meeting without the parent when the parent wishes to participate but is unable to on the scheduled date and time. This is unreasonable. **Council recommends an additional provision be included that provides APT decisions may be rendered void if the meeting proceeded without student or parental involvement due to a failure to provide adequate notice of the APT meeting occurring, or if the meeting proceeded over a parent's reasonable request to reschedule.**

Section 7.0

Ordering Transcripts of Expulsion Hearings

Amended section 7.4.10.4 states that a copy of the transcript can be obtained at the student's expense. However, this section does not specify a standard price that can be charged for these transcripts, nor does it specify a process for students facing financial hardship to apply for a fee waiver of this charge. All students should have the ability to access these transcripts regardless of their family's ability to pay as they could be foundational for the student to seek further redress of the results of the hearing. Often students facing disciplinary proceedings are disproportionately the children of low-income households. Without providing a standard fee and a fee waiver process, students from low-income households will be disproportionately impacted by these disciplinary proceedings. **Council recommends that DDOE include a fee schedule and fee waiver provision for transcripts.**

Please contact us if you have any questions on our recommendations and requests. Thank you for your consideration.

Sincerely,

William H. Doolittle

William H. Doolittle
Chairperson

WHD: kpc

CC: Shawn Brittingham, State Board of Education
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