



Governor's Advisory Council for Exceptional Citizens (GACEC)
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November 28, 2025

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

RE: 29 DE Reg. 357/14 DE Admin. Code 616 DDOE Proposed Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings regulation (November 1, 2025)

Dear Secretary Marten:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Department of Education (DDOE) second republication of the 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. Council appreciates those areas that were changed based on comments received from the GACEC and others. Council would like to share the following recommendations and requests in reference to this version of the regulations. We have underlined and bolded our recommendations throughout this letter to make it more convenient for reading.

Section 2.0

There are inconsistencies between the definitions proposed and how those terms are used in other parts of these 600 series of regulations. The definition for alternative placement provides that it begins on the "date of approval by the district or charter school level coordinator." However, the 611 regulations provide that the district board is who makes the determination to place a student within a Consortium Discipline Alternative Program (CDAP). *See* 14 Del. Admin. C. § 611.1.2. **Council recommends that DDOE amend the proposed definition to clarify that it is the determination of the school district board, which triggers the date of alternative placement.**

The definitions for alternative placement and expulsion are almost identical apart from who starts the time period (district or charter school level coordinator vs board of education) and that the definition for expulsion does not explicitly include alternative placement. In both instances, the student is removed from their regular school program for a time not to exceed the total number of student days in a school year. Since students who are expelled may also be eligible for alternative placement, most Districts choose to move forward with alternative placement rather than expulsion because the appeal rights for students are less and the district does not actually need to *prove* to anybody that the student was provided with due process. This can easily be seen by the discipline data and the number of students who are expelled vs alternatively placed in a CDAP (and the code of conduct violations for which the student is alleged to have violated). In addition, DDOE captures alternative placement as "out-of-school suspension with CDAP placement." **Therefore,**

Council asks that the DDOE explain the actual difference between an alternative placement and expulsion with CDAP placement because it seems as though the only difference between the two is that a student is entitled to additional rights and protections just based on how the district decides to pursue discipline. The same issue exists for the application of long-term suspensions (proposed 5.1.2.1.2), which allows a District to suspend a student in-school or out-of-school for a single incident for no more than the number of student days in a school year. **Based on this, Council asks what is the difference between a long-term suspension, an alternative placement, and an expulsion? To alleviate this concern, Council recommends that the DDOE amend the 616 regulations to provide the same appeal rights for students facing alternative placement and long-term suspension as those facing expulsion, including appeal rights up to and including the State Board of Education.**

Section 3.0 and 4.0

DDOE proposes to remove current 3.1.1.3, which provides that a principal conducting the initial investigation must make reasonable efforts to “include the allegedly offending student or parent in the preliminary investigation.” **Council would like to know why DDOE removed this provision and recommends that the language be returned to this section as it is an action necessary to determine what occurred and whether discipline is warranted.**

DDOE proposes to amend the timeline for when a student must be provided with an explanation of the evidence supporting the allegation(s) against them. Specifically, proposed 4.1.1.2 requires that the principal provide this evidence within three days of notifying the student of the allegations and the student code of conduct or rule violated. However, the principal should already have this information as of the date the principal notifies the student/parent of the allegations and what provisions of the student code of conduct the student is alleged to have violated. **Council asks that the DDOE explain why these additional three days are necessary or otherwise recommends that the DDOE remove the additional three days for the principal to provide an explanation of the evidence.**

In most experiences, parents are notified of a suspension the day before it is set to be served and are provided with no explanation of the evidence or otherwise given information about the process for appeals or grievances. Because the proposed 4.0 regulations only require notification by “electronic means” – meaning email *or* phone – parents often do not receive written notification of proposed disciplinary action. **Council recommends that the DDOE requires that written notification of disciplinary action, the basis for such action and information on the appeal/grievance process be provided prior to the student being required to serve the suspension. Council also recommends that the regulations specify that the written notification (or any written notification regarding disciplinary action) be provided to the parents in the language in which they are most comfortable speaking or reading.**

Districts in Delaware have routinely removed students with disabilities from the school environment in excess of 10 school days when the student is pending alternative placement or other long-term removal. This is in direct conflict with federal and state law concerning changes of placement for students with disabilities. Although the regulations include Proposed Section 9.0, which provides that a school must still comply with its obligations under the IDEA and Section 504, this provision has consistently been ignored. **Council recommends that the DDOE explicitly include in proposed 4.2 (current 4.2.1) that the provision related to the immediate removal of students due to alleged threats to health or safety not apply to students with disabilities if it would result in a disciplinary change of placement.**

Section 5.0

Proposed Section 5.4 provides that the grievance process be provided to the student and parent no later than three business days “from day 1 of the suspension.” **Because the word “from” can be read to either mean 3 days before or 3 days after, Council recommends that the DDOE replace “from” with “before” to ensure that the grievance procedure and the ability to appeal, is provided prior to the student serving the first day of the suspension.**

Proposed Section 5.5 allows districts to restrict the ability for a student to grieve or appeal a suspension if the duration is two days or less. **Council would like information as to why DDOE added this restriction on a student's right to appeal.**

New Section 6.0

Proposed 6.1.2 provides that “[v]irtual services may be provided if deemed necessary by the district or charter school.” The Delaware Department of Services for Children, Youth and Their Families previously provided comments to DDOE concerning this language, requesting that the language be removed or otherwise limited to those instances where it is “clearly more beneficial to the student’s academic progress and return to regular school programming than in-person alternatives.” DDOE, in its response to DSCYF’s comment, elected not to change the language but instead stated it would “emphasize that districts and charter schools should prioritize in-person alternatives unless virtual programming clearly better supports the student’s academic progress and successful transition back to regular school programming.” **Council supports and would like to re-emphasize the comments from DSCYF. We would also like to request that the language be struck or amended to include the emphasis stated by DDOE in its response to the DSCYF comment.**

Council would like to thank the DDOE for removing the previously proposed 6.1.5, which would have provided principals with the authority to refer a student for alternative placement upon release from a facility operated by DSCYF.

New proposed 6.2.3.2 refers to a Memorandum of Understanding between DDOE, LEAs, and DSCYF that concerns students entering secure care facilities and their reentry into their home schools. This was the result of a comment submitted by DSCYF. A search of the DDOE website and DSCYF website does not yield the document referenced. Therefore, it is impossible to provide thoughtful and thorough comments on the proposed regulation. **Council would recommend that the DDOE ensure that the MOU is available to and easily by the public.**

Proposed 6.2.6.1 provides that notification of the school’s alternative placement meeting must be provided at least five business days before the meeting is scheduled to occur. Proposed 6.2.6.1.2 explains that the written notice is deemed received on the fourth business day following the date of mailing. If proposed 6.2.6.1 were to mean that notice must be mailed at least five days before the meeting, the student would then have only a single day’s notice, which would conflict with proposed 6.2.6.1.2. **Council recommends that the DDOE clarify that the language proposed in 6.2.6.1 means that the notification must be received by the student at least five business days before the meeting. Council would also like to thank the DDOE for reducing the number of days from 20 to 14 for holding the alternative placement meeting following receipt of the notification, which the GACEC had previously suggested.**

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. Council previously recommended that 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. DDOE declined to make this change stating that “the current language already allows for student participation by alternative means and for rescheduling as needed.” **Council would like to reiterate our recommendation that this language be added since the DDOE may have unintentionally removed the language** (*see e.g., current 7.2.1.7.2 which is struck through*). The only mention of phone conferences is in relation to a student’s return from an out-of-school suspension of three days or more (proposed 5.6), a review meeting when a student has been in an alternative placement (proposed 6.4.5), and electronic communications related to grievances (proposed 8.2.7).

Proposed 6.3.2.4.2 describes what should occur where a student transfers from one district to another prior to the alternative school placement. It requires that the original district must send the alternative placement packet to the new district as part of the student’s record and that an Attorney

General's Report must be separately requested from DELJIS. **Council recommends that the DDOE remove the provision related to Attorney General Reports as inconsistent with the provisions outlined on 14 Del. Admin. C. § 614, which governs the processing and handling of Attorney General Reports.** Regulation 614 requires that the district destroy the Attorney General report if the district does not intend to pursue disciplinary action or, if it does, that it be destroyed following any applicable appeal periods. Therefore, there should be no reason why a receiving district would need access to the Attorney General report, especially where a District did not pursue disciplinary action based on such report.

Proposed 6.4 governs the review process for a student in alternative placement. DDOE proposes to amend the current timeframe (required semi-annual, recommended quarterly) to require a review at least each marking period for students in elementary and middle school and a review at least each semester for students in high school. **Council recommends that the DDOE require a review at least each marking period for all students regardless of grade level since the alternative placements are supposed to be temporary in nature.**

Proposed 6.5 provides for when the alternative placement review results in a recommendation for the student to return to their home school yet there is no provision for when the review results in the opposite. Some students have been in alternative placements even after meeting all required criteria because the home district declines to agree with the alternative placement that the student should return. **Council recommends that the DDOE include a grievance or appeal process that would allow the student to challenge the decision for a student to remain in alternative placement.** This is especially important for high school students when a determination is made that the student not return and the next review, if the current proposed regulations stand, would put the student at enrollment for an entire year at the alternative placement (which is inconsistent with the intent of alternative placement to be temporary in nature).

Miscellaneous

Currently, Districts receive Attorney General's reports for incidents, which occurred within the school environment, which is inconsistent with when these reports should be provided (which is only for off-campus conduct). There have been instances where students are then subject to additional discipline based on the same Attorney General's Report despite the conduct occurring on school grounds. **Council would like to request that the DDOE meet with the staff at the Delaware Criminal Justice Information System (DELJIS) to ensure Attorney General's Reports are only sent for incidents occurring off school grounds and to include a provision explicitly prohibiting a District from using an Attorney General's Report for on-campus conduct as the basis for disciplining a student.**

Please contact us if you have any questions about 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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