Discipline and School Climate

612 Possession, Use or Distribution of Drugs and Alcohol

1.0 Purpose

The purpose of this regulation is to outline the minimum requirements to be included in all public school district and charter school policies on the Possession, Use, or Distribution of Drugs and Alcohol.

20 DE Reg. 436 (12/01/16)

2.0 General Provisions

2.1 The following provisions shall apply to all public school district and charter schools:

2.1.1 The possession, use or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance and Drug Paraphernalia are prohibited within the School Environment, unless medically necessary.

2.1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.

2.1.3 Student motor vehicle use to and in the School Environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike substance or Drug Paraphernalia in the School Environment, may result in the student being asked to open an automobile in the School Environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.

2.1.4 All Alcohol, Drugs, Drug Like Substances, Look Alike Substances and Drug Paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 **Del.C.** Ch. 47, turned over to police as potential evidence.

12 DE Reg. 781 (12/01/08)
20 DE Reg. 436 (12/01/16)

3.0 Definitions

The following definitions shall apply to this regulation, unless a specific regulation, statute or the context in which they are used clearly indicates otherwise, and shall apply to all public school districts and charter schools.

"**Alcohol**" means alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 **Del.C.** §101 including alcohol, spirits, wine and beer.

"**Designated Caregiver**" means, pursuant to 16 **Del.C.** §4902A(5), a person who: is at least 21 years of age unless the person is the parent or legal guardian of a minor who is a qualifying patient; has agreed to assist with a patient's medical use of marijuana; has not been convicted of an excluded felony offense; and assists no more than 5 qualifying patients with their medical use of marijuana.

"**Distribute**", "**Distributing**" or "**Distribution**" means the transfer or attempted transfer of Alcohol, a Drug, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"**Drug**" means any controlled substance or counterfeit substance as defined in 16 **Del.C.** §4701 including, for example, narcotic Drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"**Drug Like Substance**" means any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 **DE Admin. Code** 877 Tobacco Policy.

"**Drug Paraphernalia**" means all equipment, products and materials as defined in 16 **Del.C.** §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging Drugs.

"Look Alike Substance" means any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a Drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See 16 **Del.C.** §4752A.

"**Medical Marijuana Oil**" means as defined in 16 **Del.C.** §4902A(10).

"Nonprescription Medication" means any over the counter medication; some of these medications may be a "Drug Like Substance."

"Possess" "Possessing" or "Possession" means that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance, or Drug Paraphernalia.

"Prescription Medication(s)" means any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 **Del.C.** §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

"Relative Caregiver" means an individual who meets the criteria and requirements of 14 **Del.C.** §202 (f)(1).

"School Environment" means within or on school property, and at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"Use" means that a student is reasonably known to have ingested, smoked or otherwise assimilated Alcohol, a Drug or a Drug Like Substance, or is reasonably found to be under the influence of such a substance.

12 DE Reg. 781 (12/01/08)
20 DE Reg. 436 (12/01/16)

4.0 Requirement of Each School District and Charter School to have a Policy

4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, at a minimum, the following:

4.1.1 A system of notification of each student and their parent, guardian or Relative Caregiver at the beginning of the school year, of the state and district policies and regulations. In addition a system for the notification of each student and their parent, guardian or Relative Caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.

4.1.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.

4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or Relative Caregivers and to the Department of Education, while maintaining confidentiality.

4.1.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.

4.1.5 A written policy on search and seizure.

4.1.6 A program of assistance for students with counseling and referral to services as needed.

4.1.7 A policy in cases involving a Drug Like Substance or a Look Alike Substance for establishing that the student intended to use, possess or distribute the substance as a Drug.

4.1.8 A policy which establishes how Prescription Medications and Nonprescription Medications shall be handled in the School Environment and when they will be considered unauthorized and subject to these state and local policies.

4.1.9 A policy which sets out the conditions for return after expulsion for Alcohol or Drug infractions.

4.2 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of Drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler with an individual prescription label, an autoinjectable epinephrine with individual prescription label, or an insulin pump for continuous subcutaneous insulin infusion ("insulin pump"); provided, nevertheless, that the student uses the inhaler, autoinjectable epinephrine, or an insulin pump pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the parent(s) or legal custodian(s) of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler, autoinjectable epinephrine, or an insulin pump at such student's discretion or under the

school nurse's supervision, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler, autoinjectable epinephrine, or an insulin pump, and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler, autoinjectable epinephrine, or an insulin pump based upon the student's age, level of maturity, behavior, or other relevant considerations.

4.2.1 Parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler, autoinjectable epinephrine, or insulin pump is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement.

4.2.2 Except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler, autoinjectable epinephrine, or an insulin pump if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

(For students who use prescribed asthmatic quick relief inhalers, autoinjectable epinephrine, or an insulin pump for continuous subcutaneous insulin therapy, see 14 **DE Admin. Code** 817, Administration of Medications and Treatments)

4.3 A Designated Caregiver may possess for the purpose of administering and may administer to a minor qualifying patient Medical Marijuana Oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The Designated Caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of dose(s) prescribed per day of Medical Marijuana Oil which is kept at all times on their person.

12 DE Reg. 781 (12/01/08)
13 DE Reg. 1201 (03/01/10)
20 DE Reg. 436 (12/01/16)

5.0 Reporting Requirements and Timelines

5.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of Drugs and Alcohol policy on file with the Department of Education.

5.2 When a local school district or charter school revises its possession, use, and distribution of Drugs and Alcohol policy, it shall notify the Department of Education of the revised policy within thirty (30) days of the revision, even if the revision was made because of changes in federal, state or local law, regulations, guidance or policies.

2 DE Reg. 2043 (05/01/99)
7 DE Reg. 767 (12/01/03)
12 DE Reg. 781 (12/01/08)
13 DE Reg. 1201 (03/01/10)
20 DE Reg. 436 (12/01/16)