

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 540

FINAL

REGULATORY IMPLEMENTING ORDER

540 Driver Education

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 540 Driver Education to allow for students with Individual Education Programs (IEPs) additional time to complete driver education pursuant to House Bill No. 264 as amended by House Amendment No. 1 of the 146th General Assembly. Additionally, changes were made to reflect the elimination of fees for driver education for nonpublic school students who are Delaware residents.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 5, 2013, in the form hereto attached as *Exhibit "A"*. In addition, a public hearing was held on February 27, 2013. Comments were received from Governor's Advisory Council for Exceptional Citizens (GACEC), the State Council for Persons with Disabilities (SCPD), and the Delaware Division of Vocational Rehabilitation. The Department made changes to the regulation to reflect the addition of the words "and related services" in section 1.1.1 as suggested by the GACEC and SCPD. The Department received a comment related to the charging of a fee for a student with an active IEP if the student did not pass the course after two attempts. The ability to delay the course until 11th or 12th grade should help to ensure that driver education is taken at the most appropriate time. In addition, taking the course across two semesters was added as a specific accommodation. The regulation has been revised to allow for additional times to complete the course with no charge to the student.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 540 Driver Education in order to allow student with an active IEPs until the age of 21 to complete their driver education certification. This regulation also provides the student the ability to enroll in another driver education course if the student fails the driver education course during the regular school year.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 540 Driver Education. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 540 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 540 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 540 Driver Education amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 540 Driver Education in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **March 21, 2013**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21 day of March 2013.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 21st day of March 2013

State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
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540 Driver Education

1.0 Eligibility for Driver Education

- 1.1 A student enrolled in a Delaware public school or nonpublic school (private and homeschool) and who is a resident of Delaware is entitled to free driver education one time only. Delaware nonpublic school (private and homeschool) students are entitled to tuition-based driver education at rates approved by co-chairs of the Joint Finance Committee, Delaware General Assembly. Students who are not successful in their initial driver education course may register in any of the adult driver education programs for a fee.
- 1.21.1 For a student with an active Individual Education Program (IEP), the Individualized Education Program Team, in consultation with the Driver Education teacher, may make accommodations to the Driver Education program, including but not limited to, allowing multiple opportunities to take the driver education course, delaying the course until the 11th or 12th grade, taking the course across two semesters] and offering specialized instruction [and related services] for special education students through the student's Individual Education Program (I.E.P., IEP).
- 1.1.2 A student who is receiving special education services under an active Individual Education Program (IEP) shall be authorized until the age of 21 to complete the driver education certification.
- 1.1.3 A student with an active IEP retaking the driver education course because of failing the initial driver education course shall not be required to pay a fee for taking the course [one] additional time[s].
- 1.32 Nothing in this regulation shall alter a 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. Nothing in this regulation shall prevent a school from providing driver education to such students.
- 1.43 Delaware students who are residents attending public schools who are attending school out of state as 10th graders, students in excess of the September 30th unit allotment, students attending private schools in the state with 10th grade enrollments of less than twenty-five homeschooled students and any student approved by the Secretary as an exceptional case are entitled to attend summer driver education without charge. Students attending private schools in state with 10th grade enrollments of less than twenty five, homeschooled students, and eligible Delaware residents attending schools out of state shall be entitled to attend tuition-based summer driver education at rates approved by the co-chairs of the Joint Finance Committee, Delaware General Assembly. Districts shall notify all nonpublic and public high schools in their district by May 1st annually as to the location of the nearest summer driver education program. Summer Driver Education shall be offered between June 10 and August 31 and each request for free tuition must be approved by the Secretary of Education through the Office of the Director of Career & Technical Education and School Climate Director overseeing driver education.
- 1.54 Adult Driver Education programs, when offered, shall follow the same regulations established for the high school and the summer programs. The adult programs are available to any individual for a fee through a local school district in each county. The cost per student for adult driver education will be determined by the Department of Education.

12 DE Reg. 670 (11/01/08)

2.0 Requirements for Class Time

- 2.1 The driver education course shall include a minimum of forty four (44) class hours of instruction consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in the car behind the wheel laboratory instruction and seven (7) hours of actual observation in the car. The class hours must not be less than forty five (45) minutes each. For those schools with varying class schedules the minimum classroom instruction must be no less than one thousand three hundred fifty (1350) minutes and behind the wheel laboratory instruction no less than three hundred fifteen (315) minutes.
- 2.2 Driving simulators may be substituted for the required hours of behind the wheel laboratory instruction but only up to three (3) hours of time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind the wheel laboratory instruction.

- 2.3 Off the street driving ranges or multiple driving ranges that are off the street may be substituted for actual behind the wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind the wheel laboratory instruction time.
- 2.4 Driving simulation and off the street driving range time shall not be taken from or cause a reduction of classroom instruction time.
- 2.5 Driving simulation and off the street driving range time shall not be substituted for more than one half (1/2) of the total required seven (7) hours of actual behind the wheel laboratory instruction and only at the ratios defined in 2.0. This includes individually or in any combination.

3.0 Curriculum

The Driver Education teachers shall use the statewide curriculum for driver education developed by the Department of Education for classroom instruction and behind the wheel laboratory instruction time. Teachers should include student activities requiring reading, writing and research as part of the Driver Education curriculum.

4.0 Final Grades

- 4.1 Final grades for the forty four hour driver education course shall be either pass or fail. Schools may grant one fourth (1/4) credit for successful completion of the minimum hours in both the classroom and the behind the wheel laboratory experience. The one fourth of a credit for driver education may be included as part of the elective credits counted toward graduation.
- 4.2 Pass or Fail grades must be received by the Department of Education no later than June 30th for Regular Driver Education Programs and August 31st for Summer Driver Education Programs. Final grades will be maintained by the Department for a seven year period.

5.0 Use of Driver Education Cars

Automobiles purchased, leased from Fleet Services or leased directly from a dealership using state funds allocated for driver education shall be used solely for the instruction of students enrolled in Driver Education; except that a school district or charter school may permit a driver education teacher to drive such automobile to and from the teacher's place of residence when the school district or charter school determines that it would be unsafe to store the automobile overnight at the school. The Director of ~~Career & Technical Education and School Climate~~ overseeing driver education shall assign private school driver education teachers a state parking location to store the vehicle overnight when it appears that it would be unsafe to store the automobile overnight at the school.

12 DE Reg. 670 (11/01/08)

6.0 Scheduling of Driver.

All public and ~~nonpublic~~ private high schools with twenty five or more enrolled 10th grade students shall offer Driver Education as part of the curriculum.

1 DE Reg. 964 (1/1/98)

6 DE Reg. 773 (12/1/02)

10 DE Reg. 1587 (04/01/07)

12 DE Reg. 670 (11/01/08)

16 DE Reg. 1070 (04/01/13) (Final)