

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 258

FINAL

Regulatory Implementing Order

258 Federal Programs General Complaint Procedures*

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures. The amended regulation reflects the addition of a limitation on the time by which a complaint may be filed and provides a numbering change in cross referencing other parts of Administrative Code. The amended regulation also explicated identifies a charter schools as a Local Education Agency for purposes of this regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2008, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities endorsing the regulation with a few observations. The Department made a clerical revision based on the comments. The Department respectfully declines to make the addition of language related to the Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. This is because under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, primary responsibility is at the program or service delivery level. Accordingly, local school districts are primarily responsible for the appropriate implementation of both statutes. Further, the Office of Civil Rights is the enforcement agency for Section 504 claims.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures in order to clarify charter schools are considered Local Education Agency for purposes of this regulation and to provide for a time limitation for the filing of a complaint.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures 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** 258 Federal Programs General Complaint Procedures amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures 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 July 14, 2008. 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 14th day of July 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 14th day of July 2008

258 Federal Programs General Complaint Procedures*

1.0 Programs Covered by the Complaint Process

This complaint process shall apply to the following programs: Title I Part A Improving Basic Programs Operated by Local Education Agencies; Title I Part B-1 Reading First; Title I Part B-2 Early Reading First; Title I Part B-3 William F. Goodling Even Start Family Literacy Program; Title I Part C Education of Migratory Children; Title I Part D Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or at Risk; Title I Part F Comprehensive School Reform; Title I Part G Advanced Placement; Title II Part A Teacher and Principal Training and Recruiting Fund, Grants to States; Title II Part A-5-2151(B) School Leadership; Title II Part D 1 and 2 Enhancing Education Through Technology; Title III Language Instruction for Limited English Proficient and Immigrant Students; Title IV Part A Safe and Drug Free Schools and Communities; Title IV Part B 21st Century Community Learning Centers; Title V Part A Innovative Programs and Title V Part B-1 Public Charter Schools.

2 DE Reg. 217 (8/1/98)

7 DE Reg. 161 (8/1/03)

2.0 Right to File a Complaint

An organization or an individual may file a complaint regarding an alleged violation of Federal Program Statutes or regulations by the Delaware Department of Education or the Local Education Agency. For purposes of this regulation, a Local Education Agency shall also include charter schools. A written and signed complaint shall be filed with the Delaware Department of Education.

2.1 The complaint shall include a statement specifying the alleged violation by the State Education Agency or a Local Education Agency. Such statement shall include facts and documentation of the alleged violation.

2.2 The Delaware Department of Education shall investigate the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty (60) working days of the receipt of the complaint. An extension of the time limit may be made by the Delaware Department of Education only if exceptional circumstances exist with respect to a particular complaint.

2.3 The Delaware Department of Education may conduct an independent onsite investigation of the complaint, if it is determined that an on site investigation is necessary.

2.4 The complaint shall allege a violation that occurred not more than one (1) year prior to the date that the complaint is received.

2 DE Reg. 217 (8/1/98)

7 DE Reg. 161 (8/1/03)

3.0 Complaint Made to the Local Education Agency

An organization or an individual is encouraged to file a written, signed complaint with the Local Education Agency, prior to submission of the complaint to the Delaware Department of Education, concerning an alleged violation by the Local Education Agency of a Federal statute or regulation that applies to the Local Education Agency's program.

- 3.1 The complaint shall include a statement specifying the alleged violation by the Local Education Agency. Such statement shall include facts and documentation of the alleged violation.
- 3.2 The superintendent or the agency head of the Local Education Agency shall investigate the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within sixty (60) working days of the receipt of the complaint.
- 3.3 An appeal of the Local Education Agency decision may be made by the complainant to the Delaware Department of Education. The appeal shall be in writing and signed by the individual or by an individual representative of the organization making the appeal. The Delaware Department of Education shall resolve ~~address~~ the appeal in the same manner as a complaint, as indicated in 2.0.

2 DE Reg. 217 (8/1/98)

7 DE Reg. 161 (8/1/03)

4.0 Review of Final Decision by the U.S. Department of Education

Any party to the complaint has the right to request that the Secretary, U. S. Department of Education, review the final decision of the Delaware Department of Education. The request for an appeal of the decision to the Secretary, U. S. Department of Education, shall be made in writing to the Delaware Department of Education within sixty days of the receipt of the decision.

2 DE Reg. 217 (8/1/98)

5.0 Complaints and appeals to the Delaware Department of Education shall be mailed to the following address:

Secretary of Education
Delaware Department of Education
401 Federal Street
Suite 2
Dover, Delaware 19901-3639

*IDEA Part B, as amended, has other specific remedies and procedural safeguards specified under Section 615 of the Act to protect ~~[disabled]~~ students with disabilities. See 14 **DE Admin. Code 925, Children with Disabilities** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies.

2 DE Reg. 217 (8/1/98)

7 DE Reg. 161 (8/1/03)

12 DE Reg. 208 (08/01/08)