

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)  
(14 Del.C. §122(b) and §154(e))

### GENERAL NOTICE

#### IMPLEMENTING ORDER

#### STATE BOARD OF EDUCATION PROCEDURES MANUAL

##### Background and Context of Regulation

The State Board of Education's *Procedures Manual* includes descriptions of the Board's organization and operations, its meeting procedures and its rules of hearing practice, among other items.

The State Board concludes it is necessary to amend the *Procedures Manual* to:

- (1) Revise citations to the Delaware Code outlining the State Board's jurisdiction to the extent statutes have been re-numbered, added, or deleted as a result of legislative changes;
- (2) Delete the specific reference to the "Administrative Manual for Special Education Services" and replace it with a reference to the Department's regulations governing special education;
- (3) Update the telephone and fax numbers listed for the State Board;
- (4) Permit parties to initiate appeals to the State Board by sending a notice of appeal by facsimile; and
- (5) To further clarify the rules applicable to appeals filed with the State Board.

These changes are exempted from the procedural requirements of the *Administrative Procedures Act* to 29 Del. C. 10113(b)(1), (2), (4) and (5). As a result, the State Board may adopt these changes informally.

#### ORDER ADOPTING REGULATIONS

The State Board of Education concludes that it is appropriate to amend the *Procedures Manual* as described above. The amended regulations are attached as Exhibit "A" and are hereby adopted by the State Board of Education as its *Procedures Manual*, effective immediately.

Approved this 23rd day of October, 2008.

#### STATE BOARD OF EDUCATION

Jean W. Allen, President  
G. Patrick Heffernan  
Barbara Rutt  
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President  
Jorge L. Melendez  
Dennis J. Savage

**State Board of Education  
Procedures Manual**

**September 1998  
(Revised: 2001, 2002, 2004 ~~and 2006~~, 2006 and 2008)**

**Legal Basis and Related Issues**

**Statutory Basis**

The State Board exists pursuant to 14 **Del.C.** §104(a), which states the following:

(a)The State Board of Education shall be composed of 7 members who shall be citizens of the State and shall be appointed by the Governor and confirmed by the Senate. The Governor shall name the President of the Board who shall serve at the Governor's pleasure. Each of the remaining members of the Board shall be appointed to serve for 6 years and until his or her successor qualifies.

**Board Structure**

**Membership**

In accordance with 14 **Del.C.** §104(a), the State Board is composed of 7 members.

**Appointment**

In accordance with 14 **Del.C.** §104(a), the State Board members are appointed by the Governor and confirmed by the Senate.

**Qualifications**

The qualifications for membership on the State Board of Education are specified in 14 **Del. C.** §104(d), which states the following:

(d)The members of the Board shall be appointed solely because of their character and fitness subject to the following qualifications: At least 2 members of the Board shall have had prior experience on a local board of education; no more than 4 members of the Board shall belong to the same political party; no person shall be eligible to appointment who has not been for at least 5 years immediately preceding appointment a resident of this state; and no person shall be appointed to the Board who is in any way subject to its authority.

Any member of the Board shall be eligible for reappointment unless otherwise disqualified by this title. In constituting the Board, the President shall be appointed from the State at large, but the appointments of the remaining 6 members shall be made so that there shall be on the Board at least 1 resident of the City of Wilmington, 3 residents from New Castle County outside the City of Wilmington, 1 from Kent County and 1 from Sussex County.

**Terms**

The President of the Board serves at the pleasure of the Governor 14 **Del.C.** §104(a). The terms for the remaining 6 members are "6 years and until his or her successor qualifies" 14 **Del.C.** §104(a). However, §104(f) provides that the "Governor may appoint members for confirmation by the Senate for terms shorter than 6 years where that is necessary to ensure that Board members' terms expire on a rotating annual basis".

**Compensation**

The compensation of State Board members is specified in 14 **Del. C.** §104(h), which states the following:

(h)The members of the Board shall receive \$100 for each day's attendance at the meetings of the Board not to exceed 24 days' attendance in any 1 calendar year; and they shall be reimbursed for ~~the~~their actual travel and other necessary expenses incurred in attending meetings and transacting the business of the Board.

### **Vacancies**

"Vacancies on the Board for any cause shall be filled by the Governor for the unexpired term and until a successor shall qualify" 14 **Del.C.** §104(e).

### **Powers, Duties and Responsibilities**

The powers, duties, and responsibilities of the State Board of Education are delineated primarily in **Delaware Code**, Title 14. The general powers are specified in 14 **Del.C.** §104(b), which follows. However, the specific powers, duties, and responsibilities, as cited in the **Code**, are detailed more fully in Appendix A, where the specific citations and a brief paraphrase of the statutes are given.

(b)The State Board of Education shall have powers, duties, and responsibilities as specified in this title. Included among the powers, duties and responsibilities are those specified in this subsection. The State Board of Education shall:

(1)Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

(2)Provide the Secretary of Education with advice and guidance on the Department's annual operating budget and capital budget requests;

(3)Provide the Secretary of Education with guidance in the preparation of the annual report specified in §124 of this title, including recommendations for additional legislation and for changes to existing legislation;

(4)Provide the Secretary of Education with guidance concerning the implementation of the student achievement and statewide assessment program specified in §122(b)(4) of this title;

(5)Decide, without expense to the parties concerned, certain types of controversies and disputes involving the administration of the public school system. The specific types of controversies and disputes appropriate for State Board resolution and the procedures for conducting hearings shall be established by rules and regulations pursuant to §121 (12) of this title;

(6)Fix and establish the boundaries of school districts, which may be doubtful or in dispute, or change district boundaries as provided in §§1025, 1026, and 1027 of this title;

(7)Decide on all controversies involving rules and regulations of local boards of education pursuant to §1058 of this title;

(8)Subpoena witnesses and documents, administer and examine persons under oath, and appoint hearing officers as the State Board finds appropriate to conduct investigations and hearings pursuant to paragraphs (5), (6), and (7) of this subsection;

(9)Review decisions of the Secretary of Education, upon application for review, where specific provisions of this title provide for such review. The State Board may reverse the decision of the Secretary only if it decides, after consulting with legal counsel to the Department, that the Secretary's decision was contrary to a specific state or federal law or regulation, was not

supported by substantial evidence, or was arbitrary and capricious. In such cases, the State Board shall set forth in writing the legal basis for its conclusion;

(10) Approve such Department rules and regulations as require State Board approval, pursuant to specific provisions of this title, before such regulations are implemented;

(11) Approve rules and regulations governing institutions of postsecondary education that offer courses, programs of courses, or degrees within the State or by correspondence to residents of the State pursuant to §§121(16) and/or 122(b)(7-8).

(12) Any provision of Chapter 5 of Title 14 to the contrary notwithstanding, decide appeals of decisions by the board of directors of a charter school to suspend or expel a student for disciplinary reasons. In deciding such cases, the State Board shall employ the same standard of review as is set forth in § 1058 of Title 14; and

(13) Approve all regulations of the Higher Education Commission.

## **Conduct of Members**

**Delaware Code**, Title 29, Chapter 58 provides the laws regulating the conduct of officers and employees of the State of Delaware. Members of the State Board of Education are subject to certain of the provisions of that statute in that they are included in the definition of “state agency” 29 **Del.C.** §5804(40 11) and the definition of “honorary state official” 29 **Del.C.** §5804(43 6). For that reason, members of the Board are encouraged to become familiar with the provisions of that chapter. The following issues are of particular concern.

### **Conflicts of Interest**

Section 5805 details the State’s conflict of interest provisions, which apply to members of the State Board of Education. As applied to State Board that means that a member may not participate on behalf of the State in the review or dispositions of any matter pending before the State in which he or she has a personal or private interest 29 **Del.C.** §5805(a). There are also restrictions on representing another’s interest §5805(b); against contracting with the State for goods or services §5805(c); or for representing or assisting private enterprise within two years after appointed service §5805(d). The code of conduct is further detailed in 29 **Del.C.** §5806.

### **Financial Disclosure**

Subchapter II, Chapter 58, 29 **Del.C.**, contains the requirements for financial disclosure of public officers. Because State Board of Education members are not included in the definition of “public officer” contained in §5812, it would appear that members are not required to file the annual disclosure reports mandated by this statute. However, nothing would prohibit a member who chose to do so from voluntarily completing such a report.

### **Dual Compensation**

“There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State” 29 **Del.C.** §5821(a). The statute prohibits such individuals from receiving dual compensation for their time. Thus, State Board members, who are employed by the agencies and organizations specified, are encouraged to acquaint themselves with the specific provisions of this statute.

## **Organization**

### **Officers**

#### **President**

The Governor shall name the President of the Board who shall serve at his/her pleasure 14 **Del.C.** §104(a). The President is responsible for the integrity of the Board process. Integrity includes the efficient, orderly deliberation of Board issues and conduct of Board affairs.

The President has no authority over Department of Education activities. However, the President does have authority, subject to any applicable Board policy, to (1) call special meetings of the Board; (2) represent, in person or through a designee, Board positions and symbolize the Board image in public and at ceremonial events; and (3) decide mechanics of Board procedures. Subject to Board approval, the President (1) determines Board agendas and committee charges, and (2) makes Board appointments to committees. The President shall be an ex officio member of all committees, and shall have all privileges of membership but shall not be counted in the committee quorum.

The President shall have the same right to make or second motions and to vote on pending questions as any other member of the Board.

The President shall determine the appropriate action to take in reference to any uncertainty regarding any expense statement submitted by a member of the State Board.

The President shall be responsible for initiating the annual evaluation of the Board's ~~progress toward achieving the goals delineated in the five-year plan (See Vision, Mission, and Goals)~~ vision, mission, and goals.

### **Vice President**

The Vice President shall be elected at the annual meeting and shall serve until the next annual meeting or until a successor has been named 14 **Del.C.** §105(a). The Vice President shall assist the President in the duties of the President's office, as the President may direct, and shall preside at meetings and appoint members of committees during the President's absence. In the event of the President's death, resignation, incapacity, or disqualification, the Vice President shall act in place of the President in all respects until the vacancy shall be filled or the incapacity removed.

### **Executive Secretary**

Pursuant to 14 **Del.C.** §104(c), the Secretary of Education, in addition to his or her other duties of office, shall serve as Executive Secretary of the State Board.

The Executive Secretary is responsible for keeping of the minutes and other official records of the State Board, either in person or by an assistant.

### **Legal Counsel**

Legal counsel to the State Board of Education is provided by the State Department of Justice and the Attorney General's Office in accordance with 29 **Del.C.** §2504. (In accordance with 29 **Del.C.** §2507, no agency board, or commission shall employ legal counsel except with approval of the Attorney General and Governor.)

### **Staff Assistance**

Section 104(c), 14 **Del.C.**, provides in part, that: "The Department, through the Secretary, shall provide reasonable staff support to assist the State Board in performing its duties pursuant to this title ...". In addition, the annual appropriations act provides funding for a single independent staff person to provide support and policy advice to the State Board of Education.

## **Committees**

### **Subcommittees of the Board**

The Board may, from time to time, establish temporary committees to help carry out its responsibilities. To preserve Board holism, committees will be used sparingly, only when other methods have been deemed inadequate or to improve efficiency of operations. Board committees, whether external or internal, may not speak for the Board. No more than three Board members may serve on a Board committee. Board members may express their interest and willingness to serve on any committee. Subject to Board approval, the President will identify the charge of the committee and appoint a committee chair and members of the committee. It is expected that committees will report back to the full Board on a regular basis.

### **Special Board Committees**

The Board may, from time to time, create special committees to advise the Board on specific issues, and shall vote to do so at a formal meeting of the Board. Such committees may include membership outside the Board or Department of Education.

### **Other Committees**

Under **Delaware Code**, a member of the State Board must serve on each of the following committees:

- President of the Board serves as co-chair of the P-20 Council 14 **Del.C.** §107
- Equalization Committee 14 **Del.C.** §1707(i)
- President of the State Board serves ex-officio on the Board of Trustees of the University of Delaware 14 **Del.C.** §5105

Traditionally, Board members also serve on numerous external boards and committees at both the State and national level. Examples include the following:

- Delaware School Boards Association Board of Directors
- Delaware School Boards Association Legislative Committee
- Education Consortium
- Committees and study groups of the National Association of State Boards of Education
- Education Task Forces and Committees established by Executive Orders and Legislation.

### **Committees Appointed by the Secretary of Education**

In accordance with 14 **Del.C.** §103(a)(11), the Secretary must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval. The Board's view shall be expressed in the form of a vote on the proposed committee membership.

### **New State Board Member Orientation**

The State Board of Education is responsible for the orientation of new members to the State Board. A subcommittee of the Board shall be responsible for planning the orientation of new members. The Secretary of Education shall be an ex-officio member of this committee.

### **Board Member Development**

The State Board of Education shall be responsible for its own development as a Board. This development shall take place through membership and participation in organizations such as the National Association of State Boards of Education, Delaware School Boards Association, the National School Boards Association, and other activities such as Board retreats, conferences, conventions, workshops, or committees.

### **Evaluation**

The Board will monitor its own process and performance to ensure continuity of Board improvements, integrity of Board actions and progress toward Board goals. The Board will be accountable to the public for competent, conscientious, and effective accomplishment of its obligations as a Board.

The Board may seek the input from others regarding the effectiveness or impact of Board initiatives as part of the evaluation process, and may utilize the services of an independent consultant in doing so.

### **Consultants**

The Board may, within available financial resources, hire consultants as needed. The Board shall formally approve the consultant and fee.

### **Board Member Reimbursements**

Reimbursement to Board members for the normal mileage and incidental expenses are paid by the Department of Education from funds appropriated to the Board and budgeted for that purpose. Reimbursement

requests for expenses for conferences or meetings outside the state must be initialed by the Board president. For other expenditures in excess of \$1,000, Board approval is required.

### **Board Member Conference Attendance**

Conferences attended by Board members should focus on policy level decisions or provide information to inform policy makers. Content must be aligned to Board goals and initiatives. Conference attendance should be shared by all board members to the extent possible and must be approved by the President before any arrangements are made.

## **Meetings**

### **Annual Meeting**

Pursuant to 14 **Del.C.** §105(a), the annual meeting of the State Board of Education shall be held in Dover during the month of July. Election of the Vice President of the Board shall occur at this meeting.

### **Regular Meetings**

Regular meetings of the State Board of Education are held once a month in the Cabinet Room of the John G. Townsend Building, Dover. The meetings are normally scheduled on the third Thursday of each month beginning at 1:00 p.m. but may vary as need dictates.

### **Special Meetings**

Special meetings of the State Board of Education may be held to address emergency issues, conduct hearings, develop goals, evaluate board operations, or for in depth study and review of an issue. Special meetings are held at a time and place agreed upon by the Board.

### **Executive Sessions**

The State Board of Education may meet in executive session for the reasons specified in 29 **Del.C.** §10004. The Board must vote in a public meeting to go into executive session stating the purpose for the executive session.

## **Board Meeting Procedures**

### **Public Notice of Meetings**

As specified in 29 **Del.C.** §10004(e)(4 2) the State Board is required to give public notice of all meetings, including executive sessions closed to the public, at least 7 days prior to the meeting. The notice must include the agenda and the date, time, and place of the meeting. The notice is posted on the bulletin board outside the Cabinet Room of the Townsend Building, Dover.

In addition, notices of all regular meetings are mailed to the district superintendents, state officials, the media, heads of state education organizations and other interested parties. Persons and organizations may request that they be placed on the mailing list by contacting Dani Moore at the Department of Education. Telephone 302/739-4603 ~~735-4010~~. Fax 302/739-7768. Email: [dmoore@doe.k12.de.us](mailto:dmoore@doe.k12.de.us)

### **Agenda Format - Order of Business**

The order of business for regular meetings is as follows:

- I. Opening
  - A. Call to Order

- B. Approval of Agenda
- C. Approval of Minutes
- II. Formal Public Comment
- III. State Board Business
  - A. Reports/Discussions
  - B. Budget Items
  - C. Other
- IV. Presentations
  - A. State Board of Education
  - B. Department of Education
  - C. Other Presentations
  - D. Secretary's Report, Review and Discussion
- V. Action Items
  - A. Department of Education
  - B. Professional Standards Board
  - C. Charter Schools
  - D. Other Action Items
  - E. Appeals and Reviews
- VI. Information Items

### **Agenda Preparation and Dissemination**

Items included on the Board's agenda for regular meetings are recommended jointly by the Policy Analyst to the State Board and the Cabinet of the Department of Education. The final agenda is subject to the approval of the Board President. Any member of the Board may request that an item be placed on the agenda.

Agendas with all background materials are distributed to Board members at least 5 days prior to the meeting. Board agendas are also distributed to district and state officials and to others on a request basis.

The State Board Agenda is also posted on the Department of Education Web Site prior to the meeting at [www.doe.k12.de.us](http://www.doe.k12.de.us)

### **Rules of Order**

The Board uses the rules of parliamentary procedure to conduct its meetings, but it is not strictly bound by Robert's Rules of Order. The general conduct of the meeting is determined by the Board President with input from other board members and advice from the Board's legal counsel.

### **Quorum**

Four (4) members of the State Board must be present to conduct the business of the Board 14 **Del.C.** §105(a)).

### **Voting Method**

Votes by the State Board are taken by voice. When the vote is not a unanimous one, a roll call vote is taken in alphabetical order with the President voting last. All questions before the Board must be approved by a majority (4) of the members of the whole Board.

### **Minutes**

As prescribed in 29 **Del.C.** §10004(f), the State Board maintains minutes of all its meetings including executive sessions. The minutes must include the names of board members present and a record, by individual member, of all votes taken and action agreed upon. The minutes, along with the printed agenda and its backup materials, shall constitute the official record of the Board.

Highlights of the State Board meetings are available on the Department of Education Website within 10 days of the State Board meeting at [www.doe.k12.de.us](http://www.doe.k12.de.us). Official Board Minutes are posted on the web site within five days of their approval at the subsequent monthly meeting of the Board.

### **Public Participation at Board Meetings**

There are three ways that individuals and groups may address the Board at its regular meetings:

- An individual or group may request time on the Board's agenda to make a formal presentation to the Board. Such a request should be in writing, and be submitted to the President of the State Board of Education, John G. Townsend Building, 401 Federal Street, Suite 2, P.O. Box 1402, Dover, DE 19903-1402, at least 20 days prior to the meeting. The decision to include the presentation will be made by the Board President. (Such presentations are included in Section IV.C. of the agenda.)
- Time will be allocated at the beginning of the meeting (Section II) for individuals or groups to address the State Board on general issues. In addition, individual and/or groups may address the State Board on agenda items at the time that they are before the Board for discussion. Persons wishing to make comments should sign up on the appropriate form at least 15 minutes prior to the call to order. Each group should choose one representative to speak and comments should be limited to five minutes. Speakers will be recognized by the Board President in the order their names appear. If a large number of people sign up to speak, the Board President may at his/her discretion, limit the number of persons allowed to speak as well as designate the appropriate time for comments.

Normally the Board will not respond to questions or comments at the meeting but ~~will~~ may respond in writing to each person or group. Written responses will not be made to persons/groups addressing action items on the agenda.

### **Appeals and Reviews**

The State Board of Education has several responsibilities under the Code to hear appeals and to review decisions of the Secretary of Education. Those responsibilities are outlined in 14 **Del.C.** §104(b)(5), (b)(6), (b)(7), ~~and~~ (b)(9), and (b)(12). The types of controversies and disputes appropriate for Board resolution and the procedures for conducting such hearings are contained in Appendix B.

### **Policy Development**

One of the primary functions of the State Board of Education is to assist the Secretary of Education in the development of policy. Subsection 104(b)(1), 14 **Delaware Code** states:

- (1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

In order to meet that responsibility, the State Board has set aside time at each regular meeting for discussions of State Board initiatives (Section III.A.), presentations from the Department of Education and the Secretary of Education's Report (Sections IV A. and B., respectively) and for Board action on policy, rules, and regulations (Section V.).

It is the expectation of the Board that the Secretary and the Department of Education will use those opportunities to obtain advice and counsel from the board as a whole in keeping with the spirit of the statute quoted above.

## **Appendix A**

The following is a list of the powers, duties, and responsibilities of the State Board of Education. Each pertinent section of the Code is paraphrased and annotated. A general description of the powers, duties, and responsibilities can also be found in 14 **Delaware Code**, §104(b), which is quoted in its entirety in the body of this document.

### **Advisory Board to the Secretary**

The State Board shall participate in meetings of the Advisory Board to the Secretary of Education 14 **Del.C.** §106.

### **Alternative Assessments**

The State Board of Education must approve any alternative assessment administered pursuant to §151(i) of Title 14 **Del.C.**

### **Approval of Charter Schools**

The State Board of Education must approve charter schools authorized by the Department 14 **Del.C.** §503, ~~§506(a)(3)(c)~~, and §511(c). The State Board is also involved in any charter revocation under 14 **Del.C.** §515 and §516.

### **Approval of Rules and Regulations of the Professional Standards Board**

The State Board of Education must approve rules and regulations promulgated by the Professional Standards Board before they become effective 14 Del.C. §1203. Such rules and regulations cover a number of areas including the following:

1. Qualifications and certification of educators in the public schools 14 **Del.C.** §1092, §1201, ~~§1230~~, §1260, §1261, and §1264(b), ~~and §3310(4)~~.
2. ~~Licensure of substitute teachers 14 Del.C. §1230~~
3. ~~Establishment of a special institute for teacher certification 14 Del.C. §1250-1260.~~
4. ~~Regarding alternative routes for teacher certification 14 Del.C. §1230-1260.~~
5. ~~Regarding professional development activities that qualify for Skills and Knowledge Salary Supplements 14 Del.C. §1305(k).~~
6. ~~Regarding authorization of stipends for employees who have achieved certification from the National Board for Professional Teaching Standards or an equivalent program 14 Del.C. §1305(m).~~
7. ~~Regarding activities that qualify for Additional Responsibility Salary Supplements 14 Del.C. §1305(n).~~

### **Approval of Regulations of the Higher Education Commission**

The State Board of Education must approve rules and regulations promulgated by the Higher Education Commission before they become effective 14 **Del.C.** §104(b) (13).

### **Approval of Rules and Regulations**

The State Board of Education must approve rules and regulations promulgated by the Department of Education before they become effective. Such rules and regulations cover a number of areas including the following:

1. Issuance of certificates and diplomas for the public schools 14 **Del.C.** §122(b)(3).
2. Statewide assessment of student achievement and the assessment of the educational attainments of the public school system 14 **Del.C.** 151(i).
3. Minimum courses of study for all public elementary schools and public high schools 14 **Del.C.** §122(b)(5).
4. Instruction in driver education in the nonpublic high schools 14 **Del.C.** §122(b)(~~13~~14).
5. Issuance of Delaware Public Education Profiles on all public schools, including charter schools 14 **Del.C.** §124(a)~~A~~.
6. Delaware performance Appraisal System II 14 **Del.C.** §1270.
7. Excusal of educational hour requirements specified in 14 **Del.C.** §122 (b)(~~8-9~~) and §1049(1).
8. Enforcement of school attendance laws 14 **Del.C.** §122(b)(~~9-10~~) and 14 **Del.C.** §2705(b) and truancy 10 **Del. C.** §901(14).
9. Instruction in driver education during summer months 14 **Del.C.** §122(b)(~~13~~14).
10. Conduct of interscholastic athletics 14 **Del.C.** §122(b)(~~14-15~~).
11. Mandatory drug and alcohol educational programs 14 **Del.C.** §122(b)(~~16-17~~).
12. Operation of adult education and family literacy programs 14 **Del.C.** §122(b)(~~17-18~~).
13. Conduct of the teacher scholarship loan program in critical curriculum areas 14 **Del.C.** §1106 and the student loan program in critical curriculum areas (14 **Del.C.** §1108).
14. Concerning the employment of school principals 14 **Del.C.** §1307(2).
15. Regarding the employment of school nurses 14 **Del.C.** §1310(b).
16. Concerning parent advisory committees, a peer review committee, a human rights committee, and an autistic program monitoring board 14 **Del.C.** §1332(f).
17. Relating to related services for children with disabilities 14 **Del.C.** §1716A(c) and §1716A(d).
- ~~18. Governing the design and operation of school buses 14 **Del.C.** §2901, and the transportation of students of nonpublic nonprofit schools 14 **Del.C.** §2905.~~
- ~~19.~~18.Regarding the creation and operation of programs designed to serve exceptional students, primarily children with disabilities (numerous citations throughout 14 **Del.C.** Chapter 31).
- ~~20.~~19.Regarding the extent and content of the instruction in the public schools in the Constitution of the United States, the Constitution and government of Delaware and the free enterprise system 14 **Del.C.** §4103.
- ~~21.~~20.Regarding interstate agreements on the qualifications of education personnel 14 **Del.C.** §8212.

#### **Approval of Shared School Decision Making Grants**

The State Board of Education must approve guidelines for district transition grants for shared decision making 14 **Del.C.** §803(b); must approve guidelines for school transition grants 14 **Del.C.** §805(b); and must approve guidelines for school improvement grants 14 **Del.C.** §806(a).

#### **Approval of Vocational Centers**

The State Board of Education must approve the creation of vocational-technical centers or schools 14 **Del.C.** §205.

#### **Approval of Neighborhood School Plans**

The State Board of Education must approve neighborhood school plans submitted by districts 14 **Del.C.** §~~205~~ 223(d).

#### **Committee Appointments**

The Secretary of Education must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval 14 **Del.C.** §103(a)(11).

### **Critical Curriculum Areas**

The State Board of Education must approve areas, which are to be designated as critical curriculum areas 14 **Del.C.** §1101; approve academic year programs 14 **Del.C.** §1104; and approve summer in-service programs 14 **Del.C.** §1105.

### **Deciding Certain Controversies**

The State Board of Education shall decide without expense to the parties concerned certain controversies and disputes involving the administration of the public school system 14 **Del.C.** §121(12) and 14 **Del.C.** §104(b)(5). Rules and regulations regarding such hearings by the Board are contained in Appendix B.

### **Deciding Controversies Concerning Local Rules and Regulations**

The State Board of Education shall decide controversies involving rules and regulations of local school boards 14 **Del.C.** §1058 and some rules and regulations of charter schools 14 **Del.C.** §104b(12).

### **Drug/Alcohol Education Programs**

The State Board of Education must approve of statewide alcohol/substance abuse programs established and implemented by the Department of Education 14 **Del.C.** §4116(a).

### **Employment of Aides in Autistic Program**

The State Board of Education may review decisions of the Department and Secretary of Education regarding requests to employ aides in lieu of teachers in the autistic program 14 **Del.C.** §1332(e).

### **Establishment of Programs for Children with Disabilities**

The State Board of Education must approve the establishment of schools, classes or programs for the disabled 14 **Del.C.** §203, §1703(d), §1703(k), §1703(l), §1703(m), §1703(n) and §1721.

### **Number and Length of School Days**

The State Board of Education must approve a reduction in the number of school hours and the length of full workdays for employees of the school system 14 **Del.C.** 1305(h)(i) (j).

### **Reorganization of School Districts**

The State Board of Education determines and establishes appropriate reorganized school districts through consolidation, division, or a combination of the two as well as establishing tax rates and tax districts for the same. 14 **Del.C.** §1025, §1026, §1027, §1028, §1065, §1924, and §1925

### **Review of Decisions Regarding Children with Disabilities**

The State Board of Education may review a variety of decisions made by the Department regarding services to children with disabilities (numerous citations in 14 **Del.C.** Chapter 31).

### **Standards for Interpreter/Tutors**

The State Board of Education must approve standards prescribed for interpreter/tutors 14 **Del.C.** §1331(b).

### **Statewide Programs for Children with Disabilities**

The State Board of Education must approve the designation of a district to serve as administrative agency for the deaf-blind program 14 **Del.C.** §1321(e)(15)a.; to administer a program for the physically impaired 14 **Del.C.** §1321(e)(16); the establishment of intensive learning centers 14 **Del.C.** §1321(e)(17); and the designation of an administering district for the autistic program 14 **Del.C.** §1332(a).

### **Use of Cash Options in Lieu of Salary Funds**

The State Board of Education may review decisions of the Department and Secretary of Education regarding district requests to elect cash options in lieu of receiving salary funds from the State 14 **Del.C.** §1321(e)(11), §1321(e)(12), §1321(e)(15)b., §1321(e)(16), §1332(d), and §1332(e).

### **Use of Special Education Funds**

The State Board of Education may review decisions on the use of special education funds that a district seeks to use in another way if an objection is made to the Department's decision 14 **Del.C.** §1703(o) and §1716A(h).

### **Vacancies on Local School Boards**

The State Board of Education appoints interim members to a local board of education in the event a majority or the entire membership vacates the seats at the same time. The Board may also set the date for a special election to fill the vacancies 14 **Del.C.** §1054.

### **Waiver of a Regulation**

The State Board may, within 30 days or at its next meeting, deny any waiver of a regulation, it must promulgate or approve, granted by the Department of Education 14 **Del.C.** §122(g)(2).

### **Waiver of Rules Under School Discipline Programs**

The Department of Education is authorized to waive certain rules and regulations in the implementation of school discipline programs. The State Board of Education may deny the waiver within a fixed period of time 14 **Del.C.** §1606.

## **Appendix B**

### **HEARING PROCEDURES AND RULES**

RULE MAKING HISTORY:Initial adoption date September 1998

Revised 2000

Revised date 10-1-01 (see Register of Regulations at [www.legis.state.de.us/onlinepublications](http://www.legis.state.de.us/onlinepublications)

Revised date 11-1-04 (see Register of Regulations at [www.legis.state.de.us/onlinepublications](http://www.legis.state.de.us/onlinepublications)

Revised date 10-23-08

#### **1.0 Scope and Purpose of Rules**

The State Board of Education ("the State Board") is authorized by several sections of the Education Code (Title 14 of the **Delaware Code**) to adopt or approve rules and regulations, resolve disputes, hear appeals, and review decisions of the Secretary of Education. The State Board is also governed by the Administrative Procedures Act (Chapter 101 of Title 29 of the **Delaware Code**), except where specifically exempted by other law.

These Hearing Procedures and Rules ("Rules") shall govern the practice and procedure before the State Board in hearings, appeals, and regulatory proceedings.

#### **2.0 General Provisions**

2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the State Board's statutory responsibilities and with the Administrative Procedures Act.

2.2 The State Board may for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.

2.3 Whether a proceeding constitutes an evidentiary hearing, an appeal or regulatory action shall be decided by the State Board on the basis of the applicable laws. A party's designation of the proceeding shall not be controlling on the State Board or binding on the party.

2.4 The State Board may appoint a representative to act as a hearing officer for any proceeding before the State Board. Except as otherwise specifically provided, the duties imposed, and the authority provided, to the State Board by these Rules shall also extend to its hearing officers.

2.5 Notwithstanding any part of these Rules to the contrary, the State Board, or its counsel, designee or hearing officer, may conduct pre-hearing conferences and teleconferences to clarify issues, confer interim relief, specify procedures, limit the time available to present evidence and argument, and otherwise expedite the proceedings.

2.6 The State Board may administer oaths, issue subpoenas, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

2.7 The State Board may elect to conduct joint hearings with the Department of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.

2.8 Any party to a proceeding before the State Board may be represented by counsel. An attorney representing a party in a proceeding before the State Board shall notify the Executive Secretary of the State Board ("Executive Secretary") of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the State Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.

2.9 The State Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the State Board shall be submitted to the Executive Secretary in writing at least three (3) business days before the date scheduled for the proceeding. The President of the State Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.

2.10A copy of any document filed with or submitted to the State Board or its hearing officer shall be provided to all other parties to the proceeding, or to their legal counsel. Where a local or other school board participates in a proceeding, copies of filed documents shall be directed to the executive secretary of the board, unless that board appoints a different representative for such purpose.

2.11For purposes of these Rules, unless otherwise specified "day" shall mean a calendar day. "Business day" shall mean weekdays Monday through Friday, except when those days fall on a legal holiday.

### **3.0 De Novo and Other Evidentiary Hearings**

3.1 Section 3.0 governs proceedings where a statute or regulation provides the right to an original or to a de novo hearing before the State Board to decide a specific controversy or dispute.

#### **3.2 Petitions for Hearing**

3.2.1A party may initiate a hearing on matters within the State Board's jurisdiction by mailing or delivering a petition for hearing to the Executive Secretary. The petition shall be in writing and shall be signed by the party making the request (or by the party's authorized representative). It shall set forth the grounds for the action in reasonable detail and shall identify the source of the State Board's authority to decide the matter. Petitions may not be delivered to the Executive Secretary by facsimile, but not by E-mail or other electronic means.

3.2.2The petition for hearing shall be filed within a reasonable time after the controversy arises, but in no event shall a petition be filed more than thirty (30) days after the petitioning party's receipt of notice that official action has been taken by an authorized person, organization, board or agency.

3.2.3 A copy of the petition for hearing shall be delivered to all other parties to the proceeding at the time it is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board or its hearing

officer shall, at the time of filing, also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Secretary shall place the matter on the agenda of the next State Board meeting. At the next meeting, the State Board will either assign the matter to a hearing officer or determine a hearing date for the matter. The parties shall be given at least twenty (20) days notice of the hearing date.

3.2.5 A party shall be deemed to have consented to an informal hearing (as that term is used in Section 10123 of the Administrative Procedures Act) unless the party notifies the Executive Secretary in writing that a formal public hearing is required. Such notice must be delivered to the Executive Secretary within three (3) days of the receipt of the notice scheduling the hearing.

### 3.3 Record of Prior Proceedings

3.3.1 If proceedings were previously held on the matters complained of in the petition, the agency which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Secretary.

3.3.2 The record shall contain any written decision, a certified copy of any rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a certified, verbatim transcript of the proceedings conducted by the agency below and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

3.3.3 The record shall be filed with the Executive Secretary within ten (10) days of the date the Executive Secretary notifies the agency that the petition has been filed, unless directed otherwise. A copy of the record shall be sent to the petitioner when it is submitted to the Executive Secretary.

### 3.4 Record Review

3.4.1 If a hearing was previously held on the matters complained of in the petition, the parties to the proceeding before the State Board may agree to submit the matter to the State Board or its hearing officer on the existing record without the presentation of additional evidence.

3.4.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The parties' written statements shall be submitted according to a schedule determined by the State Board.

3.4.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument by notifying the Executive Secretary in writing at least ten (10) days before the date written statements are due. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

3.4.4 If the parties agree to submit the matter for decision on the existing record, the State Board's decision shall be based on the existing record, the written statements and oral argument, if any.

### 3.5 Evidentiary hearings

3.5.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the State Board or its hearing officer otherwise decide to receive additional evidence.

3.5.2 The hearing will proceed with the petitioner first presenting its evidence and case. The responding party may then present its case. The petitioner will then have an opportunity to present rebuttal evidence.

3.5.3 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the State Board or hearing officer.

3.5.4 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the State Board or its hearing officer.

### 3.6 Evidence

3.6.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

3.6.2 The State Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.

3.6.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.6.4 Any document introduced into evidence at the hearing shall be marked by the State Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the State Board members present for the hearing unless otherwise directed.

3.6.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Secretary in writing at least fifteen (15) days before the date of the hearing, unless additional time is allowed for good cause. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

### 3.7 Creation of Record before State Board

3.7.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing or oral argument. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

3.7.2 If a stenographic reporter is not present at the hearing or argument, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing.

### 3.8 State Board Decision

3.8.1 When the State Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

3.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within a reasonable time of the conclusion of the proceedings before the hearing officer.

3.8.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order.

3.8.4 To the extent possible, the State Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.

3.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

## 4.0 Appeals

4.1 Section 4.0 governs proceedings where a statute or regulation provides the right to appeal to the State Board a decision which resolved a specific controversy or dispute. These proceedings include, but are not limited to, appeals of school district decisions involving rules and regulations of the school board (14 Del.C. §1051-1058<sup>1</sup>) and appeals of decisions of the Delaware Interscholastic Athletic Association (DIAA) (14 Del.C. §312) and appeals of decisions by the board of directors of a charter school to suspend or expel a student for disciplinary reasons (14 Del.C. §104(b)(12)).

Note <sup>1</sup>: The State Board of Education has held that the local boards of education are not subject to the *Administrative procedures Act* while conducting disciplinary proceedings. See *R.T. v. Sussex County Vocational-Technical School District Board of Education*, SBE No.99-12 (February 17, 2000) and *M.B. v. Sussex Technical School District Board of Education*, SBE No.-03 (April 3, 2000)

4.2 For purposes of Section 4.0:

4.2.1 "Party" shall mean any person or organization who participated in the proceedings before the agency which rendered the decision being appealed.

4.2.2“Decision” shall mean the official action taken to resolve the dispute presented below and shall include the factual findings, the rule involved and the agency’s conclusion. “Decision” shall not include policy making or the adoption of rules and regulations of future applicability.

4.3 For purposes of determining the State Board’s jurisdiction under Section 1058 of the Education Code, “controversies involving the rules and regulations of the school board” shall mean the presentation before the local school board of a dispute involving the application of rules and regulations of the local board in a particular factual context. Certain decisions involving the application of rules and regulations of the local board may not be appealed to the State Board, including:

4.3.1 Decisions involving student disciplinary actions where a student is suspended from school for ten (10) or fewer days, except where a request to expunge the disciplinary action from the student’s record has been denied by the local board.

4.3.2 Personnel actions which are covered under a collective bargaining agreement or are otherwise subject to adjudication by the Public Employment Relations Board.

4.3.3 Termination of employees conducted in accordance with Chapter 14 of the Education Code.

4.3.4 Termination or non-renewal of public school administrators and confidential employees, as those terms are defined in Section 4002 of the Education Code, at the conclusion of an employment contract.

4.4 Decisions for the Board of Directors of a charter school to suspend a student from school for ten (10) or fewer days may not be appealed to the State Board, except where a request to expunge the disciplinary action from the student’s record has been denied by the board of directors.

#### 4.5 Notice of appeal

4.5.1 A party may initiate an appeal by mailing or delivering a notice of appeal to the Executive Secretary. The notice shall be in writing, shall be signed by the party making the request (or by the party’s authorized representative. Notices of Appeal may ~~not~~ be delivered to the Executive secretary by facsimile, but not by E-mail or other electronic means.

4.5.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

4.5.3 A notice of appeal form is included at the end of these Rules. People filing appeals are not required to use the form, but may find it helpful to do so.

4.5.4 The notice of appeal must be postmarked by or delivered to the Executive Secretary within thirty (30) days of the day the party initiating the appeal receives the written decision from which the appeal is taken.

4.5.5 A copy of the notice of appeal shall be mailed or delivered to the agency which made the decision at the same time the original notice of appeal is mailed or delivered to the Executive Secretary. A copy of any other paper or document filed with the State Board or its hearing officer shall be provided to all parties to the proceeding at the same time it is filed with the State Board or its hearing officer.

4.5.6 Upon receipt of an adequately detailed notice of appeal involving a student disciplinary decision or a decision of the Delaware Interscholastic Athletic Association (DIAA), the Executive Secretary shall assign the matter to a hearing officer from a roster of hearing officers approved by the State Board. The Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting.

4.5.7 Upon receipt of an adequately detailed notice of appeal involving any matter other than a student disciplinary decision or a decision of DIAA, the Executive Secretary shall consult with the President of the State Board to determine whether the matter should be assigned to a hearing officer or placed on the State Board’s next meeting agenda. The President shall have the authority to authorize the Executive Secretary to assign a hearing officer to the matter from a roster of hearing officers approved by the State Board. In such case, the Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting. Nothing in this subsection shall prevent the State Board from later assigning the matter to a hearing officer.

#### 4.6 The record on appeal

4.6.1 Unless instructed otherwise, within ten (10) days of the receipt of the notice of appeal, the agency which made the decision under appeal shall forward the record of the proceedings below to the Executive Secretary. A copy of the record shall be sent to the party filing the appeal at the same time.

4.6.2 The record shall include the agency's written decision, a copy of any rule or regulation involved, the minutes of the meeting(s) at which the decision was made, a verbatim transcript of the hearing conducted by the agency or party below, and all exhibits presented to the agency. The transcript shall be prepared at the direction and expense of the agency below.

4.6.3 The agency's executive secretary, executive director or comparable administrator shall complete the "Certification of Record" form provided at the end of these Rules and attach it to the record when the record is forwarded to the Executive Secretary.

4.6.4 If a transcript of the proceedings below is not or cannot be provided to the State Board, the Executive Secretary shall remand the case to the agency with an instruction that the agency hold a new hearing within ten (10) days.

#### 4.7 Proceedings on appeal

4.7.1 The State Board of Education or its hearing officer shall establish and notify the parties of the date when the State Board or its hearing officer will consider the appeal, hereafter referred to as the consideration date. The parties shall be given at least twenty (20) days notice of the consideration date. The parties may agree to shorten or waive the notice of the consideration date.

4.7.2 Written position statements ~~of position~~ and legal briefs or memoranda, if any, shall be filed no later than (10) days prior to the consideration date. A party who files a written position statement with the State Board or its hearing officer must send a copy to the opposing party at the same time. Failure to file a written statement by the time specified may result in a postponement of the consideration date until the statement is filed, or a consideration of the appeal without the written statement, at the discretion of the State Board or its hearing officer.

4.7.3 The written position statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal concerns a legal issue or interpretation.

##### 4.7.4 Oral argument

4.7.4.1 A party may request that oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written position statement ~~of appeal~~. There will be no oral argument unless it is requested when the written position statement ~~of appeal~~ is submitted.

4.7.4.2 Oral argument, if requested, shall be limited to fifteen (15) minutes per side with five additional minutes for rebuttal.

4.7.4.3 Any party may request the presence of a stenographic reporter at oral argument by notifying the Executive Secretary at least ten (10) days prior to the date of the argument. The requesting party shall be liable for the expense of the reporter. If a stenographic reporter is not present at the argument, the State Board or hearing officer shall cause an electronic transcript of the hearing to be made by tape recorder or other suitable device. Electronic transcripts shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the appeal.

4.7.4.4 If the State Board or hearing officer permits a party to present oral argument on an issue which was not identified by the party in their written position statement, briefs or legal memoranda, or if in the course of the argument, the State Board or hearing officer raises an issue which was not previously raised by either party, the parties shall have a reasonable opportunity to comment in writing within five (5) business days of the oral argument.

4.7.4.5 The State Board or its hearing officer may limit or restrict argument that is irrelevant, insubstantial or unduly repetitive.

#### 4.8 Standard and Scope of Review

4.8.1 The appellate review of the State Board shall be limited to the record of the proceedings below. Neither the State Board nor the hearing officer will consider testimony or evidence which is not in the record. If the State Board determines that the record is insufficient for its review, it shall remand the case to the agency below with instructions to supplement the record.

4.8.2 The standard of review shall be determined by the law creating the right of appeal. In the absence of a specific statutory standard, the substantial evidence rule will be applied, that is, neither the State Board nor the hearing officer will substitute its judgment for that of the agency below if there is substantial evidence in the record for its decision and the decision is not arbitrary or capricious. The State Board will make an independent judgment with respect to questions of law.

#### 4.9 State Board Decision

4.9.1 After considering the record from the proceedings below, the written submissions and the arguments made by the parties, if any, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

4.9.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. To the extent possible. ~~The proposed decision shall be submitted to the State Board and the parties within fifteen (15) days of the consideration date or the filing of any post argument submissions.~~

4.9.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional comment. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Secretary.

4.9.4 The State Board shall consider the appeal at its next regular meeting following receipt of the parties' exceptions, comments, and arguments, if any, or the end of the comment period, whichever occurs first.

4.9.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and any written comments thereto, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

#### 4.10 Student Discipline Appeals

4.10.1 To the extent possible, appeals of decisions involving student discipline will be scheduled for consideration by the hearing officer within thirty (30) days of the receipt of the notice of appeal.

4.10.2 If an appeal involves disciplinary action against a student receiving special education and related services, the record must include evidence that a Manifestation Determination Review was conducted pursuant to the Department of Education's ~~Administrative Manual for Special Education Services~~ regulations governing special education. Failure to provide such evidence may result in reversal or remand to agency for additional proceedings.

4.10.3 An appeal of or dispute about the Manifestation Determination Review must be made to the Department of Education as provided in the ~~Administrative Manual for Special Education Services~~ Department's regulations governing special education. The State Board of Education will not review such determinations.

### 5.0 Public Regulatory Hearings

5.1 Section 5.0 governs public hearings before the State Board or its hearing officers where the State Board is required to hold, or decides to hold, such hearings before adopting or approving rules and regulations or taking other regulatory action. See Note 1.

5.2 Notice that the State Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the Administrative Procedures Act. Notice of the public hearing shall also be circulated to individuals and agencies on the State Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the State Board will conduct the hearing, or designate a hearing officer for that purpose.

#### 5.3 Creation of record of public hearing

5.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

5.3.2 If a stenographic reporter is not present at the hearing, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

#### 5.4 Subpoenas

5.4.1 The State Board or its hearing officer may issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) days prior to the public hearing.

5.4.2 The State Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Secretary at least fifteen (15) days prior to the date of the hearing, unless additional time is allowed for good cause.

5.4.3 The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

5.5 Documents

5.5.1 The State Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents which it will consider in reaching its decision. Documents received during the hearing shall also be marked as exhibits.

5.5.2 Any person or party submitting a document before or during the public hearing shall provide at least eight (8) copies of the document to the State Board, unless directed otherwise.

5.6 Witnesses

5.6.1 The order of witnesses appearing at the hearing shall be determined by the State Board or its hearing officer. The State Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at the public hearing.

5.6.2 The State Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious comment and information.

5.6.3 Any person who testifies at a public hearing shall be subject to examination by the State Board or its hearing officer. The State Board or its hearing officer may in their discretion allow cross examination of any witness by other participants in the proceedings.

5.7 At the conclusion of the public hearing, the State Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the Administrative Procedures Act. The Board's order shall be rendered within a reasonable time after the public hearing.

Note: The State Board is not subject to the Administrative Procedures Act when approving (or refusing to approve) regulations or regulatory action of the Department of Education, provided that the Department has complied with applicable portions of the Act. See 14 Del. C. '105(b).

**STATE BOARD OF EDUCATION  
OF THE STATE OF DELAWARE**

xxxx,  
    **Petitioner**                    )  
  )  
    **v.**                                ) **No. 200x-xx**  
  )  
  )  
xxxx,                                 )  
    **Respondent.**

**CERTIFICATION OF RECORD**

I, [name of executive secretary, executive director or comparable administrator], am the       
[title] of the {agency name}.

I hereby certify that the attached documents constitute the true and complete record of the proceedings that occurred before the  [agency name]  in the captioned matter.

I further certify that the following documents are included in the attached record:

- a. the agency's written decision;
- b. the rules or regulations involved;
- c. the minutes of the meeting(s) at which the decision was made;
- d. a verbatim transcript of the hearing;
- e. all exhibits presented; and
- f. if this matter involves disciplinary action against a student receiving special education and related services, documentation evidencing the Manifestation Determination Review.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Reference: State Board of Education *Hearing Procedures and Rules*, Sections 4.5 and 4.9.3.

**NOTICE OF APPEAL  
TO THE STATE BOARD OF EDUCATION**

**To: Executive Secretary of the State Board of Education**

I,  [name of person filing appeal]  request that the State Board of Education accept this appeal and enter a decision and order as further explained in this Notice.

1. I am filing this Notice of Appeal on behalf of \_\_\_\_\_  [myself or my child (give child's name)] .

2. Please contact me at:  [give address, telephone number(s) and email address if available]   
\_\_\_\_\_.

3. I am appealing a decision made by \_\_\_\_\_  [give name of agency]  on \_\_\_\_\_  [date of written decision] . I received the written decision on \_\_\_\_\_  [date] .

4. I believe the State Board may hear this appeal because it involves:

\_\_\_\_\_ A decision by a school district board of education that decided a controversy involving the district's rules and regulations (including disciplinary rules).

\_\_\_\_\_ A decision by the Delaware Interscholastic Athletic Association that decided a controversy involving athletic rules and regulations.

\_\_\_\_\_A decision by the board of directors of a charter school to suspend or expel a student for disciplinary reasons.

\_\_\_\_\_Other (explain why the State Board of Education has authority to consider your appeal)

\_\_\_\_\_

5. I am appealing this decision because (you may attach additional pages):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

6. I want the State Board of Education to do the following:

\_\_\_\_\_  
\_\_\_\_\_.

**The information I have provided in this Notice of Appeal is true and correct to the best of my understanding and knowledge. I will send a copy of this Notice to the agency involved when I mail or deliver the Notice of Appeal to the State Board of Education.**

**I understand that appeals to the State Board of Education are decided “on the record” of the hearing that was held by the agency and that the State Board will not accept new testimony or other new evidence during this appeal.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

**Additional Instructions**

1. Please print or type.
2. Provide all of the information requested.
3. Attach a copy of the written decision that you are appealing. The State Board of Education may not consider an appeal until a written decision has been issued.
4. Keep a copy of this Notice for your use and reference.
5. Mail, ~~fax~~, or deliver this Notice and any attachments to the Executive Secretary of the State Board of Education at ~~[add address]~~ 401 Federal Street, Suite 2, Dover, DE 19901; Facsimile No. (302) 739-7768.
6. Send a copy of this Notice and any attachments to the agency involved at the same time you mail or deliver the Notice to the State Board of Education.
7. The State Board of Education’s *Hearing Procedures and Rules* are available at the State Board web page at [www.doe.k12.de.us](http://www.doe.k12.de.us) or by calling the State Board’s offices at ~~302-739-4603~~ 735-4010. Rule 4 addresses appeals.