

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapter 31 and Section 1604(8) (14 **Del.C.** Ch. 31 & §1604(8))

14 **DE Admin. Code** 930

FINAL

REGULATORY IMPLEMENTING ORDER

930 Supportive Instruction (Homebound)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Chapter 31 and §1604(8), the Secretary of Education intends to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound). The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years. The Department intends to update the regulation to clarify illness and chronic conditions are not limited to physical illness and includes mental illness and conditions.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on October 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens (GACEC) and Jon Cooper of the Colonial School District. The Council's comments were in support of the amendments but further suggested that a broader category of medical professionals have authority to certify that a child has a mental health condition and that this be reflected in Section 2.3. The Department considered the comments; however, determined the proposed language has appropriately expanded the medical professionals eligible to certify absences due to a mental illness or mental health condition. Dr. Cooper's comments were in support of the proposed amendments as they "appropriately document" that mental health needs are equal to medical needs with regard to supportive instruction.

Clarifications were made regarding supportive instruction for pre-k students enrolled in a district. Several districts are serving pre-k students beyond those covered under IDEA.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years and to update the regulation to clarify illness and chronic conditions are not limited to physical illness and includes mental illness and conditions.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) 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** 930 Supportive Instruction (Homebound) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) 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 November 14, 2019. 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 November 2019.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 14th day of November 2019

930 Supportive Instruction (Homebound)

1.0 Definition

“Supportive Instruction” means an alternative educational program provided at home, in a hospital or at a related site for a student temporarily at home or hospitalized for a sudden physical or mental illness, injury, episodic flare up of a chronic physical or mental health condition, accident, or pregnancy, childbirth, or related medical condition to pregnancy or childbirth. Subject to 14 ~~Del.C.,~~ **Del.C.** §1604(8), this may also include an alternative educational program provided at home to a student that has been suspended, expelled or subject to expulsion based upon the student's local school district or charter school policy.

- 1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.
- 1.2 Services for children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C 1400 ~~et seq et seq.~~), and its regulations (34 CFR parts 300 and 301), 14 ~~Del.C.,~~ **Del.C.** Ch. 31, and the Department of Education's regulations on Children with Disabilities (14 **DE Admin. Code** 922 through 929) shall be provided in accordance with these laws and shall be processed under the district's or charter school's special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and its regulations, 14 ~~Del.C., Chapter~~ **Del.C. Ch.** 31, and the Department of Education's regulations on Children with Disabilities.
- 1.3 Nothing in this regulation shall alter a district's or charter 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 district from providing supportive instruction to such students.

14 DE Reg. 558 (12/01/10)

16 DE Reg. 412 (10/01/12)

18 DE Reg. 215 (09/01/14)

2.0 Eligibility for Conditions other than Suspension, Expulsion or Subject to Expulsion

- 2.1 A student enrolled in a school district or charter school is eligible for supportive instruction when the district or charter school receives the required certification that one or more of the following conditions will prevent the student from attending school for at least ten (10) school days:
 - 2.1.1 Sudden physical or mental illness,
 - 2.1.2 Accident,
 - 2.1.3 Episodic flare up of a chronic physical or mental health condition,
 - 2.1.4 Injury, or
 - 2.1.5 Pregnancy, childbirth or related medical condition.
- 2.2 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician must certify absences due to a medical condition.
 - 2.2.1 ~~A student qualifies for supportive instruction during absences because of pregnancy, childbirth, or related medical conditions, which shall be excused absences for as long as deemed medically necessary by a physician or an advanced practice nurse, employed by and who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.~~
 - ~~2.2.2.2.1~~ A student who remains enrolled in school is eligible for supportive instruction during a postpartum period for as long as deemed medically necessary. Postpartum absences shall be certified by a physician or an advanced practice nurse, employed by and who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.
- 2.3 ~~Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference. A licensed clinical mental health provider (such as a Licensed Clinical Social~~

Worker, psychiatric nurse practitioner, psychologist, or psychiatrist) must certify absences due to a mental illness or mental health condition.

- 2.4 Supportive instruction can be requested as an in school transitional program that follows a period of supportive instruction that was provided outside of the school setting. If the supportive instruction is provided as an in school transitional program, it must be approved through a staff conference.

9 DE Reg. 402 (09/01/05)

14 DE Reg. 558 (12/01/10)

16 DE Reg. 412 (10/01/12)

18 DE Reg. 215 (09/01/14)

3.0 Implementation

- 3.1 Supportive instruction for a student shall begin as soon as the documentation required by Section 2.0 is received. Supportive instruction may continue upon the return to school setting only in those exceptional cases where it is determined that a student needs a transitional program to guarantee a successful return to the school setting in accordance with subsection 2.4.

- 3.1.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.

- 3.1.1.1 The school shall provide a minimum of ~~3~~ three (3) hours of supportive instruction each week of eligibility for a K to 5th grade student, and a minimum of five hours each week of eligibility for a ~~6~~ 6th to 12th grade student. There is no minimum for in school transition.

[3.1.1.1.1 For a pre-school student identified with a disability pursuant to 14 Del.C. §3122, the district shall provide supportive instruction each week of eligibility in an amount recommended by the student's individualized education program (IEP) team.

3.1.1.1.2 For an enrolled pre-school student, the district may, but is not required to, provide supportive instruction. There is no minimum number of hours each week of eligibility.]

- 3.1.1.2 Nothing in this regulation shall prevent a school district or charter school from providing additional hours of supportive instruction to an eligible student from other available funding sources.

- 3.1.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school setting the following school year.

4 DE Reg. 344 (08/01/00)

4 DE Reg. 497 (09/01/00)

9 DE Reg. 402 (09/01/05)

14 DE Reg. 558 (12/01/10)

16 DE Reg. 412 (10/01/12)

18 DE Reg. 215 (09/01/14)

4.0 Eligibility and Implementation for Suspension, Expulsion, or Subject to Expulsion

If a local school district or charter school provides for supportive instruction (homebound) for students that have been suspended or expelled, the local school district or charter school shall have a written policy, which conforms with 14 **Del.C.** §1604(8), and any of its implementing regulations, regarding eligibility and implementation.

16 DE Reg. 412 (10/01/12)

23 DE Reg. 452 (12/01/19) (Final)