

DEPARTMENT OF EDUCATION
Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d)) 14 DE Admin.
Code 610

FINAL

REGULATORY IMPLEMENTING ORDER

610 Treatment of Severe Discipline Problems Component

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to repeal 14 **DE Admin. Code** 610 Treatment of Severe Discipline Problems Component (14 **Del.C.** Section 1604 of Chapter 16 Comprehensive School Discipline Improvement Program August 1998) and replace it with two separate regulations (14 **DE Admin. Code** 609 District and School Based Intervention Services and 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems). The new regulations 609 and 611 streamline and clarify the requirements for each type of program, School Based Programs and Alternative Program Sites.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 22, 2004, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The Councils recommended some word changes for clarity in sections 4.1 and 4.3 of 609 and the changes have been made. In Section 5.0 in 609 and in Section 12.0 in 611 clarifying phrases concerning the reporting process were added as per the Councils recommendations. In response to the concern about students who are eligible for CDAP services being excluded from eligibility for school based services the Department offers the following response. Proposed regulation 609 requires that the districts provide services to disruptive students who are not eligible for placement in consortia discipline alternative programs (CDAP's). It does not prohibit districts from providing school based services to students who are eligible for CDAP placement. The categorical exclusion in proposed regulations 609 and 611 runs the opposite direction: students may not be placed in CDAP for behaviors that are best served through school based programs and services.

II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 610 Treatment of Severe Discipline Problems Component (14 **Del.C.** Section 1604 of Ch. 16 Comprehensive School Discipline Improvement Program August 1998) and replace it with two separate regulations (14 **DE Admin. Code** 609 District and School Based Intervention Services and 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems) in order to streamline and clarify the requirements for each type of program, School Based Programs and Alternative Program Sites.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 610 and replace it with two separate regulations 14 **DE Admin. Code** 609 District and School Based Intervention Services and 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems. Therefore, pursuant to 14 **Del.C.** Chapter 16, 14 **DE Admin. Code** 609 and 14 **DE Admin. Code** 611 attached hereto as *Exhibit "B"* are hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 609 and 14 **DE Admin. Code** 611 hereby adopted 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** 609 and 14 **DE Admin. Code** 611 adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulations shall be cited as 14 **DE Admin. Code** 609 and 14 **DE Admin. Code** 611 in the *Administrative Code of Regulations* for the Department of Education. In addition 14 **DE Admin. Code** 610 shall be removed from 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.** Ch.16 on December 15, 2004. 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 16th day of December 2004.

DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

Approved this 16th day of December 2004

STATE BOARD OF EDUCATION

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~~610 Treatment of Severe Discipline problems Component (14 Del.C. Section 1604 of Chapter 16 Comprehensive School Discipline Improvement Program August 1998~~

~~1.0 Population to be Served: Except as otherwise provided herein, all students who are expelled by a local school district or are in danger of being expelled shall be placed in the alternative program unless the student is expelled for an offense equivalent to a violation of one of the following: 11 **Del.C.** §613 (Assault in the First Degree); or 11 **Del.C.** §1457 (Possession of a Weapon in a Safe School and Recreation Zone); or 11 **Del.C.** §802 (Arson in the Second Degree); or 11 **Del.C.** §803 (Arson in the First Degree); or 11 **Del.C.** §771 (Unlawful Sexual Penetration in the Second Degree); or 11 **Del.C.** §772 (Unlawful Sexual Penetration in the First Degree); or 11 **Del.C.** §773 (Unlawful Sexual Intercourse in the Third Degree); or 11 **Del.C.** §774 (Unlawful Sexual Intercourse in the Second Degree); or 11 **Del.C.** §775 (Unlawful Sexual Intercourse in the First Degree); or 16 **Del.C.** §4753A (Trafficking Marijuana, Cocaine, Illegal Drugs or Methamphetamine).~~

~~2.0 Non-referral of Students: In any case in which an expelled student is not referred to an alternative program, the decision of the local school district to expel shall state with specificity the reason for non-referral and the evidence in support thereof.~~

~~3.0 Informing the Legal Guardian: Districts shall inform the legal guardian of students for whom expulsion is being considered or who are expelled of the alternative education options that are then currently available to the students. These options shall include but not be limited to the alternative program, GED programs, James H. Groves High School and others.~~

~~4.0 Age/Grade Level to be Served: Eligible students shall be primarily those who are enrolled in grades 6 through 12, however students in lower grades may also be served through these funds.~~

~~5.0 Placement in Alternative Programs: Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for each student. The Placement Team, in concert with the Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both the student and his/her family. The ISP shall include a tentative re-~~

entry/transition plan. The Alternative Placement Team shall be composed of a representative of the Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; student's custodial adult; guidance counselor and/or school social worker; representatives from DSCYF such as Youth Rehabilitation Service or other worker with whom the family is involved as appropriate. Other school, alternative program, or agency personnel may be invited as needed and determined by the Placement Team. Students who are being placed in the Alternative Program as a transition from DSCYF facilities will have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult. If students from either a school district or DSCYF facility are students with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the IEP Team may be the same.

6.0 September 30 Enrollment Count: A student enrolled in an Alternative Program may be counted in the regular school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.

7.0 Alternative Program Setting: The Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs so long as the students do not interact with the regular school population or use any school facility at the same time as the regular school population. Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Settings shall meet safety regulations for student occupancy as outlined in **Delaware Code**.

8.0 Alternative Program Design: The Alternative Program shall include an educational program designed to maintain and improve skills at least in core academic areas such as English/language arts, mathematics, science, and social studies that will allow students to re-enter the regular school program with a reasonable chance and expectation for success. Every effort shall be made to provide courses comparable to the regular school setting for each student. Opportunities for academic acceleration will also be provided. The academic program should focus on applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Credit for work accomplished in the Alternative Program setting shall be automatically transferred to the regular school. Included in the academic core studies should be study skills, test taking strategies, and academic confidence building. Counseling and other services shall be delivered on-site for students.

9.0 Staffing: Instructional staff shall include at least two certified teachers in the major academic subject areas who can provide the lead for academic instruction and at least two instructional/service aides. Priority should be given to hiring staff who are qualified to teach special education.

10.0 Students With Disabilities: Notwithstanding any of the provisions to the contrary, students with disabilities shall be served pursuant to the provisions of Regulation 925, Children with Disabilities.

See 2 **DE Reg.** 374 (9/1/98)

See 7 **DE Reg.** 330 (9/1/03)

609 District and School Based Intervention Services

1.0 Each school district shall provide services for students whose behavior disrupts the classroom setting and creates distractions that impede the learning process, but who are not eligible for placement in an alternative program pursuant to 14 **DE Admin. Code** 611. School districts may offer such services based on the identified needs of the district and its individual schools, subject to the requirements of this regulation.

2.0 Application for Funding:

Any school district requesting an incentive or supplemental grant to provide intervention services shall apply for such funds using the LEA Consolidated Application process provided by the Department of Education.

2.1 Any incentive or supplemental grant approved as part of the LEA Consolidated Application process shall be in the amount appropriated for that purpose by law.

3.0 Student Population to be Served:

Services funded under this regulation may be provided to any student in grades K-12, subject to the terms of the district's approved LEA Consolidated Application. Notwithstanding any of the provisions to the contrary, students with disabilities shall be served pursuant to the provisions in 14 **DE Admin. Code** 925.

4.0 School Based Intervention Programs:

If a district, through its LEA Consolidated Application, provides a School Based Intervention Program as part of the services provided to disruptive students, such Program shall meet the following requirements:

4.1 A School Based Intervention Program shall include both short term and long term intervention strategies. Such strategies may include character education, short or long term counseling to improve behavior which impacts ~~academic~~ educational performance, and methods to identify the need to refer students for additional services either within the district or to other agencies. The Program shall also include support services to provide a smooth transition for students who are returning to their regular school from a Consortium Discipline Alternative Program or from a Department of Services to Children, Youth and their Families (DSCYF) setting.

4.2 The decision to place a student in the School Based Intervention Program shall be made by the student's Intervention Team. The Intervention Team shall include the building principal or assistant principal, school nurse, counselor, social worker (if the student receives social work services), and a teacher familiar with the student. Other individuals, including parents, guardians or Relative Caregivers, may be invited as appropriate.

4.3 When placing a student with disabilities in a School Based Intervention Program, the Intervention Team and a student's IEP team may be the same as long as the membership of the ~~IEP team~~ Intervention Team also meets the requirements of 14 **DE Admin. Code** 925.

5.0 Evaluation of Services:

Any local school district receiving a grant pursuant to this regulation shall submit an annual evaluation report on the effectiveness of its District and School Based Intervention Services. Such report shall be submitted as part of the LEA Consolidated Application process **[and shall conform to content and format standards.]**

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

1.0 Eligible Students:

Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program site.

1.1 Local school districts may place a student at a Consortium Discipline Alternative Program site only if the district board:

1.1.1 Has expelled the student for a violation of the district's discipline code; or

1.1.2 Determines that the student has engaged in conduct that permits the board to expel the student; or

1.1.3 Determines that the student has exhibited such severe discipline problems that expulsion is imminent.

1.2 School districts may place a student in a Consortium Discipline Alternative Program site for classroom or school environment disruptions only if:

1.2.1 Such disruptions are chronic and repetitive; and

1.2.2 The student has participated in all available School Based Intervention Programs pursuant to 14 **DE Admin. Code** 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students.

2.0 Ineligible students:

Any student expelled or suspended pending expulsion for behavior equivalent to a violation of the following is not eligible for, and may not be placed at a Consortium Discipline Alternative Program site.

2.1 11 **Del.C.** §613 Assault in the First Degree; class C felony; or

2.2 11 **Del.C.** §1457 Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F; class A or B misdemeanor; or

2.3 11 **Del.C.** §802 Arson in the Second Degree affirmative defense; class D felony; or

2.4 11 **Del.C.** §803 Arson in the first degree; class C felony; or

2.5 11 **Del.C.** §770 Rape in the fourth degree; class C felony; or

- 2.6 11 Del.C. §771 Rape in the third degree; class B felony; or
- 2.7 11 Del.C. §772 Rape in the second degree class B felony; or
- 2.8 11 Del.C. §773 Rape in the first degree class A felony; or
- 2.9 16 Del.C. §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamine, LSD, or designed drugs or
- 2.10 Any behavior equivalent to or greater than the offenses in 2.1 through 2.9.

3.0 Written Decision:

When a school board expels a student but determines the student shall not be placed at a Consortium Discipline Alternative Program under subsections 2.1.1 to 2.1.10 of this regulation, the school district's written decision shall address with specificity the reason for non-placement and the evidence in support thereof. Such decisions shall be reported to the Delaware Department of Education's Office of School Climate and Discipline within five working days.

4.0 Informing the Parents, Guardians, Relative Caregiver or Students (if the Student is Age 18 or Older):

Districts shall inform the parents, guardians, Relative Caregiver or students (if the student is age 18 or older) of the alternative education options that are then currently available to them if the students have been expelled or expulsion is being considered. These options may include, but are not be limited to, the Consortium Discipline Alternative Program, a GED Program, James H. Groves High School and continued special education and related services for children with disabilities as determined by the student's individual eligibility for participation in such programs. A student's eligibility for such alternative education options is determined by the requirements of such programs.

5.0 Grade Level to be Served:

Eligible students in the Consortium Discipline Alternative Program shall be primarily those who are enrolled in grades 6 through 12, however students in the lower grades may also be served through Alternative Program funds.

6.0 Placement at Consortium Discipline Alternative Program Sites

6.1 Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for students. The Placement Team, in concert with the Consortium Discipline Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both students and their families. The ISP shall include a tentative transition plan.

6.1.1 The Alternative Placement Team shall be composed of a representative of the Consortium Discipline Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; the student's custodial adult; guidance counselor or school social worker; and a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs as appropriate. Other individuals may be invited as determined by the placement team.

6.1.1.1 Students who are being placed at a Consortium Discipline Alternative Program site as a transition from DSCYF facilities shall have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult.

6.1.2 If students from either a school district or DSCYF facility are children with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the Individual Education Program (IEP) Team may be the same so long as the membership of the IEP Team meets the requirements of 14 DE Admin. Code 925.

7.0 September 30 Enrollment Count

7.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school.

7.2 Students shall be reported for the level of special education service as defined by the current IEP.

7.3 If a student was enrolled the previous year in a vocational program in the reporting school, the students shall be reported as enrolled in the next vocational course in the program series.

8.0 Consortium Discipline Alternative Program Setting

8.1 The Consortium Discipline Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs if the students do not interact with the regular

school population or use any school facility at the same time as the regular school population.

8.1.1 Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Consortium Discipline Alternative Program settings shall meet all applicable health and safety laws and regulations for student occupancy.

9.0 Consortium Discipline Alternative Program Design

9.1 The Consortium Discipline Alternative Program shall include an educational program designed to maintain and improve skills aligned to the Delaware State Content Standards that will allow students to re-enter the regular school program with a reasonable chance and expectation for success. Opportunities for academic acceleration shall also be provided.

9.1.1 The academic program shall include applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Study skills, test taking strategies for academic confidence building, and Character Education shall be integrated with the Delaware State Content Standards.

9.1.1.1 Credit for work accomplished in the Consortium Discipline Alternative Program setting shall be automatically transferred to the sending school.

9.1.2 All students enrolled in Consortium Discipline Alternative Programs shall participate in the Delaware Student Testing Program (DSTP).

10.0 Staffing

Instructional staff shall include educators who are licensed and certified in the content areas of English language arts, mathematics, science and social studies.

11.0 Children With Disabilities

Notwithstanding any of the provisions to the contrary, children with disabilities shall be served pursuant to the provisions of 14 DE Admin. Code 925.

12.0 The Department of Education shall annually evaluate the effectiveness of the Consortium Discipline Alternative Programs using criteria that includes student demographic data, types of interventions employed, and prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement and recidivism. [Grantees shall compile and submit data based on uniform standards and format established by the Department.]

8 DE Reg. 1008 (01/01/05)