

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))  
14 **DE Admin. Code** 415

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 415 Voluntary School Assessments

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del. C.** §122(a), the Secretary of Education intends to amend 14 **DE Admin. Code** 415 Voluntary School Assessments. This amendment is needed to include the collection of Voluntary School Assessments (VSA) in Sussex County as authorized by Senate Bill 186 of the 152nd General Assembly. Additional amendments to alter the style or form of the regulation are also included.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2023. The Department of Education did not receive any written comments concerning the proposed amendments.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 415 Voluntary School Assessments to include the collection of Voluntary School Assessments (VSA) in Sussex County as authorized by Senate Bill 186 of the 152nd General Assembly. Additional amendments to alter the style or form of the regulation are also included.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 415 Voluntary School Assessments. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 415 Voluntary School Assessments attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 415 Voluntary School Assessments 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** 415 Voluntary School Assessments amended hereby shall be in the form attached hereto as *Exhibit "A,"* and said regulation shall be cited as 14 **DE Admin. Code** 415 Voluntary School Assessments 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 December 12, 2023. 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 12th day of December 2023.

#### Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of December 2023.

##### 415 Voluntary School Assessments

#### 1.0 General Provisions

Pursuant to 14 **Del.C.** §103(c), this regulation shall apply to Voluntary School Assessments that are required in lieu of

Certifications of Adequate Capacity for proposed residential developments in New Castle County and Sussex County.  
**22 DE Reg. 296 (10/01/18)**

## 2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning ~~unless the context clearly indicates otherwise:~~

**"Building Valuation Data"** or **"BVD"** means the average construction costs as published biannually by the International Code Council, which can be used for determining permit fees for a jurisdiction.

**"Certification of Adequate Capacity"** means a certification that the school district in which a proposed development is located has 85% or less capacity for the elementary, middle, and high schools in the proposed development's feeder pattern. Such certification is issued by the Secretary based on information provided to the Department by the school ~~district and district,~~ New Castle County Department of Land ~~Use Use, or Sussex County.~~

**"Department"** means the Delaware Department of Education.

**"Gross Area"** means the calculated square footage of a residential unit.

**"Secretary"** means the Secretary of the Delaware Department of Education or ~~his or her~~ the Secretary's designee.

**"Voluntary School Assessment"** means the assessment amount calculated by the Secretary pursuant to 14 **Del.C.** §103(c).

**22 DE Reg. 296 (10/01/18)**

## 3.0 Certification of Adequate Capacity

3.1 The Secretary shall issue a Certification of Adequate Capacity for a proposed development if the school district in which the proposed development is located has adequate capacity for the increased demand that will result from the proposed development.

### 3.2 Determining Adequate Capacity

~~3.1.4~~ 3.2.1A school district has adequate capacity for a proposed development if the elementary, middle, and high schools in the proposed development's feeder pattern each do not exceed 85 percent of the maximum number of students the schools can contain based on each school's physical space and class size for each grade level.

~~3.1.2~~ 3.2.2Capacity shall include students who are enrolled in the proposed development's feeder pattern schools based on their residence, as provided in 14 **Del.C.** §202(c), and through the Delaware's School District Enrollment Choice Program as provided in 14 **Del.C.** Ch. 4.

~~3.1.3~~ 3.2.3Capacity is determined by the district at the time a developer submits a completed request for a Certification of Adequate Capacity.

**22 DE Reg. 296 (10/01/18)**

## 4.0 Determining Total Cost of a Residential Unit

4.1 Pursuant to 14 **Del.C.** §103(c)(3), a Voluntary School Assessment shall not exceed 5 percent of the total cost of a residential unit.

### 4.2 Determining Total Cost of a Residential Unit

~~4.1.4~~ 4.2.1For the purpose of this regulation, the total cost of a residential unit shall mean the total cost to construct the unit.

~~4.1.4.4~~ 4.2.1.1The total cost shall equal the Gross Area of the unit multiplied by the square footage construction cost that is derived from the Building Valuation Data table that is first issued for the current calendar year.

~~4.1.4.2~~ 4.2.1.2The total cost shall not include the cost of land and site work.

~~4.1.2~~ 4.2.2The developer shall contact the Department to identify residential units subject to the 5 percent limitation.

**18 DE Reg. 304 (10/01/14)**

**22 DE Reg. 296 (10/01/18)**

**27 DE Reg. 515 (01/01/24) (Final)**