

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 **Del.C.** §122(b)(2))  
14 **DE Admin. Code** 608

### PROPOSED

### PUBLIC NOTICE

#### Educational Impact Analysis Pursuant to 14 Del. C. §122(d)

#### 608 Unsafe School Choice Option Policy

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(b)(2), the Department of Education ("Department") developed amendments to 14 **DE Admin. Code** 608 Unsafe School Choice Option. The regulation sets forth the State's unsafe school choice policy in accordance with 20 U.S.C. § 7912(a). The regulation was reviewed in accordance with 29 **Del.C.** §10407. The proposed amendments include grammatical and style changes to comply with the Delaware Administrative Code Drafting and Style Manual.

The Department published the proposed amendments in the *Register of Regulations* on October 1, 2023. The Department received a written submittal from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"). GACEC commented that language in proposed subsections 3.2 is ambiguous because Title 11 only applies to knowingly possessing a firearm. GACEC further commented that it supports the proposed changes to subsection 3.3 because "it will ensure that parents and students are consistently aware of when schools are designated as 'persistently dangerous'" and recommended that the Department "identify which schools are so designated because of the number of unsafe incidents or for failing to comply with reporting requirements." GACEC also commented that the proposed addition of "and attending" to enrollment in subsection 5.1 is inconsistent with 20 U.S.C. § 7912(a). Additionally, GACEC recommended the Department "include additional reporting on unsafe incidents for student victims with disabilities."

The Department considered GACEC's written submittal. As a result of GACEC's written submittal, the Department revised proposed subsections 3.2 and 5.1. The Department did not make any further changes as a result of GACEC's written submittal. The revisions to proposed subsections 3.2 and 5.1 are substantive and, pursuant to 29 **Del.C.** §10118(c), the Department is republishing the proposed regulation with the revisions.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before February 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns the State's unsafe school choice policy and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education by ensuring a safe school option.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected by ensuring a safe school option.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns the State's unsafe school choice policy and is not designed to help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision

makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers because the reporting requirement already exists.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? By statute (14 Del.C. §122(b)(2)), the Department promulgates regulations governing the protection of the health and physical welfare of public school students in Delaware. The amended regulation does not change the Department's decision making authority and accountability for addressing the subject regulated.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

## 608 Unsafe School Choice Option Policy

### 1.0 Purpose

~~The Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Every Student Succeeds Act (ESSA) of 2015, requires that a State Education Agency establish a State Unsafe School Choice Option policy in order to receive funding under ESEA. The State receives funds under Title 20, Chapter 70 of the United States Code (Strengthening and Improvement of Elementary and Secondary Schools) and, as a result, is required to establish and implement an unsafe school choice policy in accordance with 20 U.S.C. § 7912(a). Pursuant to 14 Del.C. §122(b)(2), this regulation sets forth the State's unsafe school choice policy.~~

22 DE Reg. 297 (10/01/18)

### 2.0 Definitions

~~In this regulation, the following terms shall have the meanings indicated below: The following words and terms, when used in this regulation, shall have the following meanings:~~

~~"Crime" shall have the same meaning as provided in 14 Del.C. §4112.~~

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

~~"Enrolled Students" unless the context indicates otherwise, means all students included in the Delaware Student Information System (DELSIS) report for the year of the data collection.~~

~~"Expulsion" means, for purposes of this regulation, the exclusion from the regular school setting for a period determined by the local district board or charter school board not to exceed one year. The process for readmission shall be determined by the local district board or charter school board.~~

~~"Firearm" means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.~~

~~"Fiscal Year year" means the period of July 1 through June 30.~~

~~"Gun Free Schools Violation" means the prohibited bringing to school, or possession while in school of a firearm by a student.~~

~~"Persistently Dangerous School dangerous school" means a school that has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years meets the criteria in subsection 3.1.~~

~~"Safe School school" means a school in the same school district that is not currently identified by the Department of Education as a persistently dangerous school.~~

~~"School" means any public school including charter schools. School property shall have the same meaning as provided in 14 Del.C. §4112 (a)(9).~~

~~"Suspension" means, for the purpose of this regulation, the external (out of school) removal of a student from the general school population.~~

~~"Unsafe Incidents" means any of the following:~~

~~The school suspended or expelled a student for a gun free schools violation; or~~

~~The school suspended or expelled a student for a crime committed on school property which is required to be reported under 14 Del.C. §4112; or~~

~~The school reported a crime committed by a non student on school property that is required to be reported under 14 Del.C. §4112.~~

~~"Violent Felony felony" shall have the same meaning as provided in 11 Del.C. §4201(c).~~

**22 DE Reg. 297 (10/01/18)**

**3.0 Identification of Persistently Dangerous Schools**

- ~~3.1~~ The Department of Education shall identify each Persistently Dangerous School using the data reported to it pursuant to the provisions of 14 ~~Del.C. §4112~~, 14 ~~DE Admin. Code~~ 601, and any expulsion and suspension data as required by the Department.
- ~~3.1~~ A school shall be identified as a persistently dangerous school if 5 or more unsafe incidents for every 100 students enrolled occurred during the 3 previous consecutive fiscal years.
- ~~3.2~~ Unsafe incidents are set forth in subsections 3.2.1 through 3.2.4.
- ~~3.2.1~~ The school suspends or expels a student for bringing a firearm to the school in violation of 20 U.S.C. §7961.
- ~~3.2.2~~ The school suspends or expels a student for possessing a firearm at the school in violation of 20 U.S.C. §7961 or while in or on a safe school zone, as defined in 11 ~~Del.C. §1457A(a)(4)~~, pursuant to 11 ~~Del.C. §1457A(f)~~.
- ~~3.2.3~~ The school suspends or expels a student for a crime committed on school property that is required to be reported under 14 ~~Del.C. §4112~~.
- ~~3.2.4~~ The school reported a crime committed by a nonstudent on school property that is required to be reported under 14 ~~Del.C. §4112~~.
- ~~3.2~~ ~~3.3~~ Notwithstanding any provision herein to the contrary, any year that a ~~School~~ school fails to comply with the reporting mandates, as set forth in 3.1 above, to the Delaware Department of Education or to the appropriate police agency as set forth above required by law, the Department of Education will consider the ~~School~~ school as if it otherwise met the criteria to be classified as a Persistently Dangerous School for that year until such time as it may be determined, in the sole discretion of the Department, that the School has met such reporting requirements persistently dangerous school for the entire fiscal year.
- ~~3.4~~ The Department shall identify each persistently dangerous school using the data reported to it pursuant to the provisions of 14 ~~Del.C. §4112~~, 14 ~~DE Admin. Code~~ 601, and any expulsion and suspension data as required by the Department. For the purpose of this regulation, expulsion means the exclusion from the regular school setting for a period determined by the local district board or charter school board not to exceed 1 year and suspension mean the external, out-of-school removal of a student from the general school population.
- ~~3.3~~ ~~3.5~~ A ~~School~~ school that is identified as a Persistently Dangerous School will ~~persistently dangerous school~~ shall retain that designation the identification as a persistently dangerous school for the entire fiscal year.

**22 DE Reg. 297 (10/01/18)**

**4.0 Students Attending Schools Labeled as Persistently Dangerous**

- ~~4.1~~ A student attending a ~~Persistently Dangerous School~~ persistently dangerous school shall be allowed to choice to a ~~Safe School~~ safe school in the same school district, including a charter ~~school~~ school, provided that a charter school option exists in that school district's boundaries.
- ~~4.2~~ Each public school district having ~~one~~ 1 or more ~~Persistently Dangerous Schools~~ persistently dangerous schools and any charter school identified as a ~~Persistently Dangerous School~~ persistently dangerous school shall develop a plan and ~~time line~~ timeline that describes the process for notifying parents of the ~~School's~~ school's status and for relocating any student who exercises the right to choice to a ~~Safe School~~ safe school. The plan shall also describe the corrective actions that will be implemented. The plan shall be forwarded to the Department of Education no later than September 15th of the year that the ~~School~~ school is identified.

**22 DE Reg. 297 (10/01/18)**

**5.0 Students Who are Victims of a Violent Felony**

- ~~5.1~~ A student who is the victim of a ~~Violent Felony~~ violent felony while in or on the grounds of a ~~School~~ school in ~~school~~ which the student is ~~enrolled~~ attending shall be allowed to choice to a ~~Safe School~~ safe school in the same school district, including a charter ~~school~~ school, provided that a charter school option exists in that school district's boundaries.
- ~~5.2~~ All school districts and charter schools shall establish a plan that describes their policies and procedures for providing school choice options to a student who is the victim of a ~~Violent Felony~~ violent felony, including the process for notifying parents.
- ~~5.3~~ Each school district and charter school shall post the policy and procedures on the school district's or charter school's website, with hard copies provided to any requesting parties.

**7 DE Reg. 67 (07/01/03)**

12 DE Reg. 62 (07/01/08)  
22 DE Reg. 297 (10/01/18)  
27 DE Reg. 471 (01/01/24) (Prop.)