

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

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

FINAL

REGULATORY IMPLEMENTING ORDER

613 Uniform Procedures for Processing Attorney General's Reports

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to create 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports. This regulation is created pursuant to 14 **Del.C.** §122(b)(26) to provide districts and charter schools with uniform procedures for processing Attorney General's Reports.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2017, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens (GACEC), the State Council for Persons with Disabilities, as well as Lake Forest, Capital, Milford, and Smyrna School Districts. Comments were regarding: (1) confusing use of terms "district" and "charter school" in the regulation. Changes were made to add and clarify the definition of each term as well as capitalizing them when they reference a specific district or charter school; (2) the need for the word "crime" or "criminal conduct" to be defined. The term "crime" is not used in the regulation and the term "criminal conduct," is defined where used; (3) both insufficient and extremely detailed definitions. For clarity and consistency, the Department used the same definitions as found in other regulations; (4) the definition of "parent" not including persons appointed by power of attorney, DOE grant of authority or one appointed by an IEP team. Section 5.1 specifies that nothing in this regulation shall alter a district or charter school's duties under the IDEA or 14 **DE Admin. Code** 922-929; (5) a lengthy, potentially unclear definition of "regular school program". The Department believes that the lengthy definition is important to clarify what is meant by this term; (6) a suggested correction for the definition of "suspension, long-term" as it does not include federal guidance regarding short term removals that may constitute a long term suspension. The Department believes that this issue is covered by Section 5 of the regulation. (7) retaining reports during the time for initiating a dispute resolution application under IDEA. The Department believes that this issue is addressed in Section 5 of the regulation. (8) the requirement that districts and charter schools are allowed to take Disciplinary Action for "all off-campus, non-school activity conduct which shows disregard for the health, safety and welfare of others..." is too broad. The Department notes that regulation states a district or charter school "may" subject a student to Disciplinary Action dependent on the conduct which prompted the AG report. It is at their discretion; (9) concerns that the regulation authorizes disciplinary action before adjudication. The regulation only provides guidance to districts and charter schools regarding the action in a school context in accordance with the applicable law and does not address delinquency or criminal proceedings of the student (10) the consideration of a Memorandum of Agreement or Understanding (MOA) in relation to the regulation A clarifying change was made so the specific agreement is identified. As part of this change, the definition of the Interagency Agreement was added to the regulation for clarification; (11) that three-day time period districts and charter schools have to review the Attorney General's Report and determine if they need to access CJIS for additional information. The Department believes the turnaround time is appropriate.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports in order to provide districts and charter schools with uniform procedures for processing Attorney General's Reports.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports attached hereto as Exhibit "B" is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports hereby created 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** 613 Uniform Procedures for Processing Attorney General's Reports created hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports 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 June 15, 2017. 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 15th day of June 2017.

Department of Education

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

Approved this 15th day of June 2017

613 Uniform Procedures for Processing Attorney General's Reports

1.0 Purpose

Pursuant to 14 **Del.C.** §122(b)(26), this regulation, which applies to all public school ~~[districts and charter schools Districts and Charter Schools]~~, provides uniform procedures for processing Attorney General's Reports.

2.0 Terms and Definitions

In this regulation, the following terms and words shall have the following meaning unless the context clearly indicates otherwise:

"Administration" means administrative staff from a ~~[district District]~~, school, or ~~[charter school Charter School]~~.

"Alternative Placement" means the removal of a student from ~~[his/her his or her]~~ school on a temporary basis for a period of time as determined by the Alternative Placement Team and Assignment to an Alternative Program.

"Alternative Program" means a school discipline improvement program that provides Appropriate Educational Services that has been created for students whose behavior(s) is within the defined conduct under 14 **DE Admin. Code** 614. This includes any programs managed by a school ~~[district/charter District or Charter School]~~ or the Consortium Discipline Alternative Program.

"Appropriate Educational Services" means instruction and assessment provided by the ~~[district/charter District or Charter School]~~ and includes access to instructional materials, graded homework and communication with educators so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting a level of proficiency in that curriculum.

"Assignment to an Alternative Program" means student Assignment to an Alternative Program, including Consortium Discipline Alternative Program and any Alternative Program maintained by a ~~[district/charter school District or Charter School]~~, until the student has fulfilled the requirements to return to the Regular School Program.

"Attorney General's Report (Electronic Notice of Charges)" or **"Report"** means the Department of Justice's report of: 1) an enrolled student's alleged criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses; 2) wanted persons enrolled in a school and; 3) missing persons enrolled in a school.

"Board of Education" means the Board of Education of a ~~[reorganized school district District]~~ or the Board of Directors of a ~~[charter school Charter School]~~.

["Charter School"] means a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.]

"Consortium Discipline Alternative Program" means a school discipline improvement program which serves an organized consortium of school ~~[districts and/or charter schools Districts or Charter Schools]~~ as provided for in 14 **Del.C.** Ch. 16.

"Criminal History Record Information" or **"CHRI"** means a subset of CJI, set forth in 11 **Del.C.** §8602(2), that includes identifiable descriptions and notations of arrests, detentions, indictments, information or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision and release.

"Criminal Justice Information" or **"CJI"** means all Criminal Justice Information System data. The term includes: criminal history record information; biographic data; biometric data; identity history; person,

organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.

“**Criminal Justice Information System**” or “**CJIS**” means the computer hardware, software, and communication network which is managed, operated, and maintained by the DELJIS for the collection, warehousing, and timely dissemination of CJI to authorized agencies.

“**Delaware Criminal Justice Information System**” or “**DELJIS**” means the administrative body created within 11 **Del.C.** Ch. 86 that manages, operates, and maintains CJIS in the State of Delaware.

“**Disciplinary Action**” means the student identified for Short or Long-Term Suspension, Expulsion, or Alternative Placement who may be excluded from all school activities, including but not limited to, extracurricular sports/programs, field trips, and ceremonies; is not allowed on School Property unless placed in an Alternative Placement on School Property; and, if applicable, will have his [or her] driver's license suspended in accordance with 14 **Del.C.** §4130(e).

“**District**” means ~~[traditional reorganized school districts, vocational-technical school districts and charter schools]~~ a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code].

“**Expulsion**” means Disciplinary Action approved by the Board of Education resulting in a student being removed from the Regular School Program for a duration not to exceed the total number of student days in a school year. A student expelled without Appropriate Educational Services shall be unenrolled from the ~~[district/charter District or Charter School]~~ during the term of the expulsion. Regardless of whether without or with services, including Alternative Placement, the expelled student is not eligible to enroll in any other Delaware public school during the period of the Expulsion and until any reasonable terms of the Expulsion are fulfilled.

“**Grievance**” means a formal complaint, filed per specific ~~[district/charter District or Charter School]~~ procedures, to school Administration regarding a student's rights or liberty interests having been denied or impaired. At a minimum, the procedures shall be similar to the Grievance Guidelines applicable to this regulation, as posted on the Department of Education website.

[“**Interagency Agreement**” means the Interagency Agreement between the Delaware Criminal Justice Information System Board of Managers; the Delaware Department of Education; the Delaware Police Chiefs Council; Local Educational Agencies (LEAs) and Charter Schools; and the Delaware Department of Justice governing access to the Criminal Justice Information System (CJIS).]

“**Parent**” means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver's School Authorization executed in compliance with 14 **Del.C.** §202(f)(1) is on file; an individual or entity who is otherwise legally responsible for the child's welfare; a surrogate parent who has been appointed in accordance with 14 **DE Admin. Code** 926.19; or a student who has reached the age of majority as defined in 1 **Del.C.** §701.

“**Principal**” means the building principal, or the equivalent of the building principal, of any ~~[district or charter school District or Charter School]~~, or the principal's designee.

“**Regular School Program**” means student enrollment in a ~~[traditional]~~ public school ~~[or Charter School]~~, not including specially assigned non-special education or student behavioral intervention programs within or outside the enrolled school, in which the student's classroom or course placement is based primarily on age, grade level and cognitive abilities as assigned by the school Administration or an IEP team and the student's participation in daily course instruction and activities within the assigned classroom or course.

“**School Discipline Committee**” means a school-level committee consisting of appropriate school personnel, similar to those identified in 14 **Del.C.** Ch. 16, which meets to decide on student Disciplinary Action recommendations made by the Principal.

“**School Environment**” means within or on School Property, and at school sponsored or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at school sponsored extracurricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

“**School Property**” means any building, structure, athletic field, sports stadium or real property that is owned, operated, leased or rented by any public school ~~[district or charter school District or Charter School]~~ including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or charter school, or any motor vehicle owned, operated, leased, rented or subcontracted by any public school ~~[District]~~ or ~~[charter school Charter School]~~.

“Student Code of Conduct” means the ~~[district/charter school]~~ District or Charter School approved document which specifies the rights and responsibilities of students, defines conduct that ~~[disrupts/threatens]~~ **disrupts or threatens** a ~~[positive/safe]~~ **positive and safe** School Environment, standardizes procedures for consequences and Disciplinary Action, and defines due process and Grievance procedures.

“Superintendent” means the chief school officer of any public school ~~[district or charter school]~~ District or Charter School, or the equivalent of a superintendent.

“Suspension, Long-term (Long-term Suspension)” means Disciplinary Action approved by the Superintendent upon recommendation of the Principal or District ~~[or Charter School]~~ Alternative Placement Team resulting in the student being removed from the Regular School Program for eleven (11) consecutive school days or more and not to exceed the total number of school days in a school year. Student chooses to waive his right to a formalized due process hearing as outlined in Section 10.0 of 14 DE Admin. Code 616, maintains enrollment in the ~~[district/charter]~~ District or Charter School, and is provided Appropriate Educational Services during the term of the suspension, but is excluded from all school activities including, but not limited to, extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on School Property when suspension is out-of-school. A Long-term Suspension requires initial due process procedures as outlined in Section 4.0 of 14 DE Admin. Code 616 and the student choosing to waive his right to a formalized due process hearing as outlined in Section 10.0 of 14 DE Admin. Code 616.

“Suspension, Short-term (Short-term Suspension)” means Disciplinary Action approved by the Principal or School Discipline Committee resulting in the student being removed from his Regular School Program for at least one ~~[4]~~ **half** school day and not more than ten (10) consecutive school days. Student maintains enrollment in ~~[district/charter]~~ a District or Charter School, but is excluded from all school activities including, but not limited to extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on School Property when Short-term Suspension is out-of-school. A Short-term Suspension requires initial due process procedures as outlined in subsection 5.1 of 14 DE Admin. Code 616.

3.0 Uniform Processing Procedures

3.1 When a District ~~[or Charter School]~~ receives an Attorney General’s Report, the following uniform procedures shall be followed:

3.1.1 Only the Superintendent or designated ~~[District-level]~~ **District- or Charter School-level** administrative professional employee (hereinafter “designee”) shall handle the processing of the Attorney General’s Report. The designee shall be an employee at the ~~[District/administrative]~~ **District or Charter School administrative** office level and shall not be a secretary or administrative assistant.

3.1.2 The Superintendent or designee shall review the Attorney General’s Report, as soon as practicable thereafter and no later than three (3) school days, to determine if the listed charges warrant accessing the Criminal Justice Information System to obtain additional information. In the event of the absence of the Superintendent or designee, procedures shall be identified for the review of the Attorney General’s Report within the allotted time frame.

3.1.2.1 If the Superintendent or designee determines that access to the Criminal Justice Information System is needed, that access will occur as soon as practicable thereafter and no later than three (3) school days of the determination.

3.1.2.2 On the basis of that review, the Superintendent or designee shall make a determination as to whether the student’s alleged action(s) is a threat to the health, safety and welfare of others, in particular, staff and students within the School Environment and action needs to be taken.

3.1.3 The District ~~[or Charter School]~~ may provide the Attorney’s General Report and Criminal Justice Information to the school Principal if the District ~~[or Charter School]~~ decides to take action. The school Principal shall use this information only for action planning purposes.

3.1.4 A hard copy of a student’s Report or Criminal Justice Information shall not be maintained in any manner except for use as evidence in a student discipline hearing and manifestation determination meeting. Upon conclusion of the student disciplinary hearing and any appeal(s), the hard copy of the Report and Criminal Justice Information shall be destroyed. Notwithstanding the foregoing, the hard copy of the Report and Criminal Justice Information used at the manifestation determination meeting shall be maintained as part of the record of that meeting during the time for filing any dispute resolution proceedings under the Individuals with Disabilities Education Act (IDEA).

3.1.4.1 Any personally identifiable information relating to a victim listed in a Report or the Criminal Justice Information used for a disciplinary hearing or manifestation determination shall be redacted. For the purposes of this regulation, personally identifiable information includes name, date of birth, age, sex, race, home address, school, workplace, driver license number, and vehicle registration

number. If the victim and alleged offender attend the same school, that information may be shared with the Principal of the school for safety planning purposes.

4.0 District [or Charter School] Action in Response to Attorney General's Report

- 4.1 The decision to act upon the information provided in the Attorney General's Report and Criminal Justice Information shall be the sole discretion of the District [or Charter School] in accordance with the District's [or Charter School's] policies and procedures including the Student Code of Conduct. Such action may include, but is not limited to, student and/or Parent conference, counseling, safety planning and Disciplinary Action.
- 4.1.1 If the victim listed in the Criminal Justice Information attends the same school as the Report's alleged offender, the victim and victim's Parent shall be notified regarding any safety planning actions decided upon by the District [or Charter School]. The District [or Charter School] shall make reasonable efforts to include the victim and victim's Parent in the safety planning process.
- 4.1.2 If a District [or Charter School] policy allows for Disciplinary Action to be taken in response to a student Attorney General's Report, the ~~District~~ District's or Charter School's Student Code of Conduct shall include a statement that clearly gives notice that all off-campus, non-school activity conduct which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses, may subject a student to Disciplinary Action as indicated in the District's [or Charter School's] Student Code of Conduct.
- 4.1.2.1 Any Disciplinary Action taken by the District [or Charter School] in response to an Attorney General's Report that results in a Short-Term or Long-Term Suspension, Alternative Placement, or Expulsion of a student shall be in accordance with the requirements of 14 DE Admin. Code 614 and 616.

5.0 Students with Disabilities

- 5.1 Nothing in this regulation shall alter a ~~District's school's~~ District's or Charter School's duties under the Individual with Disabilities Act (IDEA) or 14 DE Admin. Code 922 through 929. Nothing in this regulation shall prevent a ~~[district/charter school]~~ District or Charter School] from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Delaware Department of Education regulations.
- 5.2 Nothing in this regulation shall alter a ~~District's~~ 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/charter school]~~ District or Charter School] from providing supportive instruction to such students.

6.0 Implementation

If any portion of this regulation is in conflict with ~~[any Memorandum of Understanding or Agreement in existence, the Memorandum of Understanding or Agreement]~~ the Interagency Agreement in existence, the Interagency Agreement] shall control.

21 DE Reg. 41 (07/01/17) (Final)