

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 923

PROPOSED

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies.

The Department of Education recently adopted Regulation 923 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the *Individuals with Disabilities Education Act*, 20 USC §1400, et.seq. ("IDEA").

The Department now proposes to amend Regulation 923 to re-adopt certain rules and standards about Extended School Year Services for children with disabilities. These requirements were formerly part of the Department's special education regulations and were inadvertently omitted when Regulation 923 was recently adopted.

Please note that the IDEA specifically requires that the Department of Education notify school districts and other education agencies of any State requirements for the education of children with disabilities that exceed federal requirements. These proposed regulations identify those additional State requirements by *italicizing* them in the text of these proposed regulations.

Persons wishing to present their views regarding the proposed amendment of the Extended School Year Services regulation may do so in writing by the close of business on or before July 2, 2007 to Martha Toomey, Director, Exceptional Children and Early Childhood Education, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office. The proposed regulations are also available by contacting Ms. Louann Vari at the above address, or by email at: lvvari@doe.k12.de.us.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The proposed amendment address the achievement of children with and without disabilities, including their achievement measured against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendment helps assure that children with disabilities receive equitable educational services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The proposed amendment does not directly address health and safety issues, but those issues are addressed by regulations already in place.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed amendment specifically ensures and implement the rights of children with disabilities under the *Individuals with Disabilities Education Act* and the provisions of Chapter 31 of Title 14 of the *Delaware Code*.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The proposed amendment leaves decision about Extended School Year services to the child's local planning team.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed amendment does not require any more reporting than necessary to comply with State statutory and federal requirements addressing the

education of children with disabilities.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The State and school districts and other local educational agencies share authority and accountability for the education of children with disabilities, and the proposed amendment reflects that partnership.

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 proposed amendment clarifies when children with disabilities are entitled to Extended School Year services and further reflects the increased federal alignment between the *Individuals with Disabilities Education Act* and the *No Child Left Behind Act*.

9. Is there a less burdensome method for addressing the purpose of the regulation? The proposed regulations are designed to assure compliance with applicable laws regarding the education of children with disabilities in these most efficient and effective way for the Department, the school districts and other affected State and local agencies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Compliance with the IDEA is required as a condition of federal funding.

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

6.0 Extended School Year Services

6.1 General: Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with 6.2 through 6.5.

6.2 Extended school year services shall be provided only if a child's IEP Team determines, on an individual basis, in accordance with 14 **DE Admin. Code** 925.20.0 through 925.24.0, that the services are necessary for the provision of FAPE to the child.

6.3 In implementing the requirements of this section, a public agency may not limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services.

6.4 Definition, as used in this section:

“Extended School Year Services” means special education and related services that are provided to a child with a disability beyond the normal school year of the public agency in accordance with the child's IEP and at no cost to the parents of the child; and meets the standards of the DOE.

6.5 *Determining need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education during the regular school year.*

6.5.1 *Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature or severity of the child's disability.*

6.5.2 *Regression and recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that this criterion focuses on children who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.*

6.5.3 Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break

6.5.4 Vocational: For children ages 16-20 whose IEPs contain vocational or employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.

6.5.5 Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.

6.6 Extended school year services are to be based on needs and goals or objectives found within the child's IEP of the school year, though activities may be different.

6.7 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, as identified on the child's IEP.

6.8 The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled children for the sole purpose of satisfying the LRE requirements for children receiving extended school year services.

6.9 Transportation shall be provided to children except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.

6.10 Written notice shall be provided to parents advising them that the IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.

6.11 In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.

Non-regulatory Note: Districts are encouraged to complete this process by May 1 so that appropriate planning and preparation can occur.

Authority: 20 U.S.C. 1412(a)(1); 14 Del.C. §3110)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Department of Education is available at: <http://regulations.delaware.gov/AdminCode/title14>**

10 DE Reg. 1758 (06/01/07) (Prop.)