

**DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(a) and 4112(b) (14 **Del.C.** §§122(a) and 4112(b))  
14 **DE Admin. Code** 608

**PROPOSED**

**PUBLIC NOTICE**

**Education 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.** Chapter 41, §4112(b) the Secretary of Education intends to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy. This regulation is being amended to provide the current federal statutory reference, remove language that is no longer included in the amended federal statute, modify language for school choice when a school is identified as persistently dangerous, and remove the definition of Terroristic Threatening as it is no longer a mandatory report under 14 **Del.C.** §4112(b).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 6, 2018 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address 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 helps to ensure all students receive a safe and equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's 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 on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
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 not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost 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 ~~No Child Left Behind Act of 2001~~ 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.

#### **4.02.0 Definitions**

In this regulation, the following terms shall have the meanings indicated below:

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

**"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"** 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"** means a school that has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years.

**"Safe 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.

~~**"Terroristic Threatening"** shall have the same meaning as provided in 11 **Del.C.** §621.~~

**"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; or

~~The school suspended or expelled a student for terroristic threatening as that term is defined in 11 **Del.C.** §621.~~

**"Violent Felony"** shall have the same meaning as provided in 11 **Del.C.** §4201(c). ~~(A list of these crimes can be found in the Delaware Guidelines for the Development of the Unsafe School Choice Option.)~~

#### **2.03.0 Identification of Persistently Dangerous Schools**

2.13.1 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.

2.23.2 Notwithstanding any provision herein to the contrary, any year that a school fails to comply with the reporting mandates, as set forth in 2.13.1 above, to the Delaware Department of Education or to the appropriate police agency as set forth above, the Department of Education will consider the 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.

2.33.3 A school identified as persistently dangerous will retain that designation for the entire fiscal year.

#### **3.04.0 Students Attending Schools Labeled as Persistently Dangerous**

3.14.1 A student attending a persistently dangerous school shall be allowed to choice to a ~~safe~~ Safe school in the same school district, including a charter school; provided such an option exists in the district, ~~the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.~~

3.24.2 Each public school district having one or more persistently dangerous schools and any charter school identified as a persistently dangerous school shall develop a plan and time line that describes the process for

notifying parents of the school's status and for relocating any student who exercises the right to choice to a ~~safe~~ 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 is identified.

#### **4.05.0 Students Who are Victims of a Violent Felony**

- 4.15.1 A student who is the victim of a Violent Felony while in or on the grounds of a school in which the student is enrolled shall be allowed to choice to a ~~safe~~ Safe school in the same school district, including a charter school; ~~the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring. Each school district and charter school shall have an electronic copy of the current policies and procedures on file with the Department of Education.~~
- 4.25.2 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, including the process for notifying parents.
- 4.35.3 Each school district and charter school shall ~~provide an electronic copy of any new or revised policies and procedures within ninety (90) days of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies post the policy and procedures on the district's or charter school's website, with hard copy provided to any requesting parties.~~

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

**12 DE Reg. 62 (07/01/08)**

**21 DE Reg. 947 (06/01/18) (Prop.)**