

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3126 (14 **Del.C.** §3126)  
14 **DE Admin. Code** 902

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 902 Gifted or Talented Education Plan

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

Pursuant to 14 **Del.C.** §3126, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 902 Gifted or Talented Education Plan. This regulation was proposed in October 2023 to clarify language to continue to allow gifted or talented services to be provided based on a school district's or charter school's capacity, and to outline school district and charter school responsibilities. In November 2023, it was determined that additional clarification was needed to explain that both school districts and charter schools must have a gifted or talented education plan, but school districts and charter schools could determine the extent of the plan and the areas of giftedness covered.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on December 1, 2023. The Department of Education received two written comments concerning the proposed amendments.

**Issue:** The definition of "capacity" offers no data-based criteria for assessing what services a school or district provides.

**Response:** When school districts or charter schools submit their plans for approval to the Department of Education, the method and norm-referenced tool for identification is part of the process by which their plans are reviewed, and therefore that is the criteria used to determine capacity. No change will be made to the regulation.

**Issue:** The lack of reference for district or charter schools' plan is problematic, as differences in the school districts' or charter schools' interpretation of capacity to provide could result in inequities between different districts and between different charter schools.

**Response:** The Department works closely with all districts and charter schools to provide feedback, support and guidance on ways to provide gifted or talented education services, especially when resources may be limited, in an effort to ensure students' needs are met. No change will be made to the regulation.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 902 Gifted or Talented Education Plan to clarify language in order to continue to allow gifted or talented services to be provided based on a school district's or charter school's capacity, and to outline school district and charter school responsibilities. Additionally, this regulation provides additional clarification requiring both school districts and charter schools to have a gifted or talented education plan, but school districts and charter schools could determine the extent of the plan and the areas of giftedness covered.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 902 Gifted or Talented Education Plan. Therefore, pursuant to 14 **Del.C.** §3126, 14 **DE Admin. Code** 902 Gifted or Talented Education Plan attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 902 Gifted or Talented Education Plan 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** 902 Gifted or Talented Education Plan amended hereby shall be in the form attached

hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 902 Gifted or Talented Education Plan 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.** §3126 on January 18, 2024. 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 18th day of January 2024.

### Department of Education

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

Approved this 18th day of January 2024

### State Board of Education

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

/s/ Provey Powell, Jr.

**\*Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

## 902 Gifted or Talented Education Plan

### 1.0 Purpose

The purpose of this regulation is to establish that a gifted or talented student, as identified by a professionally qualified person or persons, may require differentiated educational programs or services beyond those normally provided by the regular school program in order to address the ~~individual's~~ individual student's capabilities. The school districts' or charter schools' capacity to provide differentiated educational programs or services should also be considered as this varies between school districts and charter schools. Capacity means the way in which a school district or charter school chooses to identify its areas of giftedness and the types of services they choose to provide. A school district or charter school is not required to provide programming for all giftedness areas.

**23 DE Reg. 568 (01/01/20)**

### 2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

~~"Gifted or Talented Education Plan~~ **talented education plan**" or **"Plan plan"** means a Delaware Department of Education ~~approved document~~ approved document created by a school district or charter school for the development, implementation, and evaluation of an identification process and appropriate services for gifted or talented students.

~~"Gifted or Talented Student~~ **talented student**" means a child enrolled in a Delaware public school who has been identified by a professionally qualified person or persons as meeting the following definition of gifted or talented:

A child capable of high performance with demonstrated achievement ~~and/or~~ or potential ability in any of the following giftedness areas, singularly or in combination:

- General intellectual ability;
- Specific academic aptitude;
- Creative or productive thinking;
- Leadership ability;
- Visual and performing arts ability; or
- Psychomotor ability.

~~"Relative Caregiver~~ **caregiver**" means, pursuant to 14 **Del.C.** §202(f)(2), an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great

uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin, or first cousin once removed but who does not have legal custody or legal guardianship of the student.

**23 DE Reg. 568 (01/01/20)**

**3.0 ~~Development and Components of the Plan~~ Development, Components and Plan Review**

- 3.1 Each school district or charter school shall have a ~~Plan~~ plan which, at a minimum, shall:
- 3.1.1 Outline the anticipated services to be provided and giftedness areas to be covered based upon each individual district or charter school's capacity.
  - 3.1.2 Outline goals and specific outcomes;
  - 3.1.3 Be developed with input from various stakeholder groups including parents;
  - 3.1.4 Provide the process for identification of gifted or talented students by professionally qualified persons;
  - 3.1.5 Outline an identification process that includes how each district or charter identifies gifted learners and in which defined giftedness areas that ensures all students have an equal opportunity to be identified and participate in the program;
  - 3.1.6 Provide for a communication process, which shall include procedures to inform parent(s), guardian(s), or Relative Caregiver(s) parents, guardians, or relative caregivers of a student's participation in the gifted or talented education program;
  - 3.1.7 Establish procedures for requiring that, at a minimum, each teacher assigned to teach a student identified as gifted or talented be certified in accordance with the applicable Professional Standards Board regulations.
  - 3.1.8 Establish procedures for the identification and placement of a student who was identified as gifted or talented in the school district from which the student transferred students who transfer into the school district or charter school who have been identified as gifted or talented in their prior school; and
  - 3.1.9 Provide for an evaluation of the Plan provided for its gifted or talented students plan.
- 3.2 Implementation of the gifted or talented programs and services shall be aligned to the ~~Plan~~ plan.
- 3.3 The Department of Education shall review each plan periodically, but not less than every 5 years for compliance with this regulation and equitable practices. If a school district or charter school makes any substantive changes to the gifted or talented education plan, the plan shall be provided to the Department of Education within 1 year of the change for review for compliance with this regulation.

**23 DE Reg. 568 (01/01/20)**

**4.0 ~~Department of Education Responsibilities~~ Resources**

- 4.1 The Department of Education shall maintain a resource guide of best ~~practices,~~ practices on its ~~website,~~ website that a school district or charter school may use in the development and implementation of its ~~Plan~~ plan.
- 4.2 ~~Each Plan shall be reviewed periodically, but not less than every five years, by the Department of Education for compliance with this regulation, and any substantive changes to the Plan shall be provided for review for compliance with this regulation.~~

**19 DE Reg. 48 (07/01/15)**

**23 DE Reg. 568 (01/01/20)**

**27 DE Reg. 672 (03/01/24) (Final)**