

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

PROPOSED

PUBLIC NOTICE

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

613 Uniform Procedures for Processing Attorney General's Reports

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, 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 new 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 new regulation is intended to help ensure all students receive an equitable education in a safe environment.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The new regulation does help to ensure that all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation helps to 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 new 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 new 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 regulation.
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 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 new regulation.

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, 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, school, or charter school.

“Alternative Placement” means the removal of a student from his/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 or the Consortium Discipline Alternative Program.

“Appropriate Educational Services” means instruction and assessment provided by the district/charter 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, 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 or the Board of Directors of a charter school.

“Consortium Discipline Alternative Program” means a school discipline improvement program which serves an organized consortium of school districts and/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 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.

“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 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 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.

“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, or the principal's designee.

"Regular School Program" means student enrollment in a public 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 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 or charter school.

"Student Code of Conduct" means the district/charter school approved document which specifies the rights and responsibilities of students, defines conduct that disrupts/threatens a positive/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, 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 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, 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 (1) school day and not more than ten (10) consecutive school days. Student maintains enrollment in district/charter, 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 receives an Attorney General's Report, the following uniform procedures shall be followed:

3.1.1 Only the Superintendent or designated District-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 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 may provide the Attorney's General Report and Criminal Justice Information to the school Principal if the District 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 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 in accordance with the District'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. The District shall make reasonable efforts to include the victim and victim's Parent in the safety planning process.
 - 4.1.2 If a District policy allows for Disciplinary Action to be taken in response to a student Attorney General's Report, the District 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 Student Code of Conduct.
 - 4.1.2.1 Any Disciplinary Action taken by the District 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 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 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 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 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 shall control.

20 DE Reg. 867 (05/01/17) (Prop.)