

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 **Del.C.** §122(b) and §154(e))
14 **DE Admin. Code** 255

FINAL

REGULATORY IMPLEMENTING ORDER

255 Definitions of Public School, Private School and Nonpublic School

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to reauthorize 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School with no changes.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, August 5, 2008, in the form hereto attached as *Exhibit "A"*. The Department received comments from both the Governor's Advisory Council for Exceptional Citizens and State Council for Persons with Disabilities concerning the regulation's impact on Childfind responsibilities and regarding the services provided to students with disabilities in homeschools. Federal and state law extend Childfind duties to homeschooled children. As such, the Department has informed school districts of their duty to identify, locate, and evaluate students with disabilities applies to students who are homeschooled. The IDEA requires the State to ensure that: "all children with disabilities residing in the State...who are in need of special education and related services, are identified, located, and evaluated". 34 C.F.R. § 300.111(a)(1). The U.S. Department of Education, in its regulations, has extended this requirement to school districts. See, 34 C.F.R. § 300.201. The U.S. Department of Education further confirmed Childfind applies to homeschooled children when it noted if a State:

"does not recognize home schools as private schools, children with disabilities who are home-schooled are still covered by the child find obligations of SEAs and LEAs, and these agencies must insure that home-schooled children with disabilities are located, identified and evaluated, and that FAPE is available if their parents choose to enroll them in public schools."

In addition to Childfind, federal law permits school districts to use a proportionate share of funds to provide designated special education services to parentally placed private school children with disabilities. 34 C.F.R. §§ 300.132-133. Such services are, however, limited to the proportionate share of funds available and are determined through a consultation process involving private school officials and representatives of parentally placed private school children with disabilities. 34 C.F.R. § 300.134. Neither federal nor state law extend these provisions to homeschooled children. Rather, if a homeschooled child is evaluated and identified as a child with a disability, the child is entitled to a free, appropriate public education upon entering the public school system.

In sum, Regulation 255 does not change the Childfind duty to identify, locate, and evaluate homeschooled children with disabilities.

II. Findings of Facts

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School with no changes.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School hereby reauthorized 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** 255 Definitions of Public School, Private School and Nonpublic School hereby reauthorized shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School 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 October 8, 2008. 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 8th day of September 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

255 Definitions of Public School, Private School and Nonpublic School

1.0 Public School

A public school shall mean a school or Charter School having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. It also shall include the agencies of states and cities which administer the public funds.

2.0 Private School

A private school shall mean a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised and shall be interpreted further to include an accredited or approved college or university.

4 DE Reg. 1251 (2/1/01)

3.0 Nonpublic School

A nonpublic school shall mean a private school as that term is defined in paragraph 2.0 of this regulation or any homeschool defined in 14 **Del.C.** §2703A.

7 DE Reg. 618 (11/1/03)

12 DE Reg. 668 (11/01/08) (Final)