

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 930

FINAL

REGULATORY IMPLEMENTING ORDER

930 Supportive Instruction (Homebound)

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) in response to legislative action as well as other changes that have been brought forward through this review of the regulation. Legislation from the 146th General Assembly codified a requirement that Department of Education regulation define eligibility for supportive instruction for school district and charter school students; identify the licensed professional authorized to certify eligibility. Additionally, an amendment was made to address identification of those areas for supportive instruction that are not a result of sudden illness, injury, accident, episodic flare up of a chronic condition.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 4, 2012, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Department made changes, pursuant to the comments received as follows:

- 1) Added charter school to several areas;
- 2) Added the allowance for a physician assistant employed by and with a written agreement with a supervising licensed physician to determine eligibility; and
- 3) Clarified that supportive instruction for students suspended, expelled or pending expulsion must be in conformity with 14 **Del.C.**, Chapter 16, §1604(8)

A concern was expressed by the Councils related to free and appropriate public education (FAPE) for students covered by federal laws. The provision of a FAPE to students with disabilities has always and shall continue to be provided as required by applicable federal and state laws.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) in order to in respond to legislative action as well as other changes that have been brought forward through this review of the regulation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) 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** 930 Supportive Instruction (Homebound) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) 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 September 20, 2012. 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 20th day of September 2012.

DEPARTMENT OF EDUCATION

Mark T. Murphy, Secretary of Education

Approved this 20th day of September 2012

State Board of Education

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930 Supportive Instruction (Homebound)

1.0 Definition

“**Supportive Instruction**” is an alternative educational program provided at home, in a hospital or at a related site for a student temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature. **[Subject to 14 Del.C., §1604(8), ~~This this~~ may also include an alternative educational program provided at home to a student that has been suspended, expelled or subject to expulsion based upon the student’s local school district or charter school policy.**

- 1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.
- 1.2 Services for children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C 1400 et.seq), and its regulations (34 CFR parts 300 and 301), 14 **Del.C.**, Ch. 31, and the Department of Education's regulations on Children with Disabilities (14 **DE Admin. Code** 922 through 929) shall be provided in accordance with these laws and shall be processed under the district's **[or charter school's]** special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and its regulations, 14 **Del.C.**, Chapter 31, and the Department of Education's regulations on Children with Disabilities.
- 1.3 Nothing in this regulation shall alter a district's **[or charter school'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 from providing supportive instruction to such students.

14 DE Reg. 558 (12/01/10)

2.0 Eligibility for Conditions other than Suspension, Expulsion or Subject to Expulsion

- 2.1 A student enrolled in a school district **[or charter school]** is eligible for supportive instruction when the district or charter school receives the required certification that an accident, injury, sudden illness or episodic flare up of a chronic condition will prevent the student from attending school for at least ten (10) school days.
 - 2.1.1 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician. **[or a physician assistant employed by and who has a written agreement with a supervising licensed physician]** must certify absences due to a medical condition.
 - 2.1.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.
 - 2.1.3 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician. **[or a physician assistant employed by and who has a written agreement with a supervising licensed physician]** must certify absences due to pregnancy complicated by illness or other abnormal conditions.
 - 2.1.3.1 A student does not qualify for supportive instruction for normal pregnancies unless there are complications.
 - 2.1.3.2 A student who remains enrolled in school is eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician **[or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician].**

- 2.1.4 Supportive instruction can be requested as an in school transitional program that follows a period of supportive instruction that was provided outside of the school setting. If the supportive instruction is provided as an in school transitional program, it must be approved through a staff conference.

9 DE Reg. 402 (9/1/05)

14 DE Reg. 558 (12/01/10)

3.0 Implementation

- 3.1 Supportive instruction for a student shall begin as soon as the documentation required by 2.0 is received. Supportive instruction may continue upon the return to school setting only in those exceptional cases where it is determined that a student needs a transitional program to guarantee a successful return to the school setting in accordance with 2.4.

- 3.1.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.

3.1.1.1 The school shall provide a minimum of 3 hours of supportive instruction each week of eligibility for a K to 5th grade student, and a minimum of five hours each week of eligibility for a 6 to 12th grade student. There is no minimum for in school transition.

3.1.1.2 Nothing in this regulation shall prevent a school district **[or charter school]** from providing additional hours of supportive instruction to an eligible student from other available funding sources.

- 3.1.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school setting the following school year.

4 DE Reg. 344 (8/1/00)

4 DE Reg. 497 (9/1/00)

9 DE Reg. 402 (9/1/05)

14 DE Reg. 558 (12/01/10)

4.0 Eligibility and Implementation for Suspension, Expulsion, or Subject to Expulsion

If a local school district or charter school provides for supportive instruction (homebound) for students that have been suspended or expelled, the local school district or charter school shall have a written policy[, **which conforms with 14 Del.C., §1604(8), and any of its implementing regulations,**] regarding eligibility and implementation.

16 DE Reg. 412 (10/01/12) (Final)