

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

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

FINAL

REGULATORY IMPLEMENTING ORDER

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to create 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings. This regulation is created pursuant to 14 **Del.C.** §122(b)(26) to provide uniform procedures for alternative placement meetings and expulsion hearings. This is one of a series of regulations being developed regarding alternative placement, expulsion and due process procedures and the handling of Attorney General Reports. This regulation is aligned with the recommendations and outcomes of the School Discipline Task Force.

Notice of the proposed regulation was first published on December 1, 2015. Due to the complexity of this issue, several comments were received and reviewed. One specific comment required a substantive change, which required the proposed regulation to be republished. Notice of the proposed regulation was republished in the *News Journal* and the *Delaware State News* on June 1, 2016, in the form hereto attached as Exhibit "A". Comments were received from the State Council for Persons with Disabilities (SCPD), the Governor's Advisory Council for Exceptional Citizens (GACEC), the American Civil Liberties Union of Delaware (ACLU), the Delaware Department of Justice (DOJ) and the Department of Services for Children, Youth and Their Families (DSCYF). A very thorough review of each comment was undertaken. Comments received that resulted in a change to the regulation are related to: (1) the need to add the words "and assessment" within the definition of "Appropriate Educational Services" in order to clarify that both instruction and assessment are included in such services; (2) the need to add the words "a student" in the definition of Building Level Conference for clarification purposes. This was inadvertently removed when the definition was changed for the June republication; (3) the Due Process Grievance Procedures not being posted on the DOE website as referenced in 6.2. The Guidelines will be posted when the regulation is finalized, and may be posted in draft form prior to that time; clarification was added to the definition and to Section 6.2 that the required grievance procedures similar to the Guidelines are only those applicable to this regulation; (4) clarification needed in 3.1.1.1 regarding removal of student from the classroom and initial due process procedures as per 4.2.1; (5) clarification of 7.2.1.8 that the mailing of the Notice of the Alternative Placement Meeting will be done at least five business days before the meeting; (6) clarification of 10.3.12 to include the student being able to waive their right to a hearing before the local Board of Education, and ensuring a written waiver is signed by parent and student and is submitted in acknowledgment that the student is knowingly and voluntarily waiving their right to the hearing; (7) adding a new 10.4.3 to clarify the process for permitting students and parents to submit, and the Board of Education to consider, written statements relative to expulsion decisions; and (8) the need to add the word "student" in the renumbered Section 10.4.6 for clarification regarding a board decision being put in writing to a student, in addition to a superintendent and parent. Other grammatical corrections were made as needed.

Due to the complexity and interest in this regulation, a letter will be sent to each entity with responses to comments they submitted.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings in order to provide uniform procedures for alternative placement meetings and expulsion hearings.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings attached hereto as Exhibit "B" is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings hereby created 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** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings created hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings 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 15, 2016. 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 15th day of September 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 15th day of September 2016

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

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 the following situations: referral of students who warrant consideration for placement outside the Regular School Program into an Alternative Program; placement of students into an Alternative Program; monitoring student progress while in Alternative Placement; return of students back into the Regular School Program from an Alternative Program; Suspensions; and Expulsion hearings.

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 Placement Packet" means the documents submitted to the Alternative Placement Team including, but not limited to and as applicable, a student's academic information, behavioral information including reason for referral to Alternative Placement, attendance information, Individualized Education Plan (IEP), 504 plan, and immunization records.

"Alternative Placement Team (APT)" means a committee composed of the following: a representative of the Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; the student's Parent; guidance counselor or school social worker; and, if appropriate, a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs. Other individuals may be invited as determined by the APT. The APT reviews and prescribes the appropriate placement for students being considered for Alternative Placement.

"Alternative Placement Team Meeting" means a meeting held by the district/charter school Alternative Placement Team to determine the appropriate educational setting for a student whose behavior is within the defined conduct under 14 **DE Admin. Code** 614 and who has been recommended for 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 (Juvenile Arrest Warrant and Complaint)" means the Department of Justice's report of alleged out-of-school 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.

"Board of Education" means the Board of Education of a reorganized school district or the Board of Directors of a charter school.

"Building Level Conference" means a meeting which is held by phone or in person between the Principal, other appropriate school staff members as determined by the Principal, **[a student]** and a student's Parent to discuss the student's misconduct relative to a recommendation for Suspension, Alternative Placement, or Expulsion.

"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.

"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).

"Discipline Record" means all information about Disciplinary Action taken against a specific student as a result of any infraction of the school's/district's Student Code of Conduct or other rules.

"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.

"Hearing Officer" means an official appointed by the district/charter to conduct a formal due process hearing for a student recommended for Disciplinary Action which requires a formal due process hearing. The Hearing Officer may be an employee of the district or charter school, but shall not have been involved in any review of the student incident at the building or district level.

"In-School Alternative Program" means a School-Based Intervention Program (SBI) as described in 14 **DE Admin. Code** 609. Placement is determined by the school's Student Intervention Team as described in 14 **DE Admin. Code** 609. The program design includes the student's regular curriculum, as well as character education, social skills development, conflict resolution, access to counseling services and behavior modification strategies.

"Intake Form" means the checklist used during the student Intake Meeting which ensures the inclusion of behavioral, academic, and other necessary information to facilitate the placement of a student at a Consortium Discipline Alternative Program.

"Intake Meeting" means the meeting at an Alternative Program site which includes the student, the Parent, district/charter school representative, program administrator and other appropriate Alternative Program staff. At this meeting the program's rules and expectations are reviewed, paperwork that requires student and Parent signatures is completed, and the district's/charter school's individualized goals and expectations for the alternatively-placed student are reviewed.

"Outside Agency" means any agency from which a student has received services, but does not include an Alternative Program. Examples include, but are not limited to: judicial placement, youth detention facility, substance abuse facility, and mental health facility.

"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.

"Repeated Violations of Student Code of Conduct" means five or more violations of the school's Student Code of Conduct within a school year, excluding chronic infractions for tardiness or unexcused absences to school/class.

"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.

"Student Review" means a formal meeting that takes place at the Alternative Program with the district/charter school representative, the Alternative Program Administrator, and other appropriate Alternative Program staff to determine to what degree the student currently placed in the Alternative Program is progressing toward their behavioral and academic goals as determined during the student's Intake Meeting. The student and Parent shall be invited to attend this meeting.

"Superintendent" means the chief school officer of any public school district or charter school, or the equivalent of a superintendent, or the superintendent's designee.

"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 this regulation, 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 this regulation and the student choosing to waive his right to a formalized due process hearing as outlined in Section 10.0 of this regulation.

"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 this regulation.

"Transition Meeting" means a meeting to discuss the student's return to the Regular School Program which takes place at the school in which the student is enrolled, with the Alternative Program representative, the district/charter school representative, the student, the Parent, a school administrator, a teacher, a school counselor, a student advisor or disciplinarian if assigned, or other representative.

"Violent Felony" means a crime designated in 11 **Del.C.** §4201(c).

3.0 Preliminary Discipline Investigation & Reporting Requirements

3.1 Investigatory Procedures & Timeline

3.1.1 In any instance when student Disciplinary Action which may result in removal of the student out of the Regular School Program for one day or more is contemplated, the Principal shall conduct a preliminary investigation to determine if there is reasonable basis to pursue Disciplinary Action.

3.1.1.1 The Principal may remove the allegedly offending student from the general student population while conducting the preliminary investigation if the student's presence in the School Environment poses a threat to the health, safety, or welfare to persons or property within the School Environment, as determined by the Principal. **[Initial due process in accordance with subsection 4.2.1 of this regulation shall be provided.]**

3.1.1.2 When obtaining written statements from witnesses, reasonable efforts may be made to notify the Parent of each witness.

3.1.1.3 Reasonable efforts shall be made to include the allegedly offending student or Parent in the preliminary investigation.

3.1.2 The investigation shall be completed within three (3) school days of the date the incident in question was reported.

3.1.3 The Principal shall confiscate any contraband as defined in the Student's Code of Conduct or under the School's policy or state or federal law, which may be used for criminal/juvenile delinquency proceedings. Such contraband shall be labeled and secured in a locked area. Any confiscated contraband, or that reasonably understood to be illegal contraband, which may be used for criminal/juvenile proceedings shall be turned over to the appropriate police agency as soon as practicable.

3.2 Reporting Requirements

3.2.1 If the investigation reveals that there is reliable information that would lead a reasonable person to believe that a mandatorily reportable crime under 14 **Del.C.** §4112 has been committed, the Principal shall immediately notify the appropriate law enforcement agency of the incident.

3.2.1.1 All reports to the appropriate law enforcement agency must be made immediately by telephone or in person and shall be followed by a written report of the investigation within three (3) business days.

3.2.2 The Principal shall report all offenses listed as a mandatory report to the Department of Education under 14 **Del.C.** §4112 and 14 **DE Admin. Code** 601 within five (5) business days of the incident by completing the information in the eSchoolPlus discipline center or successor Delaware Department of Education approved student database management application.

4.0 Initial Due Process

4.1 A student shall be afforded initial due process rights for discipline procedures which result in the removal of the student for one day or more from the Regular School Program due to a violation of the school's Student Code of Conduct.

4.1.1 Prior to any removal of one day or more from the Regular School Program due to a violation of the school's Student Code of Conduct:

4.1.1.1 The student had prior opportunity to be informed in accordance with the established Student Code of Conduct rules and/or regulations.

4.1.1.2 The administrator/designee shall inform, orally or in writing, the student of the allegation(s) against him/her, the conduct which forms the basis of the allegation(s), and the policy, rule, or regulation violated.

4.1.1.3 The student shall be given an explanation of the evidence supporting the allegation(s) and an opportunity to present his/her side of the story including any evidence.

4.2 Due Process Delay Provision

4.2.1 A student whose presence in the School Environment poses a threat to the health, safety, or welfare to persons or property within the School Environment, as determined by the Principal, may be immediately removed from school provided that, as soon as practicable thereafter, the initial due process procedures outlined in subsection 4.1 of this regulation are followed.

4.3 In addition to the initial due process rights, a student who is recommended for Alternative Placement or Expulsion shall receive applicable additional due process rights as outlined in Sections 7.0, 10.0, and 11.0 of this regulation.

5.0 Suspensions

5.1 Short-term Suspension

5.1.1 The Principal, in accordance with the rules of the district/charter school, shall have the right to impose a Short-term Suspension on any student in the school who has violated the school's Student Code of Conduct. The duration of the Short-term Suspension shall not be more than ten (10) consecutive school days for any single conduct violation or combination of violations which occurred during a single disciplinary incident.

5.1.2 The Superintendent, in accordance with the rules of the district/charter school, shall have the right to temporarily extend a student's Short-term Suspension beyond the ten school day limit pending a district/charter Alternative Placement Meeting decision or the district/charter's Board of Education decision regarding an Expulsion hearing or other formalized Disciplinary Action hearing for the student.

5.1.2.1 A student whose Short-term Suspension has been temporarily extended beyond ten (10) consecutive school days shall receive Appropriate Educational Services beginning on the first day of the extension. Educational services shall continue until the student's district/charter Alternative Placement Meeting decision has been rendered or the district/charter's Board of Education decision regarding the student's Expulsion hearing or other formalized Disciplinary Action hearing has concluded. This does not preclude a district/charter from providing Appropriate Educational Services during a Short-term Suspension prior to the extension.

5.2 Long-term Suspension

5.2.1 The Superintendent, in accordance with the rules of the district/charter school, shall have the right to impose a Long-term Suspension on any student in the school who has violated the school's Student Code of Conduct's listed acts of misconduct as defined in 14 **DE Admin. Code** 614.3. The duration of the Long-term Suspension shall not exceed the number of school days in a school year for any single conduct violation or combination of violations which occurred during a single disciplinary incident.

5.3 Prior to any Suspension from school, the initial due process procedures outlined in subsection 4.1 of this regulation shall be followed unless temporarily delayed as allowed in subsection 4.2 of this regulation.

5.4 When a student receives a Suspension from school (in or out-of-school), reasonable attempts to provide verbal notification to the Parent shall be made by the Principal prior to the Suspension being served. Written notification of the Suspension and information regarding the districts/charters appeal or Grievance process shall be given or sent to the Parent as soon as practicable, but no later than three business days. The notification shall state the cause and duration of the Suspension.

5.4.1 The Parent or student may appeal the Suspension to the next administrative level in accordance with the district/charter's appeal or Grievance process.

5.5 Prior to the student's return from an out-of-school Suspension of three (3) school days or more, the Principal shall hold an in-person or phone conference with the Parent and student. A definite time, date, and place for the conference shall be designated by the Principal. The Principal may waive this conference requirement.

6.0 Requirement of Grievance Process

6.1 Each district/charter school shall have a written Grievance procedure. The district/charter school shall have the written Grievance procedures available for Parent review.

6.2 Grievance procedures, shall, at a minimum, be similar to the Grievance guidelines **[applicable to this regulation]** as posted on the Department of Education's website.

7.0 Assignment to an Alternative Program

7.1 Procedures for Student Referral

7.1.1 Criteria for student referral to an Alternative Placement.

7.1.1.1 A Principal may refer a student for Alternative Placement for any severe disciplinary violation for which Alternative Placement may be a consequence as specified in the district/charter school Student Code of Conduct and the student's behavior is within the defined conduct under 14 **DE Admin. Code** 614.

7.1.1.2 A Principal may refer a student for Alternative Placement for any offense listed in 14 **Del.C.** §4112. Students ineligible as a result of an offense listed in 14 **DE Admin. Code** 611 shall not be referred to a Consortium Discipline Alternative Program.

7.1.1.3 A Principal may refer a student for Alternative Placement in conjunction with an Attorney General's Report or court disposition that indicates that the student has been charged with a Violent Felony and/or is a threat to the health, safety, and welfare of others within the School Environment.

Students ineligible as a result of an offense listed in 14 DE Admin Code 611 shall not be referred to a Consortium Discipline Alternative Program.

7.1.1.4 A Principal may refer a student for Alternative Placement in conjunction with chronic disruptive behaviors which result in Repeated Violations of the Student Code of Conduct after all school-based best practice interventions have been put into place for said student. This may include, but is not limited to, counseling services, the development and implementation of a behavior support or modification plan, mentoring, referral to mediation, and participation in an available In-School Alternative Program.

7.1.1.5 Referral to a state funded Consortium Discipline Alternative Program must also meet the criteria set forth in 14 DE Admin. Code 611.

7.1.1.5.1 A referral of a charter school student to a Consortium Discipline Alternative Program shall also comply with the provisions of 14 Del.C. §504A(8).

7.2 Responsibilities for Student Referral Which May Lead to Alternative Program Placement

7.2.1 When it is alleged that a student committed a violation of the Student Code of Conduct and may be subject to a recommendation for Alternative Placement, the following procedures shall occur:

7.2.1.1 The Principal shall conduct a preliminary investigation pursuant to Section 3.0 of this regulation to determine if there is reasonable basis to pursue Disciplinary Action.

7.2.1.2 If the preliminary investigation verifies that Disciplinary Action may be warranted, initial due process procedures outlined in Section 4.0 of this regulation shall be followed.

7.2.1.3 After the student has been afforded initial due process procedures, and if the Principal decides that Disciplinary Action will be taken, the student and Parent shall be notified.

7.2.1.4 The Principal may impose a Short-term Suspension. If the student is suspended, the student and the Parent shall be provided a copy of a Suspension form that includes a written notice of the Student Code of Conduct violation(s).

7.2.1.5 If the Principal decides that the Disciplinary Action should be a referral for an Alternative Placement, the Principal shall compile an Alternative Placement Packet for the student. The Alternative Placement Packet may also include other relevant information at the discretion of the Principal.

7.2.1.5.1 Schools/charters which utilize a site-based School Discipline Committee may have the committee meet to discuss the incident and make a recommendation to the Principal for the student to remain in the current school setting, or for referral to an Alternative Program.

7.2.1.6 A charter school Principal shall verify that the Alternative Placement referral meets the conditions set forth in 14 Del.C. §504A(8).

7.2.1.7 For all referrals for Alternative Placement for a general education or special education student, the Principal shall hold a Building Level Conference with the Parent and the student.

7.2.1.7.1 The Principal shall explain to the Parent and the student the purpose of the meeting is to inform them: 1) of the referral for Alternative Placement; 2) that the student may be suspended pending the outcome of the district/charter school Alternative Placement Team Meeting and; 3) of the procedures that will take place as follow-up to the referral for Alternative Placement.

7.2.1.7.2 The conference shall be held by phone or in person.

7.2.1.7.3 The Principal shall have at least one other person present to take notes during the conference or shall have the conference audio recorded.

7.2.1.8 ~~The Parent and the student shall, at a minimum, receive written notice via regular U.S. and certified mail, of the district/charter school Alternative Placement Meeting. Notice of the Alternative Placement Meeting shall be mailed to the Parent and the student via regular U.S. and certified mail at least five business days before the meeting is to occur.~~

7.3 Alternative Placement Meeting for Districts/Charter Schools

7.3.1 A district/charter school Alternative Placement Meeting shall take place to determine if an alternative setting is appropriate for a referred student.

7.3.1.1 The Parent and student shall receive verbal and written notification of the district/charter school's Alternative Placement Meeting. Parents and student may, but are not required to, attend the meeting.

7.3.1.2 The Parent and student shall be informed of the district/charter school Alternative Placement Team's decision for placement within one (1) business day of the meeting.

7.3.1.2.1 If the decision is to assign to an Alternative Placement, the Superintendent shall send follow-up written notice within three (3) business days to the Parent describing the circumstances

which led to the placement, identifying the Alternative Program to which the student is being assigned, and the conditions which must be met in order for the student to return to the Regular School Program.

7.4 Student Assignment to an Alternative Program

7.4.1 The district/charter school representative shall contact the selected Alternative Program to set up a date and time for an Intake Meeting.

7.4.1.1 The Intake Meeting shall not occur unless all required participants are present, unless excused by the Superintendent, and documentation from the Alternative Placement Packet is provided.

7.4.1.1.1 Participants required to be present at the Intake Meeting include, but are not limited to, the student, the Parent, a district/charter school representative, the Alternative Program administrator, and other appropriate Alternative Program staff.

7.4.1.2 A student assigned to a Consortium Discipline Alternative Program must be registered in a district/charter school before the Intake Meeting is held.

7.4.1.3 The Intake Meeting will include the completion of necessary forms, including the Intake Form, which requires student and Parent signatures.

7.4.1.4 During the Intake Meeting, the district/charter school representative shall communicate, to all in attendance, the district/charter school's individualized goals and expectations for the alternatively placed student, including the Individualized Service Plan (ISP) under 14 DE Admin. Code 611, if applicable. The individualized goals and expectations shall be recorded on the Intake Form.

7.4.1.4.1 The Intake Form shall be signed by all parties, copied and distributed to the student and Parent, Alternative Program administrator, and district/charter school representative and shall become part of the student's educational record as defined by 14 DE Admin. Code 252.

7.4.2 The district/charter school shall maintain all alternatively placed students' enrollment status in Delaware Student Identification System (DELSIS) and eSchool PLUS database systems or successor Delaware Department of Education approved student database management system. A student placed in a Consortium Discipline Alternative Program shall have both an "active" and "service" status designation in DELSIS.

8.0 Procedures for Student Monitoring while in Alternative Placement

8.1 A Student Review for each student in the Alternative Program shall be completed. Quarterly reviews are recommended. Semi-annual reviews are required.

8.1.1 The Student Review shall include an examination of student attendance, grades and Discipline Records, including the student's strengths and weaknesses in connection with their individualized goals and expectations at the time of the Student Review.

8.1.2 The Student Review shall also include recommendations for continued progress and/or return (or recommendation not to return) to the Regular School Program.

9.0 Procedures for Student Return to the Regular School Program

When a Student Review results in a recommendation for return to the comprehensive school setting, a Transitional Meeting at the student's comprehensive school will be held between the Alternative Program representative, the district/charter school representative, the student, the Parent, the school administrator, a teacher, a school counselor, a student advisor or disciplinarian, if assigned. Other individuals may be invited as determined by the members of the Transitional Meeting team. This meeting shall take place prior to a student's return to that comprehensive school and shall result in a document setting forth the terms of the return.

10.0 Procedures for the Expulsion of Students

10.1 When it is alleged that a student committed a violation of the Student Code of Conduct and may be subject to a recommendation for Expulsion, the following procedures shall be followed.

10.1.1 The Principal shall conduct a preliminary investigation pursuant to Section 3.0 of this regulation to determine if there is reasonable basis to pursue Disciplinary Action.

10.1.2 If the investigation verifies that Disciplinary Action may be warranted, initial due process procedures outlined in Section 4.0 of this regulation shall be followed.

10.2 After the student has been afforded initial due process procedures, if the Principal decides that Disciplinary Action in the form of a recommendation for Expulsion will be made, the following procedures shall be followed:

10.2.1 Student will be given written notice of charges and the Parent shall be notified verbally and in writing as soon as practicable thereafter.

10.2.2 The student shall be given a Short-term Suspension pursuant to the criteria outlined in Section 6.0 of this regulation. The Parent shall be provided a copy of a Suspension form that includes a written notice of the Student Code of Conduct violation(s).

10.2.3 The Principal shall hold a Building Level Conference with the Parent and the student. The Principal shall explain to the Parent and the student the purpose of the meeting is to inform them: 1) of the recommendation for Expulsion; 2) that the student will be serving a Short-term Suspension pending the outcome of the Expulsion hearing and; 3) of the procedures that will take place as follow-up to the recommendation for Expulsion.

10.2.3.1 The conference shall be held by phone or in person.

10.2.3.2 The Principal shall have at least one other person present to take notes during the conference or shall have the conference audio recorded.

10.2.4 All documentation related to the recommendation for Expulsion shall be delivered to the Superintendent within two (2) business days of the Building Level Conference or seven (7) business days of the incident, whichever is sooner.

10.3 Expulsion Hearing[s]

10.3.1 Upon receipt of a recommendation following the Building Level Conference, the Superintendent shall review documentation to affirm that appropriate discipline procedures were followed. The Superintendent shall, within ten (10) business days of the date of the incident, notify the student and the Parent by letter that a district-level Expulsion hearing will be held to consider the recommendation.

10.3.1.1 The Superintendent shall not have been a participant in the disciplinary investigation or Building Level Conference resulting in the recommendation for Expulsion.

10.3.2 Written notice shall, at a minimum, be sent by regular U.S. and certified mail to the Parent describing the circumstances which led to the recommendation for Expulsion and shall give the date, time, and location of the hearing.

10.3.3 The hearing shall be held not less than seven (7) business days or more than twenty (20) business days after receipt of written notice. The written notice shall be deemed to be received on the fourth business day following the day of mailing. This time period may be waived by agreement of the parties. A copy of the documentation shall be made available, upon request, to the student and Parent at the district/charter school office prior to the mailing.

10.3.4 If requested, the student and Parent will also be given a copy of the following:

10.3.4.1 The reason(s) for the recommendation;

10.3.4.2 The name(s) of witnesses who may appear; and

10.3.4.3 Copies of information that may be submitted as evidence.

10.3.5 The district/charter shall receive written Parent permission for any witness who is a minor.

10.3.6 The hearing shall be conducted by a district/charter Board of Education or Hearing Officer.

10.3.7 The Board of Education or Hearing Officer shall have full authority to admit or exclude evidence.

10.3.7.1 Evidence presented at the Expulsion hearing may include, but is not limited to, witness statements, police or Attorney General's Reports, and photocopies of evidence.

10.3.7.2 The Board of Education or Hearing Officer is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as herein stated.

10.3.7.3 The Board of Education or Hearing Officer may exclude plainly irrelevant, immaterial, insubstantial, cumulative and privileged evidence.

10.3.7.4 The Board of Education or Hearing Officer may limit unduly repetitive proof, rebuttal and cross examination.

10.3.8 In conducting the hearing, the district/charter school shall submit evidence first followed by the response of the student, if any.

10.3.8.1 Further evidence by either party may be presented at the hearing if the Board of Education or Hearing Officer determines such evidence is necessary.

10.3.9 The Superintendent presenting the case on the part of the district/charter school shall not testify.

10.3.10 The hearing shall be recorded in a manner that will permit transcription.

10.3.11 The student shall have the following rights:

10.3.11.1 To be represented by legal counsel at the student's expense;

10.3.11.2 To cross-examine witnesses;

10.3.11.3 To testify and produce witnesses on his/her behalf; and

10.3.11.4 To obtain, at the student's expense, a copy of the transcript of the hearing.

10.3.12 In lieu of a formal Expulsion hearing, a **[Parent student]** may elect to waive the hearing and admit to the **[student's]** violation charge(s). The **[student and]** Parent shall submit a **[signed]** written hearing waiver **[which indicates that the student is knowingly and voluntarily waiving their right to the hearing]**. Such election may be exercised until the commencement of the hearing. This waiver does not absolve the student from required consequences under Federal or State Law or the Student Code of Conduct.

10.4 Expulsion Decision by Board of Education

10.4.1 Decision after Hearing Officer Presides over Hearing

10.4.1.1 Within five (5) business days following the conclusion of an Expulsion hearing conducted by a Hearing Officer, a written report shall be prepared by the Hearing Officer for the Superintendent.

10.4.1.1.1 The report shall frame the issues, summarize the evidence, state conclusions of fact, and make a recommendation as to whether the student should be expelled.

10.4.1.2 The Board of Education shall make its decision at the next scheduled public Board Meeting or additional scheduled public board meeting for the sole purpose of deciding on the student disciplinary matter in question.

10.4.1.2.1 The Board shall conduct a review of the Hearing Officer's recommendation. The Board may accept, reject, or modify the recommendation of the Hearing Officer. The Board's decision shall be in writing in accordance with subsection 10.4.5 of this regulation and shall be based solely upon the report from the Hearing Officer and the record of the Expulsion hearing, if any, **provided by the Superintendent, the student and Parent**].

10.4.2 Decision after Board of Education Presides over Hearing

10.4.2.1 Following the conclusion of an Expulsion hearing conducted by the Board of Education, the Board shall frame the issues, summarize the evidence, state conclusions of fact and render its decision.

10.4.2.2 The Board's decision shall be in writing in accordance with subsection 10.4.5 and shall be based solely upon the record of the Expulsion hearing of which it presided over.

[10.4.3 Decision After Waiving of Hearing Rights and Admission to Violation Charges

10.4.3.1 Within five (5) business days following the waiving of hearing rights and admission of violation charges, the Superintendent shall prepare a report for the Board of Education's action at it's next public board meeting or an additional scheduled public board meeting for the sole purpose of deciding on the student disciplinary matter in question.]

10.4.~~[34]~~Eligible expelled students shall be placed in a Consortium Discipline Alternative Program in accordance with 14 **Del.C.** §1604 and 14 **DE Admin. Code** 611. The Board shall determine if the students not eligible for placement in a Consortium Discipline Alternative Program shall be expelled with or without Appropriate Educational Services.

10.4.~~[45]~~Any decision to expel a student shall be reported to the Delaware Department of Education within five (5) business days of the Board's decision to expel. When a Board of Education expels a student, but determines the student shall not be placed at a Consortium Discipline Alternative Program, the written decision shall address with specificity the reason for non-placement and the evidence in support thereof. Such decisions shall be submitted to the Delaware Department of Education's Office of School Climate and Discipline within five business days of such decision, with a copy to the student's Parent.

10.4.~~[56]~~Except as is otherwise provided herein, within ten (10) business days of the decision by the Board, the Board, through its designee, shall submit its decision to the Superintendent and Parent **[and student]** in writing. The written decision shall include notice of the right to appeal to the State Board of Education.

10.5 Calculation of Time

10.5.1 In calculating the period of time for the term of the Expulsion, school days will be used. Students ~~[adjudicated to a Delaware Division of Youth Rehabilitative Services (YRS) receiving residential services from a Department of Services for Children, Youth and Their Families (DSCYF)]~~ program shall have the amount of school days served in such program counted as part of the calculation of time for an Expulsion. This does not preclude a district/charter from transitioning a student from a YRS program to the Regular School Program through an Alternative Program. However, transition through an Alternative Program is not required.

10.6 Notification of Expulsion to Division of Motor Vehicle

10.6.1 The Delaware Division of Motor Vehicle shall be notified of the beginning and ending date of Expulsion for students who are expelled from the School district/charter school as a request for suspension of driving privileges in accordance with 14 **Del.C.** §4130(e)(1).

10.6.2 A copy of the Delaware Division of Motor Vehicle form shall be forwarded to the Delaware Department of Education's Office of School Climate & Discipline.

11.0 Students with Disabilities

- 11.1 Nothing in this regulation shall alter a district/charter 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.
- 11.2 Nothing in this regulation shall alter a district/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/charter School from providing supportive instruction to such students.

20 DE Reg. 277 (10/01/16) (Final)