

**DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(a) and 4112(b) (14 **Del.C.** §§122(a) and 4112(b))  
14 **DE Admin. Code** 608

**FINAL**

**REGULATORY IMPLEMENTING ORDER**

**608 Unsafe School Choice Option Policy**

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

Pursuant to 14 **Del.C.**, Chapter 1, § 122 and Chapter 41, §4112(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy. This regulation is being amended to provide the current federal statutory reference, remove language that is no longer included in the amended federal statute, including Adequate Yearly Progress (AYP), modify language for school choice when a school is identified as persistently dangerous, and remove the definition of Terroristic Threatening as it is no longer a mandatory criminal report under 14 **Del.C.** §4112(b).

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on June 1, 2018, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and State Council for Persons with Disabilities noting that: (1) the criteria to qualify as an unsafe school is too high, making it easier to avoid being labeled "persistently dangerous." The Department notes that, based on a national review of other states' thresholds of being an "unsafe school," Delaware's definition is consistent and therefore does not need to be amended; and (2) the removal of the definition of "Terroristic Threatening" could have a large impact on the number of "unsafe incidents." The Department believes that the removal of the definition of "Terroristic Threatening" as a basis for an unsafe incident is consistent with most other states. Additionally, the Department added some clarifying language and made several grammatical corrections within this regulation to comply with drafting and style protocol.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy in order to provide the current federal statutory reference, remove language that is no longer included in the amended federal statute including Adequate Yearly Progress (AYP), modify language for school choice when a school is identified as persistently dangerous, and remove the definition of Terroristic Threatening as it is no longer a mandatory criminal report under 14 **Del.C.** §4112(b).

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy 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** 608 Unsafe School Choice Option Policy amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy 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 14, 2018. 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 14<sup>th</sup> day of September 2018.

## Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 14<sup>th</sup> day of September 2018

### 608 Unsafe School Choice Option Policy

#### 1.0 Purpose

The Elementary and Secondary Education Act (ESEA) of 1965, as amended by the ~~No Child Left Behind Act of 2001~~ Every Student Succeeds Act (ESSA) of 2015, requires that a State Education Agency establish a State Unsafe School Choice Option policy in order to receive funding under ESEA.

#### 1.02.0 Definitions

In this regulation, the following terms shall have the meanings indicated below:

**"Crime"** shall have the same meaning as provided in 14 Del.C. §4112.

**"Enrolled Students"** unless the context indicates otherwise, means all students included in the Delaware Student Information System (DELSIS) report for the year of the data collection.

**"Expulsion"** means, for purposes of this regulation, the exclusion from the regular school setting for a period determined by the local district board or charter school board not to exceed one year. The process for readmission shall be determined by the local district board or charter school board.

**"Firearm"** means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

**"Fiscal Year"** means the period of July 1 through June 30.

**"Gun Free Schools Violation"** means the prohibited bringing to school, or possession while in school of a firearm by a student.

**"Persistently Dangerous School"** means a school that has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years.

**"Safe School"** means a school in the same school district that is not currently identified by the Department of Education as a persistently dangerous school.

**"School"** means any public school including charter schools. School property shall have the same meaning as provided in 14 Del.C. §4112 (a)(9).

**"Suspension"** means, for the purpose of this regulation, the external (out of school) removal of a student from the general school population.

~~"Terroristic Threatening" shall have the same meaning as provided in 11 Del.C. §621.~~

**"Unsafe Incidents"** means any of the following:

The school suspended or expelled a student for a gun free schools violation; or

The school suspended or expelled a student for a crime committed on school property which is required to be reported under 14 Del.C. §4112; or

The school reported a crime committed by a non student on school property that is required to be reported under 14 Del.C. §4112; or

~~The school suspended or expelled a student for terroristic threatening as that term is defined in 11 Del.C. §621.~~

**"Violent Felony"** shall have the same meaning as provided in 11 Del.C. §4201(c). ~~(A list of these crimes can be found in the Delaware Guidelines for the Development of the Unsafe School Choice Option.)~~

#### 2.03.0 Identification of Persistently Dangerous Schools

~~2.13.1~~ The Department of Education shall identify each ~~[persistently dangerous school]~~ **Persistently Dangerous School** using the data reported to it pursuant to the provisions of 14 Del.C. §4112, 14 DE Admin. Code 601, and any expulsion and suspension data as required by the Department.

~~2.23.2~~ Notwithstanding any provision herein to the contrary, any year that a ~~[school]~~ **School** fails to comply with the reporting mandates, as set forth in ~~2.13.1~~ above, to the Delaware Department of Education or to the appropriate police agency as set forth above, the Department of Education will consider the ~~[school]~~ **School** as if it otherwise met the criteria to be classified as a ~~[persistently dangerous school]~~ **Persistently Dangerous School** for that year until such time as it may be determined, in the sole discretion of the Department, that the ~~[school]~~ **School** has met such reporting requirements.

2.33.3 A **[school School]** identified as **[persistently dangerous a Persistently Dangerous School]** will retain that designation for the entire fiscal year.

### **3.04.0 Students Attending Schools Labeled as Persistently Dangerous**

3.14.1 A student attending a **[persistently dangerous school Persistently Dangerous School]** shall be allowed to choice to a **safe Safe [school School]** in the same school district, including a charter school[;] provided **[such an that a charter school]** option exists in **[the district that school district's boundaries]**; ~~the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.~~

3.24.2 Each public school district having one or more **[persistently dangerous schools Persistently Dangerous Schools]** and any charter school identified as a **[persistently dangerous school Persistently Dangerous School]** shall develop a plan and time line that describes the process for notifying parents of the **[school's School's]** status and for relocating any student who exercises the right to choice to a **safe Safe [school School]**. The plan shall also describe the corrective actions that will be implemented. The plan shall be forwarded to the Department of Education no later than September 15th of the year that the **[school School]** is identified.

### **4.05.0 Students Who are Victims of a Violent Felony**

4.15.1 A student who is the victim of a Violent Felony while in or on the grounds of a **[school School]** in which the student is enrolled shall be allowed to choice to a **safe Safe [school School]** in the same school district, including a charter school **[provided that a charter school option exists in that school district's boundaries]**; ~~the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring. Each school district and charter school shall have an electronic copy of the current policies and procedures on file with the Department of Education.~~

4.25.2 All school districts and charter schools shall establish a plan that describes their policies and procedures for providing school choice options to a student who is the victim of a **[violent felony Violent Felony]**, including the process for notifying parents.

4.35.3 Each school district and charter school shall ~~provide an electronic copy of any new or revised policies and procedures within ninety (90) days of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies post the policy and procedures on the [school] district's or charter school's website, with hard [copy copies] provided to any requesting parties.~~

7 DE Reg. 67 (07/01/03)

12 DE Reg. 62 (07/01/08)

22 DE Reg. 297 (10/01/18) (Final)