

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 611

PROPOSED

PUBLIC NOTICE

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

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. §122(b), the Secretary of Education intends to amend 14 DE Admin. Code 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems. This amendment is needed to update the statutory reference(s), make minor clarifications and comply with 29 Del.C. §10407 which requires regulations to be reviewed every four years.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation helps to improve student achievement as measured against state achievement standards by providing guidelines for the treatment of severe discipline problems.

2. Will the regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure all students receive an equitable education.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected.

4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.

5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended 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 amended regulation does not place any unnecessary reporting or administrative requirements or mandates 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 amended regulation.

8. Will the 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 amended 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 no 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 of implementing this amended regulation.

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

1.0 Eligible Students

- 1.1 Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program (CDAP) site.
- 1.2 Subject to Section 11.0, local school districts shall place a an eligible student at a Consortium Discipline Alternative Program site if the district board:
 - 1.2.1 Has expelled the student for a violation of the district's discipline code or, determined that the student has been suspended for engaging in conduct that could result in expulsion and has not required the student to participate in other options such as ~~behavioural~~ behavioral contracts or counseling or, determined that the student has exhibited such severe discipline problems that expulsion is ~~imminent; and imminent.~~
 - 1.2.2 ~~Determined the student is not ineligible for placement at a Consortium Discipline Alternative Placement pursuant to the conditions in 2.0.~~
- 1.3 School districts may place a student in a Consortium Discipline Alternative Program for classroom or school environment disruptions only if:
 - 1.3.1 Such disruptions are chronic and repetitive; and
 - 1.3.2 The student has participated in all available School Based Intervention Programs pursuant to 14 **DE Admin. Code** 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students.

12 DE Reg. 1075 (02/01/09)

2.0 Ineligible Students

- 2.1 Any student expelled or suspended pending expulsion for behavior equivalent to a violation of the following is not eligible for, and may not be placed at a Consortium Discipline Alternative Program site.
 - 2.1.1 11 **Del.C.** §613 Assault in the First Degree; class ~~C~~ B felony; or
 - 2.1.2 11 **Del.C.** §1457 Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F: class A or B misdemeanor; or
 - 2.1.3 11 **Del.C.** §802 Arson in the Second Degree affirmative defense; class D felony; or
 - 2.1.4 11 **Del.C.** §803 Arson in the first degree; class C felony; or
 - 2.1.5 11 **Del.C.** §770 Rape in the fourth degree; class C felony; or
 - 2.1.6 11 **Del.C.** §771 Rape in the third degree; class B felony; or
 - 2.1.7 11 **Del.C.** §772 Rape in the second degree class B felony; or
 - 2.1.8 11 **Del.C.** §773 Rape in the first degree class A felony; or
 - 2.1.9 ~~16 Del.C. §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamine, LSD, or designed drugs or~~ 16 Del.C. §4752 Drug dealing—Aggravated possession; class B felony; or
 - 2.1.10 ~~Any behavior equivalent to or greater than the offenses in 2.1 through 2.9.~~
 - 2.1.10 16 Del.C. §4752B Drug dealing — Resulting in death; class B felony; or
 - 2.1.11 16 Del.C. §4753 Drug dealing—Aggravated possession; class C felony; or
 - 2.1.12 16 Del.C. §4754 Drug dealing—Aggravated possession; class D felony; or
 - 2.1.13 Any behavior equivalent to or greater than the offenses in subsections 2.1.1 through 2.1.12.
- 2.2 Provided further, any student expelled or suspended pending expulsion may not be placed at a Consortium Discipline Alternative Program if the school district determines, by a preponderance of the evidence, the student is inappropriate for such placement. When determining whether a student is inappropriate for placement in a Consortium Discipline Alternative Program, the school district shall consider the availability of space in the program to serve the student, ~~and~~ the student's age and the student's educational and behavioral modification needs.

12 DE Reg. 1075 (02/01/09)

3.0 Written Decision Required

When a school board expels a student but determines the student shall not be placed at a Consortium Discipline Alternative Program, the school district's decision shall be in writing and address with specificity the ~~reason~~ reasons for ~~non-placement~~ 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 working days of such decision with a copy to the student's parent, guardian, or Relative Caregiver.

12 DE Reg. 1075 (02/01/09)

4.0 Informing the Parents, Guardians, Relative Caregiver or Students (If the Student is Age 18 or Older)

Districts shall inform the parents, guardians, Relative Caregiver or students (if the student is age 18 or older) of the alternative education options that are then currently available to them if the students have been expelled or expulsion is being considered. These options may include, but are not be limited to, the Consortium Discipline Alternative Program, a GED Program, James H. Groves High School and continued special education and related services for children with disabilities as determined by the student's ~~individual~~ eligibility for participation in such programs. A student's eligibility for such alternative education options is determined by the requirements of such programs.

5.0 Grade Level ~~Levels~~ to be Served

Eligible students in the Consortium Discipline Alternative Program shall be primarily those who are enrolled in grades 6 through 12, however students in the lower grades may also be served through ~~Alternative Program~~ CDAP funds.

6.0 Placement at Consortium Discipline Alternative Program Sites

6.1 Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for students. The Placement Team, in concert with the Consortium Discipline Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both students and their families. The ISP shall include a tentative transition plan.

6.1.1 The Alternative Placement Team shall be composed of a representative of the Consortium Discipline Alternative Program staff; a ~~district-level~~ district-level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; the student's custodial adult; guidance counselor or school social worker; and a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs as appropriate. Other individuals may be invited as determined by the placement team.

6.1.1.1 Students who are being placed at a Consortium Discipline Alternative Program site as a transition from DSCYF facilities shall have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult.

6.1.2 If students from either a school district or DSCYF facility are children with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the Individual Education Program (IEP) Team may be the same so long as the membership of the IEP Team meets the requirements of 14 **DE Admin. Code** 925.

7.0 September 30 Enrollment Count

7.1 Students enrolled at a Consortium Discipline Alternative ~~Programs~~ Program site shall be counted in the enrollment of the sending school.

7.2 Students shall be reported for the level of special education service as defined by the current IEP.

7.3 If a student was enrolled the previous year in a Career and Technical Program in the reporting school, the students shall be reported as enrolled in the next Career and Technical course in the program series.

12 DE Reg. 1075 (02/01/09)

8.0 Consortium Discipline Alternative Program Setting

8.1 The Consortium Discipline Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs if the students do not interact with the regular school population or use any school facility at the same time as the regular school population.

8.1.1 Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Consortium Discipline Alternative Program settings shall meet all applicable health and safety laws and regulations for student occupancy.

9.0 Consortium Discipline Alternative Program Design

9.1 The Consortium Discipline Alternative Program shall include an educational program designed to maintain and improve skills aligned to the Delaware State Content Standards that will allow students to reenter the regular school program with a reasonable chance and expectation for success. Opportunities for academic acceleration shall also be provided.

9.1.1 The academic program shall include applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises.

Study skills, ~~test-taking~~ test-taking strategies for academic confidence building, and Character Education shall be integrated with the Delaware State Content Standards.

9.1.1.1 Credit for work accomplished in the Consortium Discipline Alternative Program setting shall be automatically transferred to the sending school.

9.1.2 All students enrolled in Consortium Discipline Alternative Programs shall participate in the Delaware Student Testing Program (DSTP) or successor statewide student assessment program, and Student Success Plans (SSP) as required by 14 **DE Admin. Code** 505 507.

12 DE Reg. 1075 (02/01/09)

10.0 Staffing

Instructional staff shall include educators who are licensed and certified in the content areas of English language arts, mathematics, science and social studies.

11.0 Children With Disabilities

11.1 Nothing in this regulation shall alter a district's or charter school's duties under the Individual with Disabilities Act (IDEA) or 14 **DE Admin. Code** 922 through 929. Nor shall this regulation prevent a district or charter school from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Department regulations.

11.2 Nothing in this regulation shall alter a district's or charter ~~schools's~~ 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 or charter school from providing supportive instruction to such students.

12 DE Reg. 1075 (02/01/09)

12.0 Charter School Students

12.1 A charter school, subject to the limitations of 14 **Del.C.** 504A(8), shall pursue referral of any student meeting the requirements of ~~Section~~ subsection 1.2 into a Consortium Discipline Alternative Program pursuant to the provisions of Chapter 16 of Title 14 of the **Delaware Code**.

12.2 To the extent applicable, a charter school placing a student in a Consortium Discipline Alternative Program shall be subject to the provisions of this regulation.

8 DE Reg. 1008 (01/01/05)

12 DE Reg. 1075 (02/01/09)

13.0 Evaluation

The Department of Education shall annually evaluate the effectiveness of the Consortium Discipline Alternative Programs using criteria that includes student demographic data, types of interventions employed, and prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement and recidivism. In addition, the Department of Education shall annually review the decisions acquired pursuant to Section 3.0 to assess the reasons for non-placement of students in the alternative programs, including lack of space and number, age, race and special education status of excluded students by district and charter school. Grantees shall compile and submit data based on uniform standards and format established by the Department.

12 DE Reg. 1075 (02/01/09)

23 DE Reg. 149 (09/01/19) (Prop.)