

**DEPARTMENT OF EDUCATION**  
Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 701

**FINAL**

**REGULATORY IMPLEMENTING ORDER**

**701 Unit Count**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 **DE Admin. Code** 701 Unit Count in order to clarify issues in 4.1.1 concerning the Delaware Adolescent Program, in 4.1.6 concerning Alternative Education Programs, in 4.1.7 concerning gifted kindergarten students, in 4.1.13 concerning Vocational Programs, in 5.1.6 concerning students enrolled in a Homeschool and in 7.1.2 concerning Charter Schools. Editorial corrections have also been made.

Notice of the proposed regulation was published in the News Journal and the State News on January 20, 2005, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children, the State Council for Persons with Disabilities and the Developmental Disabilities Council concerning the 12.5 hour rule in section 4.1.12 of the regulation. The Department acknowledges the concerns expressed by the Councils on the existence of the 12.5 hour rule. But, because of the financial impact, the Department doesn't feel that it is appropriate to remove this provision without the concurrence of the Budget Office, the Comptroller General's office and the Joint Finance Committee.

**II. Findings of Fact**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 701 concerning students in the Delaware Adolescent Program, in alternative education programs, in gifted kindergarten programs, in vocational programs, in homeschools and in charter schools in order to provide clarity to the explanation of the counting procedure.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 701. Therefore, pursuant to 14 **Del.C.** Chapter 17, 14 **DE Admin. Code** 701 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 701 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** 701 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 701 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.** Chapter 17 on March 10, 2005. 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 10<sup>th</sup> day of March 2005.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

## 701 Unit Count

### 1.0 Forms and Record Keeping

1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.

1.2 Each school shall maintain September enrollment records in a manner which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.

1.3 Records to substantiate special education students included in the enrollment count shall contain: student name, cohort age group, grade level, eligibility category, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are ~~bonafide~~ identified as special education students as per 14 **DE Admin. Code** 925.

### 2.0 Special Situations Regarding Enrollment

2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.

2.2 Students with multiple disabilities shall be reported in the category that corresponds to their major eligibility category.

2.3 Students included in the special education unit count under the placement provisions of Transfer Student or Emergency Temporary Placement or Change of Placement shall meet the evaluation and placement requirements found in 14 **DE Admin. Code** 925.

2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

### 3.0 Accounting for Students not in Attendance the Last Ten Days in September

3.1 For students not in attendance at school during the last 10 school days of September, the following information shall be on file to substantiate their inclusion in the enrollment count:

3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.

3.1.2 Reason to believe that student will be returning to school before November 1st.

3.1.3 Districts and Charter Schools enrolling a within-state transfer student during the last ten school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by fax with a follow-up letter to the previous ~~district central office~~ unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving ~~district's~~ district or charter school's enrollment and unit count. Copies of the fax transmittals and follow-up letters shall be on file to substantiate the student's inclusion in the receiving ~~district's~~ district or charter school's enrollment and unit count.

### 4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:

4.1.1 ~~Delaware Adolescent Program, Inc. (DAPI): A student enrolled in DAPI on September 30 may be counted in the home school enrollment count. If the student received special education services the previous year in the reporting school, the student may continue to be reported for the same level of special education service as was received during the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may continue to be reported as enrolled in the next vocational course in the program series.~~

4.1.1 Delaware Adolescent Program, Inc. (DAPI):

4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.

4.1.1.2 Students shall be reported for the level of special education service as defined by the current

IEP.

4.1.1.3 If a student was enrolled the previous year in a vocational program in the reporting school, the students shall be reported as enrolled in the next vocational course in the program series.

4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In-school Credit Program (14 **DE Admin. Code** 915.2.4) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.

4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 1st.

4.1.4 Supportive Instruction (Homebound): Students receiving supportive instruction (homebound) pursuant to 14 **DE Admin. Code** 930 qualify for inclusion in the unit count.

4.1.4.1 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a full-time special education student if, in the child's placement immediately preceding the homebound placement, the child was receiving instruction from a certified special education teacher for at least ~~12 1/2~~ 12.5 hours per week.

4.1.4.2 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a part-time special education student if, in the child's placement immediately preceding the homebound placement, the child was receiving instruction from a certified special education teacher for less than ~~12 1/2~~ 12.5 hours per week.

~~4.1.6 Alternative Education Program: A student enrolled in an Alternative Program on September 30 may be counted in the home school enrollment count. If the student received special education services the previous year in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.~~

4.1.6 Consortium Discipline Alternative Program:

4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school. (see 14 **DE Admin. Code** 611)

4.1.6.2 Students shall be reported for the level of special education service as defined by the current

IEP.

4.1.6.3 If a student was enrolled in the previous year in a vocational program in the reporting school, the students shall be reported as enrolled in the next vocational course in the program series.

~~4.1.7 Gifted or talented students as defined in 14 **Del.C.** §3101 beginning with the chronological age of 4 inclusive, who have been identified by professionally qualified persons (14 **Del.C.** §3101), are recorded in the grade level enrollment group to which they are assigned. These students should be evaluated using standardized assessment instruments.~~

4.1.7 Students enrolled in kindergarten pursuant to 14 **DE Admin. Code** 940 shall be counted in the grade level enrollment group to which they are assigned.

4.1.8 Except as provided in section 5.0 ~~and 7.2 of this regulation~~, all pre-kindergarten children with disabilities shall be counted as full-time in the appropriate eligibility category.

4.1.9 Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.

4.1.10 Regular Programs - Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.

4.1.11 Full-time Special Education Services - Students who have been properly identified, and receive instruction from a certified special education teacher for at least ~~12 1/2~~ 12.5 hours per week. Children with disabilities must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 **DE Admin. Code** 925.

4.1.12 Part Time Special Education Services - Students who have been properly identified and receive instruction from a certified special education teacher for less than ~~12 1/2~~ 12.5 hours per week. These children with disabilities must meet all other criteria for full-time special education services. For unit count computation, they will have their time apportioned between a regular student in a specified grade and a special student in a specified category.

4.1.12.1 The apportioning is accomplished by dividing the number of hours that each student receives

instruction from a certified special education teacher by 15. For example, if a second grade student eligible for special education services in the Learning Disabled category receives 11.5 hours of special education service per week, the student is counted as a .77 LD student ( $11.5/15 = .77$ ) and a .23 second grade regular student. This accounts for one Full-Time Equivalent Student ( $.77 + .23 = 1.0$ ).

4.1.13 Vocational Programs - A maximum of 900 minutes of vocational time per week per student shall be credited toward the vocational unit determination. ~~Students who attend full time, 900 minute vocational programs are not counted in any other vocational course. They have the maximum time allowed.~~ However, units shall be counted on the basis of 1 unit for each 30 students or major fraction thereof for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.

## 5.0 Programs and/or Situations that Do Not Qualify for the Unit Count

5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:

5.1.1 Students who have not attended school during the last 10 days of September

5.1.2 Students who are enrolled in General Education Development (GED) programs

5.1.3 Students who are enrolled in other than Department of Education approved programs

5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District unless that District operates the facility's instructional program; otherwise the student must be treated as a withdrawal

5.1.5 Children eligible for special education under Developmentally Delayed Three Year Old Children and Pre-School Speech Delayed 3 and 4 Year Old Children. Services will be provided for these students through an annual appropriation to the Department of Education specifically for that purpose (14 Del.C. §1703).

5.1.6 Students enrolled in a Homeschool as defined in 14 Del.C 2703A.

## 6.0 Nontraditional High School Schedules:

For unit count purposes if a ~~special education student~~ student receiving special education services or a vocational student in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a vocational student receives a minimum of 300 minutes of instruction per week and a full-time special education student receives a minimum of 7.5 hours of instruction per week.

6.1 The following exemplifies a situation with the required minimum minutes and hours for a full time vocational and/or special education student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the year.

Fall/Spring Vocational = 300 minutes per week  
Spring/Fall Vocational = 1500 minutes per week  
 $1800 / 2 = 900$  minutes  
per week

Fall/Spring Special Education = 7.5 hours per week  
Spring/Fall Special Education = 17.5 hours per week  
 $= 25.0 / 2 = 12.5$  hours  
per week

## 7.0 Charter Schools

7.1 Charter schools shall be allowed the following options in calculating their unit count:

7.1.1 Using the standard public school procedure: major fraction unit rounding rule in each category; or

7.1.2 ~~Adding the fractional units in each category and using the major fraction unit rounding rule on the total.~~ Adding the fractional units in each category, fractional units will be funded

7.2 Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any pre-k students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll pre-k students.

## 8.0 Unit Adjustments After Audit

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. ~~Another~~ Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

**2 DE Reg. 382 (9/1/98)**

**5 De Reg. 627 (9/1/01)**

**6 DE Reg. 74 (7/1/02)**

**8 DE Reg. 1475 (4/1/05)**