

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 211

FINAL

REGULATORY IMPLEMENTING ORDER

211 Notice to School Boards of Due Process Proceedings

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** by adding a new regulation 211 Notice to School Boards of Due Process Proceedings. The regulation is required as a result of the passage of HB 387 of the 145th General Assembly. The regulation relates to notification of special education due process proceedings. This law applies to both local school boards and charter schools.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 4, 2011 in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the regulation with two considerations. The Department has reviewed the comments and has made a wording change as recommended. An amendment related to board notifications was not made as the regulation was proposed based on the wording in the current law.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation 211 Notice to School Boards of Due Process Proceedings. The regulation relates to notification of special education due process proceedings.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings 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** 211 Notice to School Boards of Due Process Proceedings amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings 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 March 17, 2011. 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 17th day of March 2011.

Department of Education

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 17th day of March 2011

211 Notice to School Boards of Due Process Proceedings

1.0 Purpose

The purpose of this regulation is to outline the process for notifying school board members pursuant to 14 Del.C. §3110(d) of special education administrative hearings under the Individuals With Disabilities Education Act, 20 U.S.C. § 1400 et seq. ("IDEA") and 14 Del.C. §3101 et seq ("Chapter 31") involving the school district or charter school.

2.0 Definitions

"School Board" shall mean charter school boards of directors organized pursuant to Chapter 5 of Title 14 of the Delaware Code, and reorganized school district boards and vocational technical school district boards duly appointed or elected pursuant to Chapter 10 of Title 14 of the Delaware Code.

"School Board Member" shall mean a district school board member or charter school board member whether that person is elected, appointed, or is a volunteer.

3.0 Privacy and Confidentiality Considerations

Actions taken and documents provided in accordance with this regulation and 14 Del.C. §3110(d) must comply with IDEA and its regulations, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA") and its regulations, the Delaware Freedom of Information Act, 14 Del.C. §10001 et seq. ("FOIA"), and all other applicable federal and state laws and regulations governing the privacy and confidentiality of student information and records.

4.0 Notice of Due Process Complaint

4.1 After receiving notification that a due process complaint has been received by the Secretary of the Department of Education, the superintendent of a reorganized school district or a vocational technical school district ("superintendent") or charter school principal ("principal") shall provide a copy of the complaint to each school board member at the next scheduled school board meeting.

4.2 The school board president shall sign a statement that all school board members received a copy of the complaint and the superintendent or principal shall provide a copy of the statement to the parent(s) or legal guardian of the child named in the complaint by certified mail.

5.0 Notice of Due Process Hearing Panel Decision

5.1 Within 7 school days of receiving a due process hearing decision, the superintendent or principal shall provide a copy of the decision to each school board member.

5.2 The superintendent or principal shall send a letter signed by the school board president to the parent or legal guardian of the child named in the hearing decision by certified mail, stating that the members of the school board were provided with a copy of the due process hearing panel decision.

6.0 Notice of Parent Request for Judicial Review of Due Process Hearing Panel Decision

6.1 After receipt of the civil action filed by a parent or legal guardian seeking judicial review of a due process hearing decision pursuant to applicable laws and regulation, the superintendent or principal shall provide each school board member with a copy of the civil action at the next regularly scheduled school board meeting.

6.2 The superintendent or principal shall send a letter signed by the president of the school board by certified mail to the parent(s) or legal guardian of the child named in the civil action stating that the members of the school board were provided with a copy of the civil action.

7.0 School District or Charter School Request for Judicial Review of Due Process Hearing Panel Decision

A decision by a reorganized school district or a vocational technical school district or charter school to seek judicial review of a due process hearing decision must be made by a majority of school board members.

14 DE Reg. 762 (02/01/11)

14 DE Reg. 1050 (04/01/11) (Final)