

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 612

FINAL

REGULATORY IMPLEMENTING ORDER

612 Possession, Use or Distribution of Drugs and Alcohol

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol. This regulation is being amended to update drug and alcohol policy posting requirements.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2016, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities regarding: (1) minimum vs. uniform requirements for student conduct. The specific requirements of 14 **Del.C.** §122(b)(26) are addressed in 14 **DE Admin. Code** 614 and 616. No change was made to this portion of the regulation; (2) the suggested deletion of Section 4.1.7 referring to "the following penalties" as the language referred to was removed. The Department thanks the Councils for noting this unnecessary language, and notes such language was removed and the section was renumbered accordingly. Additionally, the definitions of "Suspension" and "Exclusion" were removed as they are not specifically referenced in the regulation; (3) the suggested deletion of reference to a release of liability. The Department believes the concern is addressed in 4.2.1 and 4.2.2 and therefore no change was made to the regulation regarding release of liability; (4) suggesting there is some "tension" between Senate Bill 181 and disability-related laws. The Department is abiding by the requirements of the statute. No change was made to the regulation in this regard.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol to update drug and alcohol policy posting requirements.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol 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** 612 Possession, Use or Distribution of Drugs and Alcohol amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol 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 November 17, 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 17th day of November 2016.
Steven H. Godowsky, Secretary of Education

Approved this 17th day of November 2016

State Board of Education

Teri Quinn Gray, Ph.D., President

Nina Lou Bunting, Vice President

Gregory B. Coverdale, Jr. (absent)

G. Patrick Heffernan

Barbara B. Rutt

Terry M. Whittaker, Ed.D. (absent)

612 Possession, Use or Distribution of Drugs and Alcohol

1.0 ~~The Following Policy on the Possession, Use, or Distribution of Drugs and Alcohol Shall Apply to All Public School Districts and Charter Schools Purpose~~

The purpose of this regulation is to outline the minimum requirements to be included in all public school district and charter school policies on the Possession, Use, or Distribution of Drugs and Alcohol.

2.0 **General Provisions**

2.1 The following provisions shall apply to all public school district and charter schools:

4.1 ~~2.1.1~~ The possession, use ~~and~~/or distribution of ~~a~~Alcohol, a ~~d~~Drug, a ~~d~~Drug ~~l~~Like ~~s~~Substance, a ~~l~~Look ~~a~~Alike ~~s~~Substance and ~~d~~Drug ~~p~~Paraphernalia are ~~wrong and harmful to students and are~~ prohibited within the ~~s~~School ~~e~~Environment, unless medically necessary.

4.2 ~~2.1.2~~ Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.

4.3 ~~2.1.3~~ Student motor vehicle use to and in the ~~s~~School ~~e~~Environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of ~~a~~Alcohol, a ~~d~~Drug, a ~~d~~Drug ~~l~~Like ~~s~~Substance, a ~~l~~Look ~~a~~Alike substance or ~~d~~Drug ~~p~~Paraphernalia in the ~~s~~School ~~e~~Environment, may result in the student being asked to open an automobile in the ~~s~~School ~~e~~Environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.

4.4 ~~2.1.4~~ All ~~a~~Alcohol, ~~d~~Drugs, ~~d~~Drug ~~l~~Like ~~s~~Substances, ~~l~~Look ~~a~~Alike ~~s~~Substances and ~~d~~Drug ~~p~~Paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 **Del.C.** Ch. 47, turned over to police as potential evidence.

12 DE Reg. 781 (12/01/08)

23.0 ~~The Following Definitions Shall Apply to This Policy and Will be Used in All District and Charter School Policies~~

The following definitions shall apply to this regulation, unless a specific regulation, statute or the context in which they are used clearly indicates otherwise, and shall apply to all public school districts and charter schools.

"Alcohol" ~~shall~~ means alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 **Del.C.** §101 including alcohol, spirits, wine and beer.

"Designated Caregiver" means, pursuant to 16 **Del.C.** §4902A(5), a person who: is at least 21 years of age unless the person is the parent or legal guardian of a minor who is a qualifying patient; has agreed to assist with a patient's medical use of marijuana; has not been convicted of an excluded felony offense; and assists no more than 5 qualifying patients with their medical use of marijuana.

"Distribute", "Distributing" or "Distribution" ~~shall~~ means the transfer or attempted transfer of ~~a~~Alcohol, a ~~d~~Drug, a ~~d~~Drug ~~l~~Like ~~s~~Substance, or ~~d~~Drug ~~p~~Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"Drug" ~~shall~~ means any controlled substance or counterfeit substance as defined in 16 **Del.C.** §4701 including, for example, narcotic ~~d~~Drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"Drug Like Substance" ~~shall~~ means any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of ~~d~~Drug ~~l~~Like ~~s~~Substance does not include tobacco or tobacco products which are governed by 14 **DE Admin. Code** 877 Tobacco Policy.

"Drug Paraphernalia" ~~shall~~ means all equipment, products and materials as defined in 16 **Del.C.** §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging ~~d~~Drugs.

~~["Expulsion" shall mean exclusion from school for a period determined by the local district or charter school not to exceed the total number of student days. The process for readmission shall be determined by the local district or charter school. 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.]~~

"Look Alike Substance" shall mean any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a dDrug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See 16 Del.C. §4752A.

"Medical Marijuana Oil" means as defined in 16 Del.C. §4902A(10).

"Nonprescription Medication" shall mean any over the counter medication; some of these medications may be a "dDrug lLike sSubstance."

"Possess" "Possessing" or "Possession" shall mean that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, aAlcohol, a dDrug, a dDrug lLike sSubstance, a lLook aAlike sSubstance, or dDrug pParaphernalia.

"Prescription Drugs Medication(s)" shall mean any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 Del.C. §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

"Relative Caregiver" means an individual who meets the criteria and requirements of 14 Del.C. §202 (f)(1).

"School Environment" shall mean within or on school property, and at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

~~["Suspension" means, for the purposes of this regulation, 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 suspension is out-of-school. A suspension requires initial due process procedures as outlined in Regulation 616.]~~

"Use" shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated aAlcohol, a dDrug or a dDrug lLike sSubstance, or is reasonably found to be under the influence of such a substance.

12 DE Reg. 781 (12/01/08)

34.0 Requirement of Each School District and Charter School to have a Policy.

4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, as at a minimum, the following:

3.1 4.1.1 A system of notification of each student and of his/her their parent, guardian or Relative Caregiver at the beginning of the school year, of the state and district policies and regulations. In addition a system for the notification of each student and his/her their parent, guardian or Relative Caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.

3.2 4.1.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.

3.3 4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or Relative Caregivers and to the Department of Education, while maintaining confidentiality.

3.4 4.1.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.

3.5 4.1.5 A written policy on search and seizure.

3.6 4.1.6 A program of assistance for students with counseling and referral to services as needed.

~~[3.7 4.1.7 A discipline policy which contains, at a minimum, the following penalties for infractions of state, district, and charter school dDrug policies.]~~

- 3.7.1 ~~Use/Impairment: For a first offense, if a student is found to be only impaired and not in violation of any other policies, he/she shall be suspended for up to 10 days, or placed in an alternative setting for up to 10 days, depending upon the degree of impairment, the nature of the substance used, and other aggravating or mitigating factors. For a second or subsequent offense, a student may be expelled or placed in an alternative setting for the rest of the school year.~~
- 3.7.2 ~~Possession of alcohol, a drug, a drug-like substance, and/or a look-alike substance, in an amount typical for personal use, and drug paraphernalia: For a first offense, the student shall be suspended for 5 to 10 days. For a second or subsequent offense, a student may be expelled for the rest of the school year or placed in an alternative setting for the rest of the school year.~~
- 3.7.3 ~~Possession of a quantity of alcohol, a drug, a drug-like substance, a look-alike substance and drug paraphernalia in an amount which exceeds an amount typical for personal use, or distribution of the above named substances or paraphernalia: the student shall be suspended for 10 days, or placed in an alternative setting for 10 days. Depending on the nature of the substance, the quantity of the substance and/or other aggravating or mitigating factors, the student also may be expelled.~~
- 3.8 ~~4.1.[87]A policy in cases involving a dDrug lLike sSubstance or a lLook aAlike sSubstance for establishing that the student intended to use, possess or distribute the substance as a dDrug.~~
- 3.9 ~~4.1.[98]A policy which establishes how pPrescription Medications and nNonprescription drugs Medications shall be handled in the sSchool eEnvironment and when they will be considered unauthorized and subject to these state and local policies.~~
- 3.10 ~~4.1.[109]A policy which sets out the conditions for return after e[Expulsion expulsion] for aAlcohol or dDrug infractions.~~
- 3.11 ~~4.2 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of dDrugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler ("Inhaler") with an individual prescription label, or an autoinjectable epinephrine with individual prescription label, or an insulin pump for continuous subcutaneous insulin infusion ("insulin pump"); provided, nevertheless, that the student uses the inhaler, or autoinjectable epinephrine, or an insulin pump pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the parent(s) or legal custodian(s) of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler, or autoinjectable epinephrine, or an insulin pump at such student's discretion or under the school nurse's supervision, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler, or autoinjectable epinephrine, or an insulin pump, and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler, or autoinjectable epinephrine, or an insulin pump based upon the student's age, level of maturity, behavior, or other relevant considerations.~~
- 3.11.1 ~~4.2.1 Parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler, or autoinjectable epinephrine, or insulin pump is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement.~~
- 3.11.2 ~~4.2.2 Except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler, or autoinjectable epinephrine, or an insulin pump if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.~~
- ~~(For students who use prescribed asthmatic quick relief inhalers, or autoinjectable epinephrine, or an insulin pump for continuous subcutaneous insulin therapy, see 14 DE Admin. Code 817, Administration of Medications and Treatments)~~
- 4.3 ~~A Designated Caregiver may possess for the purpose of administering and may administer to a minor qualifying patient Medical Marijuana Oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The Designated Caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of dose(s) prescribed per day of Medical Marijuana Oil which is kept at all times on their person.~~

12 DE Reg. 781 (12/01/08)

13 DE Reg. 1201 (03/01/10)

45.0 Reporting Requirements and Timelines

4.1 5.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of ~~e~~Drugs and ~~a~~Alcohol policy on file with the Department of Education.

4.2 5.2 When a local school district or charter school revises its possession, use, and distribution of ~~e~~Drugs and ~~a~~Alcohol policy, it shall ~~provide an electronic copy~~ notify the Department of Education of the revised policy ~~to the Department~~ within thirty (30) days of the revision, even if the revision was made because of changes in ~~F~~federal, state or local law, regulations, guidance or policies.

2 DE Reg. 2043 (05/01/99)

7 DE Reg. 767 (12/01/03)

12 DE Reg. 781 (12/01/08)

20 DE Reg. 436 (12/01/16) (Final)