

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

PROPOSED

PUBLIC NOTICE

211 Notice to School Boards of Due Process Proceedings

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

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

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.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **March 4, 2011** to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? This is a new regulation and not specifically related to improving student achievement.
2. Will the new regulation help ensure that all students receive an equitable education? This is a new regulation and not specifically related to students receiving an equitable education.
3. Will the new regulation help to ensure that all students' health and safety are adequately protected? This is a new regulation and not specifically related to students' health and safety.
4. Will the new regulation help to ensure that all students' legal rights are respected? The requirements of this new regulation will provide information that might include students' rights as they relate to special education.
5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This new regulation requires administrators and boards of local school districts and charter schools to take additional actions as it relates to due process proceedings.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This new regulation requires administrators and boards of local school districts and charter schools to take additional actions as it relates to due process proceedings.
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 does not change based on this new regulation.
8. Will the new 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 new regulation is consistent with other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? The new regulation is in response to legislation passed.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are time resources and material costs associated with the requirements of this regulation.

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.