

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 608

FINAL

REGULATORY IMPLEMENTING ORDER

608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony and rename the regulation, 608 Unsafe School Choice Option Policy. The amended regulation adds another definition and requires each school district and charter school to have an electronic copy on file with the Department of Education of the current policies and procedures describing school choice options to a student who is the victim of a violent felony, including the process for notifying parents and provide any new or revised policies and procedures to the Department of Education within ninety (90) days of any revision(s). In addition, the amended regulation clarifies suspension and expulsion data used for the determination of persistently dangerous schools.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Monday May 5, 2008, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens endorsing the proposed amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony in order to add another definition, a requirement that each school district and charter school have an electronic copy of the current policies and procedures on file with the Department of Education within ninety (90) days of any revision(s) and clarifies suspension and expulsion data.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony 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** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony amended hereby shall be in the form attached

hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony 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 June 13, 2008. 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 13th day of June 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

608 Unsafe School Choice Option for ~~Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony~~ Policy

The Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001), requires that a State Education Agency establish a State Unsafe School Choice Option policy in order to receive funding under ESEA.

1.0 Definitions

In this regulation, the following terms shall have the meanings indicated below:

"Crime" shall have the same meaning as provided in 14 **Del.C.** §4112.

"Enrolled Students" unless the context indicates otherwise, means all students included in the Delaware Student Information System (DELSIS) report for the year of the data collection.

"Expulsion" means, for purposes of this regulation, the exclusion from the regular school setting for a period determined by the local district board or charter school board not to exceed one year. The process for readmission shall be determined by the local district board or charter school board.

"Firearm" means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

"Fiscal Year" means the period of July 1 through June 30.

"Gun Free Schools Violation" means the prohibited bringing to school, or possession while in school of a firearm by a student.

"Persistently Dangerous School" means a school that has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years.

"Safe School" means a school in the same school district that is not currently identified by the Department of Education as a persistently dangerous school.

"School" means any public school including charter schools. School property shall have the same meaning as provided in 14 **Del.C.** §4112 (a)(9).

"Suspension" means, for the purpose of this regulation, the external (out of school) removal of a student from the general school population.

"Terroristic Threatening" shall have the same meaning as provided in 11 **Del.C.** §621.

"Unsafe Incidents" means any of the following:

The school suspended or expelled a student for a ~~g~~Gun ~~f~~Free ~~s~~Schools ~~v~~Violation; or

The school suspended or expelled a student for a crime committed on school property which is required to be reported under 14 **Del.C.** §4112; or

The school reported a crime committed by a non student on school property that is required to be reported under 14 **Del.C.** §4112; or

The school suspended or expelled a student for terroristic threatening as that term is defined in 11 **Del.C.** §621.

"**Violent Felony**" shall have the same meaning as provided in 11 **Del.C.** §4201(c). (A list of these crimes can be found in the Delaware Guidelines for the Development of the Unsafe School Choice Option.)

2.0 Identification of Persistently Dangerous Schools

2.1 ~~Beginning in July 2003,~~ The Department of Education shall identify each persistently dangerous school using the data reported to it pursuant to the provisions of 14 **Del.C.** §4112 ~~and~~, 14 **DE Admin. Code** 601, and any expulsion and suspension data as required by the Department.

2.42 Notwithstanding any provision herein to the contrary, any year that a school fails to comply with the reporting mandates, as set forth in 2.01 above, to the Delaware Department of Education or to the appropriate police agency as set forth above, the Department of Education will consider the school as if it otherwise met the criteria to be classified as a persistently dangerous school for that year until such time as it may be determined, in the sole discretion of the Department, that the school has met such reporting requirements.

2.23 A school identified as persistently dangerous will retain that designation for the entire fiscal year.

3.0 Students Attending Schools Labeled as Persistently Dangerous

3.1 A student attending a persistently dangerous school shall be allowed to choice to a safe school in the same school district, including a charter school; provided such an option exists in the district, the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.

3.42 Each public school district having one or more persistently dangerous schools and any charter school identified as a persistently dangerous school shall develop a plan and time line that describes the process for notifying parents of the school's status and for relocating any student who exercises the right to choice to a safe school. The plan shall also describe the corrective actions that will be implemented. The plan shall be forwarded to the Department of Education no later than September 15th of the year that the school is identified.

4.0 Students Who are Victims of a Violent Felony

4.1 A student who is the victim of a ~~v~~violent ~~f~~elony while in or on the grounds of a school in which the student is enrolled shall be allowed to choice to a safe school in the same school district, including a charter school; the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.

4.42 All school districts and charter schools shall establish a plan that describes their policies and procedures for providing school choice options to a student who is the victim of a violent felony, including the process for notifying parents. ~~These plans shall be forwarded to the Department of Education by September 15, 2003.~~ Each school district and charter school shall have an electronic copy of the current policies and procedures on file with the Department of Education.

4.3 Each school district and charter school shall provide an electronic copy of any new or revised policies and procedures within ninety (90) days of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.

7 DE Reg. 67 (7/1/03)

12 DE Reg. 62 (07/01/08) (Final)