

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 **Del.C.** §122(b)(2))
14 **DE Admin. Code** 603

FINAL

ORDER

603 Compliance with the Gun-Free Schools Act

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b)(2), the Delaware Department of Education ("Department") developed amendments to 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act. The regulation concerns the written policy requirements to implement the Gun-Free Schools Act (20 U.S.C. §7961) and the reporting requirements for districts and charter schools in Delaware. The regulation was reviewed in accordance with 29 **Del.C.** §10407. The proposed amendments include adding Section 1.0, which concerns the content of the regulation; adding Section 2.0, which provides defined terms; and changes to Sections 3.0 and 4.0 to align the proposed regulation with 20 U.S.C. §7961 and 11 **Del.C.** §1457A.

Notice of the proposed regulation was published in the *Register of Regulations* on April 1, 2024. The Department received one written submittal from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"). GACEC commented that 14 **Del.C.** §1457A(f) is not consistent with the Gun-Free Schools Act that gives discretion to the "chief administering officer of a local educational agency" to modify an expulsion under the Act. GACEC further commented that "while Delaware State law . . . requires a minimum term of expulsion of 180 days, rather than one year minimum which appears in the proposed regulation, the Gun Free Schools Act requires a one year minimum." GACEC also commented that the proposed regulation "removes the requirement to record the expulsion modification in writing and instead requires it to simply be reported to" the Department.

II. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE

The Secretary of Education has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical.

III. FINDINGS OF FACTS

The Department considered the written submittal and determined not to make any further changes as a result of the written submittal. The Department finds that the term chief administering officer is not defined for the purpose of the Gun-Free Schools Act and under Delaware law, expulsion decisions are made by district boards of education or charter school boards of directors. The Department further finds that 180 days is typically the length of one school year and that proposed subsection 3.1.1 is consistent with 20 U.S.C. §7961 and 11 **Del.C.** §1457A. The Department also finds that while federal law requires written modifications concerning expulsion decisions, there is no such requirement for schools when they report those decisions to the Department in accordance with proposed subsection 3.1.2; nevertheless, the report is in writing. In addition, the Department finds that the proposed amendments to the regulation are consistent with 20 U.S.C. §7961 and 11 **Del.C.** §1457A. The Department also finds that the proposed regulation is necessary to govern the protection of the health and physical welfare of public school students in Delaware. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act.

IV. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act. Therefore, pursuant to 14 **Del.C.** §122(b)(2), 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act, attached hereto as Exhibit A, is hereby amended.

V. TEXT AND CITATION

The text of 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act in the *Administrative Code of Regulations* for the Department.

VI. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date it is published in the *Delaware Register of Regulations*.

Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act hereby amended shall be in effect for a period of five years from the effective date of this Order unless it is amended or repealed sooner.

IT IS SO ORDERED the 14th day of May, 2024.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

603 Compliance with the Gun-Free Schools Act

1.0 Content

Pursuant to 14 **Del.C.** §122(b)(2), this regulation provides the written policy requirements to implement the Gun-Free Schools Act (20 U.S.C. §7961) and the reporting requirements for Delaware public schools.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning:

"Department" means the Delaware Department of Education established pursuant to 14 **Del.C.** §101.

"Firearm" has the same meaning given such term in the Gun-Free Schools Act (20 U.S.C. §7961(b)(3)).

4.0 3.0 Written Policy Required

4.1 3.1 Each school district and charter school shall have a written policy implementing the Gun-Free Schools Act [(20 U.S.C. §7961)] and complying with 11 **Del.C.** §1457(j) §1457A or its successor statute. At a minimum, the policy must contain the following elements:

4.1.1 3.1.1A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than ~~one~~ 1 school year.

4.1.2 3.1.2 ~~Modification Pursuant to 11 Del.C. §1457A(f), modification~~ Pursuant to 11 **Del.C.** §1457A(f), ~~modification~~ to the expulsion requirement may be made on a case by case basis by the ~~chief school officer~~ local school board or charter school board of directors. Any modification to the expulsion requirement must be ~~made in writing~~ reported to the Department.

4.1.3 ~~The definition of "Firearm" shall be the same as the meaning given to the term in the federal Gun-Free Schools Act.~~

3.2 A copy of the school district's or charter school's current policy shall be in the school district or charter school's Student Handbook or Code of Conduct.

12 DE Reg. 325 (09/01/08)

23 DE Reg. 368 (11/01/19)

2.0 4.0 Submission of the Policy Information to the State Department of Education

2.1 4.1 Each school district and charter school shall submit the following to the ~~Delaware~~ Department of Education annually, in such form as the Department requires:

2.1.1 4.1.1 An electronic copy of its policy implementing the Gun-Free Schools Act [(20 U.S.C. §7961)] and complying with 11 **Del.C.** §1457(j) §1457A or its successor statute; and

2.1.2 4.1.2 An electronic copy of any revised policy implementing the Gun-Free Schools Act [(20 U.S.C. §7961)] and complying with 11 **Del.C.** §1457(j) §1457A or its successor statute ~~under the policy implemented in accord with this regulation~~ within ninety (90) 90 days of such revision regardless of whether revisions were made as a result of changes to federal, state or local law, regulations, guidance or policies; and

2.1.3 4.1.3 ~~Descriptions of the~~ Description of the circumstances surrounding expulsions imposed under 11 **Del.C.** §1457(j) §1457A or its successor statute ~~and under the policy implemented in accord with this regulation.~~ The description must include all of the following:

4.1.3.1 The name of the school;

4.1.3.2 The number of students expelled from the school; and

4.1.3.3 The type of firearms.

23 DE Reg. 368 (11/01/19)

3.0 5.0 Individuals with Disabilities Act

Nothing in this regulation shall alter a district or charter school's duties pursuant to the Individuals with Disabilities Education Act.

1 DE Reg. 1976 (06/01/98)
7 DE Reg. 333 (09/01/03)
12 DE Reg. 325 (09/01/08)
23 DE Reg. 368 (11/01/19)
27 DE Reg. 968 (06/01/24) (Final)