

# 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 to clarify 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 is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement. In addition, 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 if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, January 5, 2010, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens recommending a change to §§ 3.11.1 and 3.11.2 that would change the language from "student's educational placement" to "student". Upon review of the correspondence to the Office of Civil Rights, the language proposed in the January *Register of Regulations* is the language agreed upon with the Office of Civil Rights.

##### 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 in order to clarify 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 is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement. In addition, 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 if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

##### 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 February 18, 2010. 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 18<sup>th</sup> day of February 2010.

#### DEPARTMENT OF EDUCATION

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

Approved this 18<sup>th</sup> day of February 2010

#### STATE BOARD OF EDUCATION

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#### 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

- 1.1 The possession, use and/or distribution of alcohol, a drug, a drug like substance, a look alike substance and drug paraphernalia are wrong and harmful to students and are prohibited within the school environment.
- 1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.
- 1.3 Student motor vehicle use to and in the school 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 alcohol, a drug, a drug like substance, a look alike substance or drug paraphernalia in the school environment, may result in the student being asked to open an automobile in the school 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.
- 1.4 All alcohol, drugs, drug like substances, look alike substances and drug 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)**

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

"**Alcohol**" shall mean 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.

**"Distribute" "Distributing" or "Distribution"** shall mean the transfer or attempted transfer of alcohol, a drug, a look alike substance, a drug like substance, or drug paraphernalia to any other person with or without the exchange of money or other valuable consideration.

**"Drug"** shall mean any controlled substance or counterfeit substance as defined in 16 **Del.C.** §4701 including, for example, narcotic 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 mean 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 drug like substance does not include tobacco or tobacco products which are governed by 14 **DE Admin. Code** 877 Tobacco Policy.

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

**"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 drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See 16 **Del.C.** §4752A.

**"Nonprescription Medication"** shall mean any over the counter medication; some of these medications may be a "drug like substance."

**"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, alcohol, a drug, a look alike substance, a drug like substance or drug paraphernalia.

**"Prescription Drugs"** 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.

**"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.

**"Use"** shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated alcohol, a drug or a drug like substance, or is reasonably found to be under the influence of such a substance.

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

### **3.0 Requirement of Each School District and Charter School to have a Policy.**

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

- 3.1 A system of notification of each student and of his/her 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 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 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 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 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 A written policy on search and seizure.
- 3.6 A program of assistance for students with counseling and referral to services as needed.
- 3.7 A discipline policy which contains, at a minimum, the following penalties for infractions of state, district, and charter school drug 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 A policy in cases involving a drug like substance or a look alike substance for establishing that the student intended to use, possess or distribute the substance as a drug.
- 3.9 A policy which establishes how prescription and nonprescription drugs shall be handled in the school environment and when they will be considered unauthorized and subject to these state and local policies.
- 3.10 A policy which sets out the conditions for return after expulsion for alcohol or drug infractions.
- 3.11 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 drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler ("Inhaler") or autoinjectable epinephrine with individual prescription label; provided, nevertheless, that the student uses the inhaler or autoinjectable epinephrine 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 at such student's discretion, 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 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 based upon the student's age, level of maturity, behavior, or other relevant considerations.
  - 3.11.1 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 is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement.
  - 3.11.2 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 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, see 14 DE Admin. Code 817, Administration of Medications and Treatments)

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

#### **4.0 Reporting Requirements and Timelines**

- 4.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of drugs and alcohol policy on file with the Department of Education.
- 4.2 When a local school district or charter school revises its possession, use, and distribution of drugs and alcohol policy, it shall provide an electronic copy of the revised policy to the Department within thirty (30) days of the revision, even if the revision was made because of changes in Federal, state or local law, regulations, guidance or policies.2 DE Reg. 2043 (5/1/99)

**7 DE Reg. 767 (12/1/03)**

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

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