

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 701

### FINAL

#### 701 Unit Count

#### REGULATORY IMPLEMENTING ORDER

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 701 Unit Count. The amendments include, but are not limited to, changes because of the revisions to the special education funding structure (Needs Based Funding), clarification related to choice and charter school students, and rules related to the Distance Learning/Twilight Programs.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Wednesday, March 3, 2010, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Changes have been made to reflect several of the Councils comments, including the Delaware Code reference to "good cause" for clarification; changing wording and formatting for ease of understanding. Several of the comments were a result of a difference between what was sent for publication versus what was published. A more detailed letter will be forthcoming to the Councils.

##### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 701 Unit Count which include, but are not limited to, changes because of the revisions to the special education funding structure (Needs Based Funding), clarification related to choice and charter school students, and rules related to the Distance Learning/Twilight Programs.

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 701 Unit Count. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 701 Unit Count attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 701 Unit Count 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** 701 Unit Count amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 701 Unit Count 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 April 15, 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 15th day of April 2010.

Department of Education  
Lillian M. Lowery, Ed.D., Secretary of Education  
Approved this 15th day of April 2010

## 701 Unit Count

### 1.0 Forms and Record Keeping

- 1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.
- 1.2 Each school shall maintain September enrollment records in a manner which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.
- 1.3 Records to substantiate ~~special education~~ students with disabilities included in the enrollment count shall contain: ~~student name, cohort age group, grade level, eligibility category, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file~~ a student Individual Education Program (IEP) in effect during the last week of school in September and eligibility documentation. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are identified as special education students as per 14 **DE Admin. Code** 925.

**8 DE Reg. 1473 (4/1/05)**

### 2.0 Special Situations Regarding Enrollment

- 2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.
- 2.2 Students with multiple disabilities shall be reported in the category that corresponds to their ~~major~~ **primary** eligibility category.
- 2.3 Students with disabilities included in the special education unit count under the placement provisions of ~~Transfer Students or Emergency Temporary Placement~~ or Change of Placement shall meet the evaluation and placement requirements found in 14 **DE Admin. Code** 925.
- 2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

**8 DE Reg. 1473 (4/1/05)**

### 3.0 Accounting for Students Not in Attendance the Last Ten Days in September

- 3.1 For students not in attendance at school during the last 10 school days of September during which students are required to be in attendance, the following information shall be on file to substantiate their inclusion in the enrollment count:
  - 3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.
  - 3.1.2 Reason to believe that student will be returning to school ~~before~~ prior to November 1st.
  - 3.1.3 Districts and Charter Schools enrolling ~~a~~ with an intra-state transfer student during the last ~~ten~~ 10 school days of September during which students are required to be in attendance shall first determine if the student is currently obligated under a choice agreement or first year charter agreement before enrolling the student. If said obligation exists, "good cause" [pursuant to 14 Del.C. §402 and §506(d) respectively] must be [agreed upon by the sending and receiving district/charter school determined] before the receiving district/charter school can enroll the

student. Districts and charter schools enrolling an in state transfer student during the last 10 school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by fax with a follow up letter to the previous district/charter school's unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district or charter school's enrollment and unit count. Copies of the fax transmittals and follow up letters shall be on file to substantiate the student's inclusion in the receiving district or charter school's enrollment and unit count.

#### **8 DE Reg. 1473 (4/1/05)**

#### **4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count**

- 4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:
  - 4.1.1 Delaware Adolescent Program, Inc. (DAPI):
    - 4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.
    - 4.1.1.2 Students shall ~~be reported for~~ receive the level of special education service as defined by the current IEP.
    - 4.1.1.3 If a student was enrolled the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
  - 4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In school Credit Program (14 **DE Admin. Code** 915.2.4) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.
  - 4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 1st.
  - 4.1.4 Supportive Instruction (Homebound): Students receiving supportive instruction (homebound) pursuant to 14 **DE Admin. Code** 930 qualify for inclusion in the unit count.
    - 4.1.4.1 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a ~~full-time~~ special education student if, in the child's placement immediately preceding the homebound placement, the child ~~was receiving instruction from a certified special education teacher for at least 12.5 hours per week~~ had an IEP in effect during the last week of school in September.
    - 4.1.4.2 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a ~~part time~~ special education student if, in the child's placement immediately preceding the homebound placement, the child ~~was receiving instruction from a certified special education teacher for less than 12.5 hours per week.~~
  - 4.1.5 Stevenson House or New Castle County Detention Center: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1<sup>st</sup>.
  - 4.1.6 Consortium Discipline Alternative Program:
    - 4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school pursuant to 14 **DE Admin. Code** 611.
    - 4.1.6.2 Students shall **[receive]** ~~be reported for~~ the level of special education service as defined by the current IEP.

- 4.1.6.3 If a student was enrolled in the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.7 Students enrolled in kindergarten pursuant to 14 **DE Admin. Code** 940 shall be counted in the grade level enrollment group to which they are assigned.
- 4.1.8 Except as provided in section 5.0 and 7.2, all pre kindergarten children with disabilities shall be counted as full time in the appropriate eligibility category.
- 4.1.9 Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.
- 4.1.10 Regular Programs, Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.
- 4.1.11 ~~Full time~~ Special Education Services~~, and receive instruction from a certified special education teacher for at least 12.5 hours per week. Children and have an IEP in effect during the last week of school in September. Students~~ **[special education services include]** students who have been properly identified, and receive appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 **DE Admin. Code** 925.
- 4.1.12 ~~Part Time Special Education Services, Students who have been properly identified and receive instruction from a certified special education teacher for less than 12.5 hours per week. These children with disabilities must meet all other criteria for full time special education services. For unit count computation, they will have their time apportioned between a regular student in a specified grade and a special student in a specified category.~~
  - 4.1.12.1 ~~The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, if a second grade student eligible for special education services in the Learning Disabled category receives 11.5 hours of special education service per week, the student is counted as a .77 LD student ( $11.5/15 = .77$ ) and a .23 second grade regular student. This accounts for one Full Time Equivalent Student ( $.77 + .23 = 1.0$ ).~~
- 4.1.13 2 Career Technical Programs, A maximum of 900 minutes of vocational career and technical education time per week per student shall be credited toward the vocational career and technical education unit determination. However, units shall be counted on the basis of 1 unit for each 30 students or major fraction thereof for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.

**8 DE Reg. 1473 (4/1/05)**

**5.0 Programs and Situations that Do Not Qualify for the Unit Count**

- 5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:
  - 5.1.1 Students who have not attended school during the last 10 days of September
  - 5.1.2 Students who are enrolled in General Education Development (GED) programs
  - 5.1.3 Students who are enrolled in other than Department of Education approved programs
  - 5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District/Charter School unless that District/Charter School operates the facility's instructional program; otherwise the student must be treated as a withdrawal
  - 5.1.5 ~~Children eligible for special education under Developmentally Delayed Three Year Old Children and Preschool Speech Delayed 3 and 4 Year Old Children. Services will be provided for these students through an annual appropriation to the Department of Education specifically for that purpose (14 **Del.C.** §1703).~~
  - 5.1.6 5 Students enrolled in a Homeschool as defined in 14 **Del.C.** §2703A.

**8 DE Reg. 1473 (4/1/05)**

## 6.0 Nontraditional High School Schedules

6.1 For unit count purposes if a ~~student receiving special education services~~ or a career technical student in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a career technical student receives a minimum of 300 minutes of instruction per week ~~and a full time special education student receives a minimum of 7.5 hours of instruction per week.~~

6.1.1 The following exemplifies a situation with the required minimum minutes and hours for a full time career technical ~~or special education~~ student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the year.

Fall and Spring Career Technical= 300 minutes per week  
Spring and Fall Career Technical= 1500 minutes per week  
1800 /2 = 900 minutes  
per week

Fall and Spring Special Education= 7.5 hours per week  
Spring and Fall Special Education=17.5 hours per week  
=25.0 /2 = 12.5 hours per week

6.2 For unit count purposes a district shall meet the following criteria to include selected students participating in a district's Distance Education/Twilight Program in the September 30<sup>th</sup> unit count. For purposes of this section, a Distance Education/Twilight Program shall mean a district approved credit bearing program as follows:

6.2.1 Students must be currently suspended indefinitely or expelled by the district and enrolled in the district's alternative placement program;

or

6.2.2 Students with disabilities enrolled in the district's Distance Education/Twilight Program for credit recovery only must be receiving services as decided upon by the IEP team and reflected in the IEP on-site;

or

6.2.3 The inclusion of students with non-behavior issues and not special education in the unit count can only be included if there is not a break in educational service and they meet the entry criteria of the program and the additional criteria outlined in 6.2.4 through 6.2.11; ~~[and, in addition to either 6.2.1 through 6.2.3, all of the following]:~~

6.2.4 Students and their parent(s)/guardian(s) must attend a mandatory program orientation session provided by the district staff. A sign in sheet and signed agreement will be kept on file and serve as sufficient evidence to meet this requirement.

6.2.5 Students must be enrolled for a minimum of three courses.

6.2.6 Students must be required to complete a minimum number of hours of active engagement each week that they are enrolled in the program. The minimum number of hours should not be less than three hours per week.

6.2.7 Students must be enrolled in eSchoolPLUS, the statewide pupil accounting system.

6.2.8 The district must keep records on file for the school year of the unit count on work completed and time spent working on the educational program for each enrolled student. The district must submit a sample to the Department of Education that may serve as sufficient evidence to meet this requirement.

6.2.9 The district must provide evidence of staff monitoring the progress of each student and providing feedback to participating students and their parents/guardians.

6.2.10 The district must show evidence on how progress of students enrolled in the program is incorporated into their academic record for meeting the district's graduation requirements.

6.2.11 An audit file containing information listed in 6.2 and its subsections must be maintained on all students participating in the program and must be presented upon request to the Department of Education and/or the State Auditor's Office.

**8 DE Reg. 1473 (4/1/05)**

## **7.0 Charter Schools**

7.1 Charter schools shall be allowed the following options in calculating their unit count:

- 7.1.1 Using the standard public school procedure: major fraction unit rounding rule in each category; or
- 7.1.2 Adding the fractional units in each category, fractional units will be funded

7.2 Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any Pre K students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll Pre K students.

**8 DE Reg. 1473 (4/1/05)**

## **8.0 Unit Adjustments After Audit**

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

**2 DE Reg. 382 (9/1/98)**

**5 DE Reg. 627 (9/1/01)**

**6 DE Reg. 74 (7/1/02)**

**8 DE Reg. 1473 (4/1/05)**

**13 DE Reg. 1452 (05/01/10) (Final)**