

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 107A

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

#### 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** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments are addressing policy changes for the 2011-2012 school year, including provisions related to the summative rating determination, pattern of ineffective teaching, and improvement plans.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 2, 2012, 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 endorsing the regulation while indicating that the categories "seem overly generous and euphemistic" with regard to "needs improvement" and "ineffective."

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to address policy changes for the 2011-2012 school year, including provisions related to the summative rating determination, pattern of ineffective teaching, and improvement plans.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 19, 2012. 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 19<sup>th</sup> day of April 2012.

#### Department of Education

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

Approved this 19<sup>th</sup> day of April 2012

## State Board of Education

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### 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

#### 1.0 Effective Date

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the 2011-12 school year and shall, at such time, replace the current 14 **DE Admin. Code** 107 Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II).

**15 DE Reg. 835 (12/01/11)**

#### 2.0 Definitions

The following definitions shall apply for purposes of this regulation:

**“Announced Observation”** shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

**“Board”** shall mean a local board of education or a charter school board of directors.

**“Credentialed Evaluator”** shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as Evaluator.

**“DASA”** shall mean the Delaware Association of School Administrators.

**“DPAS II Revised Guide for Specialists”** shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

**“DSEA”** shall mean the Delaware State Education Association.

**“Experienced Specialist”** shall mean a specialist who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the *Delaware Code*; or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from his or her respective licensure body.

**“Improvement Plan”** shall be the plan that a specialist and evaluator mutually develop in accordance with 8.0.

**“Interim assessment”** shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students’ knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers, administrators, and specialists at the student, classroom, school, and district levels.

**“Novice Specialist”** shall mean a specialist who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the *Delaware Code* or holds a valid and current license from his or her respective licensure body.

**“Satisfactory Component Rating”** shall mean the specialist’s performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the *Delaware Code*.

**“Satisfactory Evaluation”** shall be equivalent to the overall Highly Effective, Effective or Needs Improvement rating on the Summative Evaluation and shall be used to qualify for a continuing license.

**“Specialist”** shall mean an educator other than a teacher or administrator and includes, but is not limited to, School Counselors, Library Media Specialists, School Psychologists, and School Nurses.

**“State Assessment”** shall mean the Delaware Comprehensive Assessment System (DCAS).

**“Student Achievement”** shall mean

(a) For tested grades and subjects:

(1) A student’s score on the DCAS; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessment; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures shall be approved by the Department of Education and developed in partnership with input from the relevant specialist organizations or respective licensure body and the Delaware State Education Association (DSEA).

“**Student Growth**” shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

“**Summative Evaluation**” shall be the final evaluation at the conclusion of the appraisal cycle.

“**Unannounced Observation**” shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“**Unsatisfactory Component Rating**” shall mean the specialist’s performance does not demonstrate an understanding of the concepts of the component.

“**Unsatisfactory Evaluation**” shall be the equivalent to the overall Ineffective rating on the Summative Evaluation.

“**Working Day**” shall mean a day when the employee would normally be working in that district or charter school.

**15 DE Reg. 835 (12/01/11)**

**3.0 Appraisal Cycles**

- 3.1 Experienced specialists who have earned a rating of Highly Effective on their most recent Summative Evaluation shall receive a minimum of (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced specialists who have earned a rating of Effective and have earned Satisfactory ratings on at least four (4) of the Appraisal Components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.3 Experienced specialists who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative evaluation at the end of the one (1) year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Specialists.
- 3.4 Novice specialists shall receive a minimum of two (2) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of Needs Improvement or Ineffective on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the *DPAS II Revised Guide for Specialists*.

**15 DE Reg. 835 (12/01/11)**

**4.0 DPAS II Guide for Specialists**

- 4.1 All districts and charter schools shall use the manual entitled *DPAS II Revised Guide for Specialists* as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
  - 4.2.1 Specific details about each of the five (5) Appraisal Components listed in 5.1.
  - 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
  - 4.2.3 Specific procedures to implement the appraisal system.

## **5.0 Appraisal Components and Appraisal Criteria**

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator:
- 5.1.1 Planning and Preparation
    - 5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students or clients served.
    - 5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.
    - 5.1.1.3 Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.
    - 5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.
    - 5.1.1.5 Demonstrating Knowledge of How to Design or Use Student Assessments: Specialist creates and or selects assessments that are congruent with instructional goals, criteria and standards. The specialist plans for the use of formative and summative assessments of the specialist's students.
  - 5.1.2 Professional Practice and Delivery of Services
    - 5.1.2.1 Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.
    - 5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients.
    - 5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding.
    - 5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.
  - 5.1.3 Professional Collaboration and Consultation
    - 5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs.
    - 5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns.
    - 5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.
    - 5.1.3.4 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.
    - 5.1.3.5 Use of Assessment in Planning and Delivery of Services: Specialist makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.
  - 5.1.4 Professional Responsibilities
    - 5.1.4.1 Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.
    - 5.1.4.2 Recording student data in a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel.
    - 5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or students.
    - 5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.
  - 5.1.5 Student Improvement

5.1.5.1 Measuring Student Improvement: Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards set by the Secretary based on input from stakeholder groups.

5.2 Notwithstanding 5.1 for the 2011-2012 school year, the first four (4) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator.

**15 DE Reg. 835 (12/01/11)**

## **6.0 Summative Evaluation Ratings**

6.1 Each Appraisal Component shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the specialist has no more than one unacceptable rating on the Appraisal Criteria specified in each of the five (5) components set forth in 5.1.

6.1.2 A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.

6.2 The Summative Evaluation shall also include one of four overall ratings: Highly Effective, Effective, Needs Improvement or Ineffective.

6.2.1 Highly Effective shall mean that the specialist has earned a Satisfactory Component Rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth, as defined in the *DPAS II Revised Guide for Specialists*, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.

6.2.1.1 Notwithstanding 6.2.1 for the 2011-2012 school year, for a specialist the Summative Evaluation Rating "Highly Effective" shall not be applicable.

6.2.2 Effective shall mean that:

6.2.2.1 The specialist has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and

6.2.2.2 The specialist does not meet the requirements for a Highly Effective rating found in 6.2.1.

6.2.2.3 Notwithstanding 6.2.2.1 and 6.2.2.2 for the 2011-2012 school year, "Effective" shall mean the specialist has earned a Satisfactory Component Rating three (3) or four (4) of the first four (4) Appraisal Components.

6.2.3 Needs Improvement shall mean that:

6.2.3.1 The specialist has earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or

6.2.3.2 The specialist has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has earned an Unsatisfactory rating in the Student Improvement Component.

6.2.3.3 Notwithstanding 6.2.3.1 and 6.2.3.2 for the 2011-2012 school year, "Needs Improvement" shall mean the specialist has earned a Satisfactory Component Rating in two (2) of the first four (4) Appraisal Components.

6.2.4 Ineffective shall mean that:

6.2.4.1 The specialist has earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and

6.2.4.2 The specialist has earned an Unsatisfactory Component Rating in the School Improvement Component.

6.2.4.3 Notwithstanding 6.2.4.1 and 6.2.4.1 for the 2011-2012 school year, "Ineffective" shall mean the specialist has earned a Satisfactory Component Rating in zero (0) or one (1) of the first four (4) Appraisal Components.

6.2.5 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

**15 DE Reg. 835 (12/01/11)**

## **7.0 Pattern of Ineffective Practice Defined**

- 7.1 A pattern of ineffective practice shall be based on the most recent Summative Evaluation ratings of a specialist using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective practice. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective practice:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

- 7.2 ~~Notwithstanding the chart above, for the 2011-2012 school year a specialist with an overall Summative Rating of "Needs Improvement" or "Ineffective" that is based on the following component rating results shall not have that year's summative rating used for any purpose in the determination of a pattern of ineffective practice:~~

- ~~7.2.1 Satisfactory Component ratings in the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.~~
- ~~7.2.2 Satisfactory Component ratings in three (3) of the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.~~
- ~~7.2.3 Satisfactory Component ratings in two (2) of the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.~~

**15 DE Reg. 835 (12/01/11)**

**8.0 Improvement Plan**

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.
- 8.1.1 An Improvement Plan shall also be developed if a specialist's overall performance during an observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 ~~Notwithstanding 8.1, for the 2011-2012 school year, an Improvement Plan shall not be developed related to Appraisal Component 5.1.5, nor shall an Improvement Plan be developed for a specialist with an overall Summative Rating of "Needs Improvement" that is based on the following component rating results:~~
- ~~8.2.1 Satisfactory Component ratings in the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.~~
- 8.32 The Improvement Plan shall contain the following:
- 8.32.1 Identification of the specific deficiencies and recommended area(s) for growth;
- 8.32.2 Measurable goals for improving the deficiencies to satisfactory levels;
- 8.32.3 Specific professional development or activities to accomplish the goals;
- 8.32.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
- 8.32.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
- 8.32.6 Timeline for the plan, including intermediate check points to determine progress;
- 8.32.7 Procedures for determining satisfactory improvement.
- 8.32.8 Multiple observations and opportunity for feedback provided by a trained evaluator, a mentor, or lead specialist, or an instructional coach.
- 8.43 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.54 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.65 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

**15 DE Reg. 835 (12/01/11)**

## 9.0 Challenge Process

- 9.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement PERFORMANCE IS UNSATISFACTORY has been included on the Formative Feedback form. To initiate a challenge, a specialist shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the specialist. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.
- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, meet with the specialist, and issue a written decision.
- 9.1.2 If the challenge is denied, the decision shall state the reasons for denial.
- 9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall be final.

**15 DE Reg. 835 (12/01/11)**

## 10.0 Evaluator Credentials

- 10.1 Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.1.1 The Department of Education shall annually monitor evaluation implementation.
- 10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the *DPAS II Revised Guide for Specialists*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

**15 DE Reg. 835 (12/01/11)**

## 11.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the *DPAS II Revised Guide for Teachers Specialists* shall be presented to the State Board of Education for review on an annual basis.

## 12.0 Procedures for the Termination of Services of Professional Employees

For purposes of 14 Del.C., Chapter 14 Procedures for the Termination of Services of Professional Employees only, the Appraisal Component 5.1.5 Student Improvement shall be considered "Satisfactory" for a specialist for the 2011-2012 school year.

**13 DE Reg. 1445 (05/01/10)**

**15 DE Reg. 835 (12/01/11)**

**15 DE Reg. 1595 (05/01/12) (Final)**