

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3110(d) (14 **Del.C.** § 3110(d))
14 **DE Admin. Code** 211

FINAL

REGULATORY IMPLEMENTING ORDER

211 Notice to School Boards of Due Process Proceedings

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §3110(d), the Secretary of Education intends to amend 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings. This regulation is being amended to specifically recognize vocational school and charter school board members and to streamline language in accordance with the *Delaware Administrative Code Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on March 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on March 1, 2021, in the form hereto attached as *Exhibit "A"*. Comments received which were pertinent to the proposed amendments were either in support of the changes or suggested the Department consider the following:

(1)Regulation 210 District School Board Member Special Education Due Process Hearing Training and Regulation 211 Notice of School Boards of Due Process Proceedings essentially address the same situation, therefore they should have more consistent language. Specifically, the definition of "School Board Member" in Regulation 210 does not include vocational technical school boards. For clarity, the comment suggests removing the existing definition of "District School Board or Charter School Board" and instead include a definition for "School Board Member" which includes charter school boards, reorganized school district boards and vocational technical school district boards.

Response: The Department agrees that for clarity the definitions of "School Board" and "School Board Member" in Regulation 210 District School Board Member Special Education Due Process Hearing Training should be defined the same as in Regulation 211 Notice to School Boards of Due Process Proceedings. These changes were made to Regulation 210, including a reference to "School Board" in subsection 4.1 of Regulation 210.

(2)The Department noted that the words "whether" and "person" are unnecessary and should be removed from the definition of "School Board Member" in Regulation 211 to simplify the definition, to comply with the Delaware Administrative Code Style Manual, and to ensure consistency with similar definitions in Regulation 210.

Response: These changes were made within Regulation 211 to simplify the definition, to comply with the *Delaware Administrative Code Style Manual*, and to ensure consistency with similar definitions in Regulation 210.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings to specifically recognize vocational school and charter school board members and to streamline language in accordance with the *Delaware Administrative Code Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings 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** 211 Notice to School Boards of Due Process Proceedings amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings 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 13, 2021. 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 April 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 13th day of April 2021

211 Notice to District and Charter School Boards of Due Process Proceedings Hearings

1.0 Purpose

The purpose of this regulation is to outline the process for notifying district, including vocational technical school, and charter school board members pursuant to 14 **Del.C.** §3110(d) of special education administrative hearings under the Individuals With Disabilities Education Act, 20 U.S.C. § 1400 et seq. ("IDEA") and 14 **Del.C.** §3101 ~~et seq~~ ("Chapter 31") involving the school ~~district~~ district, vocational technical school, or charter school.

2.0 Definitions

"School Board" ~~shall mean~~ means charter school boards of directors organized pursuant to ~~Chapter 5 of Title 14 of the Delaware Code, 14 Del.C. Ch. 5,~~ and reorganized school district boards and vocational technical school district boards duly appointed or elected pursuant to ~~Chapter 10 of Title 14 of the Delaware Code 14 Del.C. Ch. 10.~~

"School Board Member" ~~shall mean~~ means a ~~district school board member~~ district, vocational technical, or charter school board member ~~[whether]~~ that ~~[person]~~ is elected, appointed, or ~~is a volunteer~~ volunteers.

3.0 Privacy and Confidentiality Considerations

Actions taken and documents provided in accordance with this regulation and 14 **Del.C.** §3110(d) must comply with IDEA and its regulations, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA") and its regulations, the Delaware Freedom of Information Act, 14 **Del.C.** §10001 et seq. ("FOIA"), and all other applicable federal and state laws and regulations governing the privacy and confidentiality of student information and records.

4.0 Notice of Due Process Complaint

- 4.1 After receiving notification that a due process complaint has been received by the Secretary of the Department of Education, the superintendent of a reorganized school district or a vocational technical school district (~~"superintendent"~~) or the head of charter school principal (~~"principal"~~) shall provide a copy of the complaint to each school board member at the next scheduled school board meeting.
- 4.2 The school board president shall sign a statement that all school board members received a copy of the complaint and the superintendent or ~~principal~~ head of charter school shall provide a copy of the statement to the ~~parent(s)~~ parent or legal guardian of the child named in the complaint by certified mail.

5.0 Notice of Due Process Hearing Panel Decision

- 5.1 Within ~~7~~ seven (7) school days of receiving a due process hearing decision, the superintendent or ~~principal~~ head of charter school shall provide a copy of the decision to each school board member.
- 5.2 The superintendent or ~~principal~~ head of charter school shall send a letter signed by the school board president to the parent or legal guardian of the child named in the hearing decision by certified mail, stating that the members of the school board were provided with a copy of the due process hearing decision.

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6.0 Notice of Parent Request for Judicial Review of Due Process Hearing Panel Decision

- 6.1 After receipt of the civil action filed by a parent or legal guardian seeking judicial review of a due process hearing decision pursuant to applicable laws and regulation, the superintendent or ~~principal~~ head of charter school shall provide each school board member with a copy of the civil action at the next regularly scheduled school board meeting.

6.2 The superintendent or ~~principal~~ head of charter school shall send a letter signed by the president of the school board by certified mail to the ~~parent(s)~~ parent or legal guardian of the child named in the civil action stating that the members of the school board were provided with a copy of the civil action.

7.0 School District or Charter School Request for Judicial Review of Due Process Hearing Panel Decision

A decision by a reorganized school ~~district or district~~, a vocational technical school district or a charter school to seek judicial review of a due process hearing decision must be made by a majority of school board members.

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