

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 **Del.C.** §122(b) and §154(e))
14 **DE Admin. Code** 540

FINAL

REGULATORY IMPLEMENTING ORDER

540 Driver Education

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** 540 Driver Education in order to clarify that Delaware nonpublic school (private and homeschool) students are entitled to tuition-based driver education at rates approved by the co-chairs of the Joint Finance Committee, Delaware General Assembly.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, September 4, 2008, in the form hereto attached as *Exhibit "A"*. The Department received 63 written comments with 61 opposing the change and 2 supporting the change. The comments in opposition cited: discrimination against children in nonpublic schools; financial burden to single parents; taxes are paid by nonpublic school student parents/guardians; whether this is a violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution; ability of students to receive their license before age 18 without driver education; and whether this action negates the benefits from the graduated license. Suggestions were made to establish a fee based system for all students whether public or nonpublic.

The proposed regulatory changes are being made by the Secretary with the consent of the State Board of Education to conform with the legislative action of the 144th General Assembly, Senate Bill 300 as follows:

"402. Section 1 of this Act provides \$500.0 ASF to the Department of Education, Driver Training (95-03-30) to develop and implement a fee structure for the provision of driver's education services to non-public school students beginning in Fiscal Year 2009.

Upon approval of the co-chairs of the Joint Finance Committee, the Department shall be authorized to promulgate rules and regulations associated with this fee structure. The fee shall not be greater than the amount charged to out-of-state non-public students attending Delaware schools.

Additionally, the Department is authorized to transfer GF FTEs in 95-03-30 to appropriated special funds throughout the fiscal year as revenue becomes available."

For clarification, 14 **Del.C.**, § 2703A *Homeschools defined* and 14 **DE Admin. Code** 255 *Definition of Public School, Private School and Nonpublic School* govern the definition of a "nonpublic school".

The Secretary and State Board of Education are bound by the legislative action of the General Assembly and as such are acting to align the current regulation with this legislation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 540 Driver Education in order to conform with the legislative action of the 144th General Assembly, Senate Bill 300.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 540 Driver Education. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 540 Driver Education attached hereto as *Exhibit "B"* is hereby amended and 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** 540 Driver Education amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 540 Driver Education 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 October 23, 2008. 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 23rd day of October 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 23rd day of October 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

Richard M. Farmer, Jr., Vice President

G. Patrick Heffernan

Jorge L. Melendez

Barbara Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

540 Driver Education

1.0 Eligibility for Driver Education

- 1.1 Delaware public school residents are entitled to free driver education one time only. Delaware nonpublic school (private and homeschool) students are entitled to tuition-based driver education at rates approved by co-chairs of the Joint Finance Committee, Delaware General Assembly. Students who are not successful in their initial driver education course may register in any of the adult driver education programs for a fee.
- 1.2 The Individualized Education Program Team, in consultation with the Driver Education teacher, may make accommodations to the Driver Education program and offer specialized instruction for special education students through the student's Individual Education Program (I.E.P.).
- 1.3 Nothing in this regulation shall alter a school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a school from providing driver education to such students.

- 1.4 Delaware residents ~~[attending school out of state as 10th graders, students attending public schools who are]~~ in excess of the September 30th unit allotment, students attending private and parochial academies in state with 10th grade enrollments of less than twenty five, home schooled students and any student approved by the Secretary as an exceptional case are entitled to attend summer driver education without charge. Students attending private schools in state with 10th grade enrollments of less than twenty five, ~~[and]~~ homeschooled students~~[, and eligible Delaware residents attending schools out of state]~~ shall be entitled to attend tuition-based summer driver education at rates approved by the co-chairs of the Joint Finance Committee, Delaware General Assembly. Districts shall notify all nonpublic and public high schools in their district by May 1st annually as to the location of the nearest summer driver education program. Summer Driver Education shall be offered between June 10 and August 31 and each request for free tuition must be approved by the Secretary of Education through the ~~Office of the Education Associate, Safety and Driver Education~~ ~~Office of the Director of Career & Technical Education and School Climate~~.
- 1.5 Adult Driver Education programs, when offered, shall follow the same regulations established for the high school and the summer programs. The adult programs are available to any individual for a fee through a local school district in each county. The cost per student for adult driver education will be determined by the Department of Education.

2.0 Requirements for Class Time

- 2.1 The driver education course shall include a minimum of forty four (44) class hours of instruction consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in the car behind the wheel laboratory instruction and seven (7) hours of actual observation in the car. The class hours must not be less than forty five (45) minutes each. For those schools with varying class schedules the minimum classroom instruction must be no less than one thousand three hundred fifty (1350) minutes and behind the wheel laboratory instruction no less than three hundred fifteen (315) minutes.
- 2.2 Driving simulators may be substituted for the required hours of behind the wheel laboratory instruction but only up to three (3) hours of time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind the wheel laboratory instruction.
- 2.3 Off the street driving ranges or multiple driving ranges that are off the street may be substituted for actual behind the wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind the wheel laboratory instruction time.
- 2.4 Driving simulation and off the street driving range time shall not be taken from or cause a reduction of classroom instruction time.
- 2.5 Driving simulation and off the street driving range time shall not be substituted for more than one half (1/2) of the total required seven (7) hours of actual behind the wheel laboratory instruction and only at the ratios defined in 2.0. This includes individually or in any combination.

3.0 Curriculum

- 3.1 The Driver Education teachers shall use the statewide curriculum for driver education developed by the Department of Education for classroom instruction and behind the wheel laboratory instruction time. Teachers should include student activities requiring reading, writing and research as part of the Driver Education curriculum.

4.0 Final Grades

- 4.1 Final grades for the forty four hour driver education course shall be either pass or fail. Schools may grant one fourth (1/4) credit for successful completion of the minimum hours in both the classroom and the behind the wheel laboratory experience. The one fourth of a credit for driver education may be included as part of the elective credits counted toward graduation.
- 4.2 Pass or Fail grades must be received by the Department of Education no later than June 30th for Regular Driver Education Programs and August 31st for Summer Driver Education Programs. Final grades will be maintained by the Department for a seven year period.

5.0 Use of Driver Education Cars

- 5.1 Automobiles purchased, leased from Fleet Services or leased directly from a dealership using state funds allocated for driver education shall be used solely for the instruction of students enrolled in Driver Education; except that a school district or charter school may permit a driver education teacher to drive such automobile to and from the teacher's place of residence when the school district or charter school determines that it would be unsafe to store the automobile overnight at the school;~~and further provided that in the case of a private school driver education teacher, the Education Associate, Safety and Driver Education at the Department of Education may permit that teacher to drive the automobile to and from school from the teacher's place of residence~~ The Director of Career & Technical Education and School Climate shall assign private school driver education teachers a state parking location to store the vehicle overnight when it appears that it would be unsafe to store the automobile overnight at the school.

6.0 Scheduling of Driver.

- 6.1 All public and nonpublic high schools with twenty five or more enrolled 10th grade students shall offer Driver Education as part of the curriculum.

1 DE Reg. 964 (1/1/98)

6 DE Reg. 773 (12/1/02)

10 DE Reg. 1587 (04/01/07)

12 DE Reg. 670 (11/01/08) (Final)