

**DEPARTMENT OF EDUCATION**  
**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 1726(b) (14 **Del.C.** §1726(b))

**FINAL**

**REGULATORY IMPLEMENTING ORDER**

**702 Education Opportunity Fund**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §1726(b), the Secretary of Education intends to create 14 **DE Admin. Code** 702 Education Opportunity Fund. This new regulation is created as required by Senate Bill 56 of the 151st General Assembly to identify the types of services and supports that may be funded with the per pupil funding money from the Opportunity Fund.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on August 1, 2022. The Department of Education received the following comments which were pertinent to the proposed amendments.

(1) Concerns with the definitions of "English Learner," "Mental Health Supports," and "Wrap-around Services." Specifically, that the definition does not require either the child's native language be other than English or that the child be from an environment where a language other than English has impacted their level of English. Additionally, there were concerns that mental health supports did not include psychological treatment, and that wrap-around services were narrow in scope.

**Response:** The Department wishes to use the same definition for "English Learner" or "EL" as defined in 14 **Del. Admin. C.** §920 for consistency. When Regulation 920 is updated, the Department will consider improving the definition. The Department did clarify the definitions of "Mental Health Supports" and "Wrap-around Services," but did not believe including the term "psychological treatment" was necessary.

(2) Concerns with the list of personnel, contractual services, and supplies and materials for which the Education Opportunity Fund monies may be used. Specifically, there are concerns with no provision to pay for transportation, that data systems to support instructional decisions should not be funded by money intended to enhance services for English Learners and Low Income Students, and that the list of services and supports does not include other licensed psychologists or mental health therapists.

**Response:** The Department notes that these particular titles of mental health providers are limited in the annual Budget Bill for the mental health portion of the funds and subsection 3.1.1.12 allows for any others that are not limited. Provision to pay for transportation was added in subsection 3.1.2.8, and data systems, as noted in subsection 3.1.2.10, was clarified with more specificity.

(3) Concerns that the use of "such as" and "includes" makes the lists of services, supports and contractual services appear to be non-exhaustive.

**Response:** These lists are not intended to be exhaustive to allow for the flexible use of funds dependent on the individual needs of students, communities and families. Creating an exhaustive list would not allow for flexibility and could likely miss an innovative use that could prove invaluable to a certain community or individual.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 702 Education Opportunity Fund as required by Senate Bill 56 of the 151st General Assembly to identify the types of services and supports that may be funded with the per pupil funding money from the Opportunity Fund.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 702 Education Opportunity Fund. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 702 Education Opportunity Fund attached hereto as *Exhibit "A"* is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 702 Education Opportunity Fund created 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** 702 Education Opportunity Fund created hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 702 Education Opportunity Fund 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 September 8, 2022. The effective date of this Order shall be 10 days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 8th day of September 2022

### Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 8th day of September 2022

### 702 Education Opportunity Fund

#### **1.0 Purpose**

Pursuant to 14 **Del.C.** §1726(b), the purpose of this regulation is to identify the types of services and supports that may be funded with the per pupil funding from the Opportunity Fund.

#### **2.0 Definitions**

The following words and terms, when used in this regulation, have the following meaning:

"**English Learner**" or "**EL**" means an individual who has English language speaking, reading, writing, or understanding difficulties sufficient to deny the individual the ability to meet challenging state academic standards as defined using Delaware's standardized entrance and exit procedures.

"**Low Income Students**" means students within the statewide metric determined by the Department of Education utilizing direct certification for Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP).

"**Mental Health Supports**" means a variety of strategies and services that can support the social, emotional and behavioral wellbeing and mental health of students and their families. Supports of this type include, behavioral assessment and intervention, individual and ~~[group, group counseling,]~~ family psychoeducation and support ~~[intervention, interventions, social skills group interventions,]~~ social and emotional learning, and mental health promotion, instruction and support, engagement strategies, assessment, screening, crisis management, suicide prevention and coordination of services.

"**Opportunity Fund**" means the fund containing monies appropriated in the Annual Appropriations Act, which are to be used to enhance services for English Learners and Low Income Students enrolled in public schools.

"**Students with Interrupted Formal Educations**" or "**SIFE**" means English Learners who have attended schools in the United States for less than twelve months and who, upon initial enrollment in such schools, are two or more years below grade level in literacy in their home language or two or more years below grade level in mathematics due to inconsistent or interrupted schooling prior to arrival in the United States.

"**WIDA English Language Development Standards**" means the state adopted standards used to plan and implement language instruction and assessment for English Learners in order to provide the social, instructional, and academic language that students need to engage with peers, educators, and curriculum in schools.

"**Wrap-around Services**" means a variety of strategies and services **[designed]** to support the needs of the student in the areas of attendance, academic ~~[engagement, behavior incidents or referral]~~ engagement, and behavioral functioning by strengthening connections and attachments in the school setting. Wrap-around supports are strength-based and reliant on a team planning process that engages children, youth, and their caregivers in a problem-solving approach that yields a service plan that is culturally and linguistically responsive to the needs of the student].

#### **3.0 Types of Services and Supports**

3.1 Services and supports identified for improving reading comprehension, math proficiency, wrap-around services and mental health supports for ELs and Low Income Students that may be funded by the Opportunity Fund include:

3.1.1 Employing additional personnel such as:

- 3.1.1.1 EL Teachers.
- 3.1.1.2 EL Coaches.
- 3.1.1.3 EL Paraprofessionals.
- 3.1.1.4 Reading Specialists.
- 3.1.1.5 Reading/Mathematics Interventionists.
- 3.1.1.6 Reading/Mathematics Coach.
- 3.1.1.7 Reading/Mathematics Paraprofessionals.
- 3.1.1.8 School Counselors.
- 3.1.1.9 School Social Workers.
- 3.1.1.10 School Psychologists.
- 3.1.1.11 Licensed Clinical Social Worker.
- 3.1.1.12 Other mental health personnel not limited by the Annual Appropriations Act.

3.1.2 Contractual services such as:

- 3.1.2.1 Translation and interpretation services and applications.
- 3.1.2.2 Professional learning services to build educator capacity to implement the WIDA English Language Development Standards.
- 3.1.2.3 Professional learning services to build educator capacity to strengthen Tier 1 instruction for ELs and students experiencing poverty.
- 3.1.2.4 Professional learning services to support educators in meeting the needs of unique populations ELs, including long-term ELs, SIFEs, newcomer students, students dually-identified as ELs and with disabilities, and ELs who are talented and gifted.
- 3.1.2.5 Professional learning services to support personnel listed in subsection 3.1.1.
- 3.1.2.6 Extended day learning experiences.
- 3.1.2.7 Summer learning experiences.
- [3.1.2.8 Supplemental transportation costs to support student attendance at extended day and summer learning experiences.**
- ~~3.1.2.8~~ **3.1.2.9]Contracted coaching and instructional support for installing and implementing interventions.**
- ~~3.1.2.9~~ **3.1.2.10]Data systems [to support instructional decisions, specifically designed to increase usability of EL and Low Income Student data for instructional decision making.**
- ~~3.1.2.10~~ **3.1.2.11]Contracted mental health supports.**

3.1.3 Supplies and materials such as:

- 3.1.3.1 Supplemental instructional materials for ELs with unique needs such as SIFEs, newcomer students, and long-term ELs.
- 3.1.3.2 Support materials for content classrooms to meet the needs of ELs.
- 3.1.3.3 Social and emotional learning, as well as mental health instructional materials to support ELs and Low Income Students.