

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)
14 **DE Admin. Code** 611

FINAL

REGULATORY IMPLEMENTING ORDER

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 11 **Del.C.** §1457(j), the Secretary of Education intends to amend 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems. This amendment is needed to update the statutory reference, make minor clarifications and comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on September 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens. The comments were similar endorsing the proposed amended regulation while seeking clarification of certain changes. The first comment concerned how the local school district would determine whether an incident is "equivalent to or greater than" the identified offenses. Regulation 611's enumerated offenses are a non-exhaustive list of behaviors that would prohibit an expelled or suspended pending expulsion student from placement in a Consortium Discipline Alternative Program (CDAP). In keeping with standard practice in reaching its decision, the local school district will look to the nature of the behavior, the degree of the criminal offense type, i.e. misdemeanor or felony, and the potential risk the student poses to facilitators and/or participants in the CDAP.

The second comment concerned whether a student whose behavior is "equivalent to" selling a small amount of a controlled substance will be excluded from CDAP. Again, the local school district will look to the nature of the behavior, the degree of the criminal offense type, i.e. misdemeanor or felony, and the potential risk the student poses to facilitators and/or participants in the CDAP. The proposed amendment does not change the applicable Uniform Due Process Procedures pursuant to Regulation 616.

The third general comment involved the potentially restrictive impact of the proposed amendment to Section 2.2. The proposed amendment to Section 2.2 memorializes a standard practice. The "student's educational and behavioral modification needs" are of primary importance. Neither the Department nor the local school district wants to place the student in an inappropriate setting. The proposed language will help ensure students receive the appropriate education and behavioral modification services. The proposed amendment does not change the applicable Uniform Due Process Procedures pursuant to Regulation 616.

Finally, the proposed amendments do not alter a local school district or charter school's duties to students with disabilities.

The Department appreciates the time each of the Councils provided in reviewing the proposed amended regulation. Other minor grammatical changes were found to be needed and were made by the Department.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems in order to update the statutory reference(s), make minor clarifications and comply with 29 **Del.C.** §10407 which requires regulations to be reviewed every four years.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems 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** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems 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 15, 2019. 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 October 2019.

Department of Education

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

Approved this 15th day of October 2019

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

1.0 Eligible Students

- 1.1 Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program (CDAP) site.
- 1.2 Subject to Section 11.0, local school districts shall place a an eligible student at a Consortium Discipline Alternative Program site if the district board:
 - 1.2.1 Has expelled the student for a violation of the district's discipline code or, determined that the student has been suspended for engaging in conduct that could result in expulsion and has not required the student to participate in other options such as ~~behavioural~~ behavioral contracts or counseling or, determined that the student has exhibited such severe discipline problems that expulsion is ~~imminent~~; and imminent.
 - 1.2.2 ~~Determined the student is not ineligible for placement at a Consortium Discipline Alternative Placement pursuant to the conditions in 2.0.~~
- 1.3 School districts may place a student in a Consortium Discipline Alternative Program for classroom or school environment disruptions only if:
 - 1.3.1 Such disruptions are chronic and repetitive; and
 - 1.3.2 The student has participated in all available School Based Intervention Programs pursuant to 14 **DE Admin. Code** 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students.

12 DE Reg. 1075 (02/01/09)

2.0 Ineligible Students

- 2.1 Any student expelled or suspended pending expulsion for behavior equivalent to a violation of the following is not eligible for, and may not be placed at a Consortium Discipline Alternative Program site.
 - 2.1.1 11 **Del.C.** §613 Assault in the First Degree; class ~~C~~ B felony; or
 - 2.1.2 11 **Del.C.** §1457 Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F: class A or B misdemeanor; or
 - 2.1.3 11 **Del.C.** §802 Arson in the Second Degree affirmative defense; class D felony; or
 - 2.1.4 11 **Del.C.** §803 Arson in the first degree; class C felony; or
 - 2.1.5 11 **Del.C.** §770 Rape in the fourth degree; class C felony; or
 - 2.1.6 11 **Del.C.** §771 Rape in the third degree; class B felony; or
 - 2.1.7 11 **Del.C.** §772 Rape in the second degree class B felony; or
 - 2.1.8 11 **Del.C.** §773 Rape in the first degree class A felony; or
 - 2.1.9 ~~16 **Del.C.** §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamine, LSD, or designed drugs or~~ 16 **Del.C.** §4752 Drug dealing—Aggravated possession; class B felony; or

~~2.1.10 Any behavior equivalent to or greater than the offenses in 2.1 through 2.9.~~

~~2.1.10 16 Del.C. §4752B Drug dealing — Resulting in death; class B felony; or~~

~~2.1.11 16 Del.C. §4753 Drug dealing—Aggravated possession; class C felony; or~~

~~2.1.12 16 Del.C. §4754 Drug dealing—Aggravated possession; class D felony; or~~

~~2.1.13 Any behavior equivalent to or greater than the offenses in subsections 2.1.1 through 2.1.12.~~

- 2.2 Provided further, any student expelled or suspended pending expulsion may not be placed at a Consortium Discipline Alternative Program if the school district determines, by a preponderance of the evidence, the student is inappropriate for such placement. When determining whether a student is inappropriate for placement in a Consortium Discipline Alternative Program, the school district shall consider the availability of space in the program to serve the student, ~~and~~ the student's age and the student's educational and behavioral modification needs.

12 DE Reg. 1075 (02/01/09)

3.0 Written Decision Required

When a school board expels a student but determines the student shall not be placed at a Consortium Discipline Alternative Program, the school district's decision shall be in writing and address with specificity the ~~reason~~ reasons for non-placement ~~non-placement~~ and the evidence in support thereof. Such decisions shall be submitted to the Delaware Department of Education's Office of School Climate ~~and Discipline~~ within five working days of such decision with a copy to the student's parent, guardian, or Relative Caregiver.

12 DE Reg. 1075 (02/01/09)

4.0 Informing the Parents, Guardians, Relative Caregiver or Students (If the Student is Age 18 or Older)

Districts shall inform the parents, guardians, Relative Caregiver or students (if the student is age 18 or older) of the alternative education options that are then currently available to them if the students have been expelled or expulsion is being considered. These options may include, but are not be limited to, the Consortium Discipline Alternative Program, a GED Program, James H. Groves High School and continued special education and related services for children with disabilities as determined by the student's ~~individual~~ eligibility for participation in such programs. A student's eligibility for such alternative education options is determined by the requirements of such programs.

5.0 Grade ~~Level~~ Levels to be Served

Eligible students in the Consortium Discipline Alternative Program shall be primarily those who are enrolled in grades 6 through 12, however students in the lower grades may also be served through ~~Alternative Program~~ CDAP funds.

6.0 Placement at Consortium Discipline Alternative Program Sites

- 6.1 Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for students. The Placement Team, in concert with the Consortium Discipline Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both students and their families. The ISP shall include a tentative transition plan.
- 6.1.1 The Alternative Placement Team shall be composed of a representative of the Consortium Discipline Alternative Program staff; a ~~district-level~~ district-level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; the student's custodial adult; guidance counselor or school social worker; and a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs as appropriate. Other individuals may be invited as determined by the placement team.
- 6.1.1.1 Students who are being placed at a Consortium Discipline Alternative Program site as a transition from DSCYF facilities shall have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult.
- 6.1.2 If students from either a school district or DSCYF facility are children with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the Individual Education Program (IEP) Team may be the same so long as the membership of the IEP Team meets the requirements of 14 **DE Admin. Code** 925.

7.0 September 30 Enrollment Count

- 7.1 Students enrolled at a Consortium Discipline Alternative ~~Programs~~ Program site shall be counted in the enrollment of the sending school.
- 7.2 Students shall be reported for the level of special education service as defined by the current IEP.
- 7.3 If a student was enrolled the previous year in a Career and Technical Program in the reporting school, the students shall be reported as enrolled in the next Career and Technical course in the program series.

12 DE Reg. 1075 (02/01/09)

8.0 Consortium Discipline Alternative Program Setting

- 8.1 The Consortium Discipline Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs if the students do not interact with the regular school population or use any school facility at the same time as the regular school population.
 - 8.1.1 Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Consortium Discipline Alternative Program settings shall meet all applicable health and safety laws and regulations for student occupancy.

9.0 Consortium Discipline Alternative Program Design

- 9.1 The Consortium Discipline Alternative Program shall include an educational program designed to maintain and improve skills aligned to the Delaware State Content Standards that will allow students to reenter the regular school program with a reasonable chance and expectation for success. Opportunities for academic acceleration shall also be provided.
 - 9.1.1 The academic program shall include applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Study skills, ~~test-taking~~ test-taking strategies for academic confidence building, and Character Education shall be integrated with the Delaware State Content Standards.
 - 9.1.1.1 Credit for work accomplished in the Consortium Discipline Alternative Program setting shall be automatically transferred to the sending school.
 - 9.1.2 All students enrolled in Consortium Discipline Alternative Programs shall participate in the Delaware Student Testing Program (DSTP) or successor statewide student assessment program, and Student Success Plans (SSP) as required by 14 **DE Admin. Code** 505 507.

12 DE Reg. 1075 (02/01/09)

10.0 Staffing

Instructional staff shall include educators who are licensed and certified in the content areas of English language arts, mathematics, science and social studies.

11.0 Children With Disabilities

- 11.1 Nothing in this regulation shall alter a district's or charter school's duties under the Individual with Disabilities Act (IDEA) or 14 **DE Admin. Code** 922 through 929. Nor shall this regulation prevent a district or charter school from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Department regulations.
- 11.2 Nothing in this regulation shall alter a district's or charter ~~schools's~~ 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 district or charter school from providing supportive instruction to such students.

12 DE Reg. 1075 (02/01/09)

12.0 Charter School Students

- 12.1 A charter school, subject to the limitations of 14 **Del.C.** 504A(8), shall pursue referral of any student meeting the requirements of ~~Section~~ subsection 1.2 into a Consortium Discipline Alternative Program pursuant to the provisions of Chapter 16 of Title 14 of the **Delaware Code**.
- 12.2 To the extent applicable, a charter school placing a student in a Consortium Discipline Alternative Program shall be subject to the provisions of this regulation.

8 DE Reg. 1008 (01/01/05)

12 DE Reg. 1075 (02/01/09)

13.0 Evaluation

The Department of Education shall annually evaluate the effectiveness of the Consortium Discipline Alternative Programs using criteria that includes student demographic data, types of interventions employed, and prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement and recidivism. In addition, the Department of Education shall annually review the decisions acquired pursuant to Section 3.0 to assess the reasons for non-placement of students in the alternative programs, including lack of space and number, age, race and special education status of excluded students by district and charter school. Grantees shall compile and submit data based on uniform standards and format established by the Department.

12 DE Reg. 1075 (02/01/09)

23 DE Reg. 370 (11/01/19) (Final)