

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 415

FINAL

REGULATORY IMPLEMENTING ORDER

415 Voluntary School Assessment

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(a), the Secretary of Education intends to amend 14 **DE Admin. Code** 415 Voluntary School Assessment. The regulation is being amended to delete unnecessary language that merely restates Delaware Code, delete language that conflicted with Delaware Code, and clarify the Department's definition of "adequate capacity."

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on August 1, 2018, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 415 Voluntary School Assessment in order to delete unnecessary language that merely restates Delaware Code, delete language that conflicted with Delaware Code, and clarify the Department's definition of "adequate capacity."

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 415 Voluntary School Assessment. Therefore, pursuant to 14 **Del.C.** §122(a), 14 **DE Admin. Code** 415 Voluntary School Assessment attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 415 Voluntary School Assessment 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** 415 Voluntary School Assessment amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 415 Voluntary School Assessment 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(a) on September 14, 2018. 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 14th day of September 2018.

Department of Education

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

Approved this 14th day of September 2018

415 Voluntary School Assessment

1.0 **Purpose General Provisions**

- 1.1 ~~The funds generated as a result of the Voluntary School Assessment, as authorized by the provisions of 14 **Del.C.** §103(c) relating to land use planning and education shall be applied exclusively to offsetting the required local share of major capital construction costs.~~

- 1.2 ~~Districts receiving Voluntary School Assessment funds shall have full discretion in the use of those funds for any construction activities that increase school capacity.~~

Pursuant to 14 Del.C. §103(c), this regulation shall apply to Voluntary School Assessments that are required in lieu of Certifications of Adequate Capacity for proposed residential developments in New Castle County.

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

"Building Valuation Data" or "BVD" means the average construction costs as published biannually by the International Code Council, which can be used for determining permit fees for a jurisdiction.

~~"Certificate of Necessity" means the document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project. The Certificate of Necessity authorizes the school district to hold a referendum for the Capital Improvement Program identified and authorizes the school district to sell bonds to pay the local portion in the event of a successful referendum.~~

~~"Certificate of Occupancy" means the document issued by a local code enforcement official/office attesting that a facility meets building codes and is fit for human occupancy.~~

"Certification of Adequate Capacity" means a certification that the school district in which a proposed development is located has 85% or less capacity for the elementary, middle, and high schools in the proposed development's feeder pattern. Such certification is issued by the Secretary based on information provided to the Department by the school district and New Castle County Department of Land Use.

~~"Change Orders" means the documents that change the construction contract and are negotiated between the owner and contractor in order to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.~~

"Department" means the Delaware Department of Education.

~~"Equalization Report" means the report issued per 14 Del.C. §1707(i), which recommends formula adjustments for funding allocations that are intended to equalize tax base disparities, driven by land values, amongst local school districts.~~

"Gross Area" means the calculated square footage of a residential unit.

~~"International Code Council" means the nationally recognized organization that is dedicated to developing model codes and standards used in the design, build and compliance process to construct safe, sustainable, affordable and resilient structures.~~

~~"Program Capacity" means eighty-five (85) percent of the maximum number of students that a program or school can contain as determined solely by considerations of physical space and class size for each grade level, as identified in 14 Del.C. §405(c).~~

~~"School Capacity" means the calculation which determines the number of students that can be served within a school building, as determined by the Department of Education school construction formula.~~

~~"School Capacity Certification" means the certification made by any local school district to be impacted by a pending development, which identifies the existence of capacity within existing district infrastructure, or lack thereof.~~

~~"School Construction Technical Assistance Manual" means the document that identifies the school construction formula and provides local school districts with guidance and rules related to school construction.~~

"Secretary" means the Secretary of the Delaware Department of Education or his or her designee.

"Voluntary School Assessment" means the fee assessed on new residential construction units in New Castle County and its municipalities to provide support for the construction of additional capacity within local school districts, for increased student growth that results from residential development assessment amount calculated by the Secretary pursuant to 14 Del.C. §103(c).

3.0 ~~Determination of School District Capacity~~ Certification of Adequate Capacity

- 3.1 ~~Prior to a developer recording a residential subdivision plan per 9 Del.C. §2661, and for over 5 units in size for any lands annexed into any municipality located in New Castle County per 22 Del.C. §842(2), the developer shall request from the Department of Education a School Capacity Certification to ensure that the school district in which the development will be located has adequate capacity to accommodate the proposed number of students the development will generate. The Department of Education shall also verify with the municipality located in New Castle County or New Castle County all the necessary information regarding the development to include location; tax parcel number of the development; and number and type of residential units.~~

- 3.2 The Department of Education shall respond to the developer's request for certification within 60 days of receipt of a completed request for such certification. The municipality located in New Castle County or New Castle County shall provide the Department of Education with all the necessary development information within 20 days from the request by the Department of Education. The certification from the school district shall include the following information for the schools impacted by the new development:
 - 3.2.1 Feeder patterns for this development and the schools that will be affected by these feeder patterns.
 - 3.2.2 The increased demand that will result from the proposed development.
 - 3.2.3 School capacity, program capacity and enrollment data relevant to the proposed development.
- 3.3 The developer shall be subject to the Voluntary School Assessment if it is determined by the school district that no capacity exists.
- 3.1 The Secretary shall issue a Certification of Adequate Capacity for a proposed development if the school district in which the proposed development is located has adequate capacity for the increased demand that will result from the proposed development.
 - 3.1.1 A school district has adequate capacity for a proposed development if the elementary, middle, and high schools in the proposed development's feeder pattern each do not exceed 85 percent of the maximum number of students the schools can contain based on each school's physical space and class size for each grade level.
 - 3.1.2 Capacity shall include students who are enrolled in the proposed development's feeder pattern schools based on their residence, as provided in 14 Del.C. §202(c), and through the Delaware's School District Enrollment Choice Program as provided in 14 Del.C. Ch. 4.
 - 3.1.3 Capacity is determined by the district at the time a developer submits a completed request for a Certification of Adequate Capacity.

4.0 Calculation of Voluntary School Assessment for New Castle County

- 4.1 The Department of Education shall calculate the Voluntary School Assessment rates annually for each school district in New Castle County. Voluntary School Assessments shall be calculated on a per unit basis using statewide average cost of construction based on the school construction formula.
 - 4.1.1 The calculation shall include the local share of cost per student for school construction by taking the statewide average cost and multiplying it by the annual local major capital match requirement.
 - 4.1.2 The local share calculated above shall then be multiplied by 0.5 (statewide average children per household as per 14 Del.C. §103(c)(3)) to determine the final individual rate for each school district.

5.04.0 Determining Total Cost of a Residential Unit

- 4.1 Pursuant to 14 Del.C. §103(c)(3), a Voluntary School Assessment shall not exceed 5 percent of the total cost of a residential unit.
 - 4.1.1 For the purpose of this regulation, the total cost of a residential unit shall mean the total cost to construct the unit.
 - 4.1.1.1 The total cost shall equal the Gross Area of the unit multiplied by the square footage construction cost that is derived from the Building Valuation Data table that is first issued for the current calendar year.
 - 4.1.1.2 The total cost shall not include the cost of land and site work.
- 5.14.1.2 The developer shall contact the Department of Education to identify residential units subject to the 5 percent limitation as per 14 Del.C. §103(c).
- 5.2 Total cost of the residential unit shall mean the total cost to construct the residential unit, not to include cost of land or site work (for the purposes of determining the 5 percent limitation on the Voluntary School Assessment fees as per 14 Del.C. §103(c)).
- 5.3 Cost per square foot shall be derived from the Building Valuation Data (BVD) table, reflecting construction cost standards established by the International Code Council (ICC).
- 5.4 Total construction cost shall equal Gross Area of the residential unit multiplied by the Square Foot Construction Cost identified on the BVD table.
- 5.5 The Department of Education shall use the first issued ICC update of the BVD table in the current calendar year as the basis for calculating total construction costs for any new major subdivision which is subject to the 5 percent limitation as per 14 Del.C. §103(c).

6.0 Determination of Voluntary School Assessment Fee

- 6.1 ~~For each of the new residential units to be constructed, the developer shall pay to the Department of Education the Voluntary School Assessment in effect for the fiscal year in which the first building permit is issued for a residential unit to be constructed on the property.~~
- 6.2 ~~The fee shall remain constant throughout the development of the subdivision (and shall not be increased for any reason, including but not limited to any re-subdivision); provided, however, that after 5 years from the issuance of the first building permit, the voluntary school assessment amount may be recalculated by the Department of Education.~~
- 6.3 ~~Any voluntary school assessments paid under this subsection shall be paid to the Department of Education at the time that a certificate of occupancy is obtained for each unit, and shall be deposited by the Department into an interest-bearing account. Such assessments shall be released and paid by the State into an interest-bearing account of the school district at the time the school district engages in construction activities which increase school capacity.~~
- 6.4 ~~With the approval of the Department of Education, after consultation with the superintendent of the affected school district, an applicant may receive a credit against voluntary assessments to be paid in an amount equal to the fair market value of any lands or properties set aside by the developer and deeded to the school district for school uses. Any such lands shall not be used for non-school purposes, other than as parkland or open space.~~
- 6.5 ~~No certificate of adequate school capacity shall be required and projects are exempt from payment of Voluntary School Assessment fees where any of the following criteria are met:~~
- 6.5.1 ~~The residential development is restricted by recorded covenants to provide housing or shelter predominantly for individuals 55 years of age or older pursuant to the provisions of the Federal Fair Housing Act [42 U.S.C. § 3601, et. seq.].~~
- 6.5.2 ~~The residential development is for low income housing, which, for purposes of this section; shall be defined to mean any housing financed by a loan or mortgage that is insured or held by the Secretary of HUD or the Delaware State Housing Authority or which is developed by a nonprofit corporation certified under § 501(c) (3) of the United States Internal Revenue Code [26 U.S.C. § 501(c) (3)]; or~~
- 6.5.3 ~~The applicant has pledged, in a writing recorded and running with the subject property, to pay a Voluntary School Assessment in an amount determined pursuant to §103(c) of Title 14 for each lot for which the applicant would otherwise be required to obtain a certificate.~~

18 DE Reg. 304 (10/01/14)

22 DE Reg. 296 (10/01/18) (Final)