

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))  
14 **DE Admin. Code** 701

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 701 Unit Count

#### 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** 701 Unit Count. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. The proposed amendments are made to align language in this regulation with language in Regulation 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs related to a child with a disability who is determined eligible for special education and related services. Other changes are grammatical in nature and are made to ensure compliance with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on July 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on July 1, 2021, in the form hereto attached as Exhibit "A". No comments were received.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 701 Unit Count in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. The proposed amendments are made to align language in this regulation with language in Regulation 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs related to a child with a disability who is determined eligible for special education and related services. Other changes are grammatical in nature and are made to ensure compliance with the *Delaware Administrative Code Drafting and 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** 701 Unit Count. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 701 Unit Count attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 701 Unit Count 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** 701 Unit Count amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 701 Unit Count 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 August 12, 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 12th day of August 2021.

Department of Education

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

Approved this 12th day of August 2021

701 Unit Count

- 1.1 All information submitted through the unit count process shall be on ~~the~~ forms provided by the Department of Education or in such other format as may be acceptable to the Department.
- 1.2 Each school shall maintain September enrollment records in a manner which ~~will allow~~ allows for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three (3) years.
- 1.3 Records to substantiate students with disabilities included in the enrollment count shall contain a student ~~individual~~ Individualized Education Program (IEP) in effect during the last week of school in September and eligibility documentation. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are identified as a child with a disability determined to be eligible for special education students and related services as per under 14 DE Admin. Code 925.

**8 DE Reg. 1473 (04/01/05)**

**13 DE Reg. 1452 (05/01/10)**

## **2.0 Special Situations Regarding Enrollment**

- 2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.
- 2.2 Students with disabilities included in the special education unit count under the placement provisions of Transfer Students or Change of Placement shall meet the evaluation and placement requirements found in **14 DE Admin. Code 925.**
- 2.3 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

**8 DE Reg. 1473 (04/01/05)**

**13 DE Reg. 1452 (05/01/10)**

**15 DE Reg. 68 (07/01/11)**

## **3.0 Accounting for Students Not in Attendance the Last Ten Days in September**

- 3.1 For students not in attendance at school during the last 10 school days of September during which students are required to be in attendance, the following information shall be on file to substantiate their inclusion in the enrollment count:
  - 3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.
  - 3.1.2 Reason to believe that student will be returning to school prior to November ~~1st~~ 1.
  - 3.1.3 ~~Districts and Charter Schools~~ District and charter schools enrolling an intra-state transfer student during the last 10 school days of September during which students are required to be in attendance shall first determine if the student is currently obligated under a choice agreement or ~~first-year~~ first-year charter agreement before enrolling the student. If ~~said obligation an agreement~~ exists, "good cause" pursuant to **14 Del.C. §402 and §506(d)** respectively must be determined before the receiving ~~district/charter~~ district or charter school can enroll the student. ~~Districts~~ District and charter schools enrolling an in state transfer student during the last 10 school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by fax with a follow up letter to the previous ~~district/charter~~ district or charter school's unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district or charter school's enrollment and unit count. Copies of the fax transmittals and follow up letters shall be on file to substantiate the student's inclusion in the receiving district or charter school's enrollment and unit count.

**8 DE Reg. 1473 (04/01/05)**

**13 DE Reg. 1452 (05/01/10)**

## **4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count**

- 4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:

- 4.1.1 Delaware Adolescent Program, Inc. (DAPI):
  - 4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.
  - 4.1.1.2 Students shall receive the level of special education service as defined by the current IEP.
  - 4.1.1.3 If a student was enrolled the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three (3) traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In ~~school~~ School Credit Program (14 **DE Admin. Code** 915.2.4 915, subsection 2.4) and students in the Advanced Placement Program shall be enrolled and attend at least one (1) full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.
- 4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 4<sup>th</sup> 1.
- 4.1.4 Supportive Instruction (~~Homebound~~): (Homebound)
  - 4.1.4.1 Students receiving supportive instruction (homebound) pursuant to 14 **DE Admin. Code** 930 qualify for inclusion in the unit count.
  - 4.1.4.1 4.1.4.2A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a special education student if, in the child's placement immediately preceding the homebound placement, the child had an IEP in effect during the last week of school in September.
- 4.1.5 Department of Services for Children, Youth and Their Families or Department of Correction Facilities: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 4<sup>th</sup> 1.
- 4.1.6 Consortium Discipline Alternative Program:
  - 4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school pursuant to 14 **DE Admin. Code** 611.
  - 4.1.6.2 Students shall receive the level of special education service as defined by the current IEP.
  - 4.1.6.3 If a student was enrolled in the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.7 Except as provided in ~~section~~ Sections 5.0 and 7.0, all ~~pre-kindergarten~~ pre-kindergarten children with disabilities shall be counted in the Preschool ~~Pre-K-12~~ Pre-K to 12 Intensive Special Education (~~Intensive~~), (Intensive) or ~~Pre-K-12~~ Pre-K to 12 Complex Special Education (~~complex~~ Complex) units.
- 4.1.8 Students enrolled in residential facilities as of the last day of September. ~~These students~~ are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.
- 4.1.9 Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, ~~which most students take~~ taken by most students.
- 4.1.10 Special education services include students who have been ~~properly identified~~ found eligible for special education and related services under 14 DE Admin Code 925, Section 6.0 and have an IEP in effect during the last week of school in September. Students with disabilities must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 **DE Admin. Code** 925.
- 4.1.11 A maximum of 900 minutes of career and technical education time per week per student shall be credited toward the career and technical education unit determination. However, units shall be counted on the basis of 4 one (1) unit for each 30 students for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.

**8 DE Reg. 1473 (04/01/05)**

**13 DE Reg. 1452 (05/01/10)**

**15 DE Reg. 68 (07/01/11)**

**20 DE Reg. 799 (04/01/17)**

## **5.0 Programs and Situations that Do Not Qualify for the Unit Count**

- 5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:
  - 5.1.1 Students who have not attended school during the last 10 days of ~~September~~ September.
  - 5.1.2 Students who are enrolled in General Education Development (GED) ~~programs~~ programs.

- 5.1.3 Students who are enrolled in other than Department of Education approved ~~programs~~ programs.
- 5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the ~~District/Charter School~~ district or charter school unless that ~~District/Charter School~~ district or charter school operates the facility's instructional program; otherwise the student must be treated as a ~~withdrawal~~ withdrawal.
- 5.1.5 Students enrolled in a ~~Homeschool~~ homeschool as defined in 14 **Del.C.** §2703A.

8 DE Reg. 1473 (04/01/05)

13 DE Reg. 1452 (05/01/10)

## 6.0 Nontraditional High School Schedules

- 6.1 For unit count ~~purposes~~ purposes, if a career technical student in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a career technical student receives a minimum of 300 minutes of instruction per week.
  - 6.1.1 The following exemplifies a situation with the required minimum minutes and hours for a full time career technical student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the ~~year~~ year:

Fall and Spring Career Technical= 300 minutes per week  
 Spring and Fall Career Technical= 1500 minutes per week  
 1800 /2 = 900 minutes per week

- 6.2 For unit count ~~purposes~~ purposes, a district shall meet the following criteria to include selected students participating in a district's Distance Education/Twilight Program in the September 30<sup>th</sup> ~~unit count~~ count:
  - 6.2.1 For purposes of this section, a Distance Education/Twilight Program shall mean a district approved credit bearing program as follows:
    - 6.2.1.1 ~~6.2.1~~ Students must be currently suspended indefinitely or expelled by the district and enrolled in the district's alternative placement program; or
    - 6.2.2 ~~6.2.1.2~~ Students with disabilities enrolled in the district's Distance Education/Twilight Program for credit recovery only must be receiving services as decided upon by the IEP team and reflected in the IEP on-site; or
    - 6.2.3 ~~6.2.1.3~~ The inclusion of students with non-behavior issues and not special education in the unit count can only be included if there is not a break in educational service and they meet the entry criteria of the program and the additional criteria outlined in subsections 6.2.4 through 6.2.11;
    - 6.2.4 ~~6.2.2~~ Students and their ~~parent(s)/guardian(s)~~ parents or guardians must attend a mandatory program orientation session provided by the district staff. A sign in sheet and signed agreement will be kept on file and serve as sufficient evidence to meet this requirement.
    - 6.2.5 ~~6.2.3~~ Students must be enrolled for a minimum of three (3) courses.
    - 6.2.6 ~~6.2.4~~ Students must be required to complete a minimum number of hours of active engagement each week that they are enrolled in the program. The minimum number of hours should not be less than three (3) hours per week.
    - 6.2.7 ~~6.2.5~~ Students must be enrolled in eSchoolPLUS, the statewide pupil accounting system.
    - 6.2.8 ~~6.2.6~~ The district must keep records on file for the school year of the unit count on work completed and time spent working on the educational program for each enrolled student. The district must submit a sample to the Department of Education that may serve as sufficient evidence to meet this requirement.
    - 6.2.9 ~~6.2.7~~ The district must provide evidence of staff monitoring the progress of each student and providing feedback to participating students and their ~~parents/guardians~~ parents or guardians.
    - 6.2.10 ~~6.2.8~~ The district must show evidence on how progress of students enrolled in the program is incorporated into their academic record for meeting the district's graduation requirements.
    - 6.2.11 ~~6.2.9~~ An audit file containing information listed in subsection 6.2 and its subsections must be maintained on all students participating in the program and must be presented upon request to the Department of Education ~~and/or~~ or the State Auditor's Office.

8 DE Reg. 1473 (04/01/05)

13 DE Reg. 1452 (05/01/10)

## **7.0 Charter Schools**

Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any ~~Pre-K~~ Pre-K students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll ~~Pre-K~~ Pre-K students.

**8 DE Reg. 1473 (04/01/05)**

**15 DE Reg. 68 (07/01/11)**

## **8.0 Unit Adjustments After Audit**

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

**2 DE Reg. 382 (09/01/98)**

**5 DE Reg. 627 (09/01/01)**

**6 DE Reg. 74 (07/01/02)**

**8 DE Reg. 1473 (04/01/05)**

**13 DE Reg. 1452 (05/01/10)**

**15 DE Reg. 68 (07/01/11)**

**20 DE Reg. 799 (04/01/17)**

**25 DE Reg. 275 (09/01/21) (Final)**