

State Board of Education Procedures Manual

September 1998, with revisions through March 2019

March 21, 2019

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Legal Basis and Related Issues

Statutory Basis

The State Board exists pursuant to 14 Del.C. §104(a), which states the following:

(a) The State Board of Education, referred throughout this subchapter as "State Board," consists of 9 members who are citizens of this State and appointed as follows:

- (1) The Governor shall appoint, with Senate confirmation, 7 voting members.
 - a. Six of the 7 voting members are appointed for terms of up to 6 years, to ensure that no more than 2 members' terms expire in the same year. Each of the 6 voting members serves until that member's successor qualifies.
 - b. One of the 7 voting members is appointed as the President of the State Board and serves at the Governor's pleasure.
- (2) The Governor shall appoint annually 1 nonvoting member who is a former Delaware State Teacher of the Year and employed as a Delaware public school educator. The Teacher of the Year Advisory Board shall provide annually to the Governor a list of recommendations that includes at least 1 individual from each county in this State. This appointment does not require Senate confirmation.
- (3) The Governor shall appoint annually 1 nonvoting member who, at the time of appointment, is or will be in the next school year an eleventh or twelfth grade student at a public school in this State, with priority given to the selection of an individual who has demonstrated commitment to ensuring quality education for Delaware students. This appointment does not require Senate confirmation.

Board Structure

Membership

In accordance with 14 Del.C. §104(a), the State Board is composed of 7 voting members and 2 nonvoting members.

Appointment

In accordance with 14 Del.C. §104(a), the State Board voting members are appointed by the Governor and confirmed by the Senate.

The Governor shall appoint annually 1 nonvoting member who is a former State Teacher of the Year and employed as a Delaware public school educator. This appointment does not require Senate confirmation.

The Governor shall appoint annually 1 nonvoting member who, at the time of appointment, is or will be in the next school year an eleventh or twelfth grade student at a public school in this state. The appointment does not require Senate confirmation.

Qualifications

The qualifications for membership on the State Board of Education are specified in 14 Del. C. §104(d), which states the following:

(d) The members of the State Board must be of good character and fitness and are subject to the following qualifications: at least 2 members must have prior experience on a local board of education; no more than 4 members may belong to the same political party; an individual who has been a resident of this State for less than 5 years immediately preceding appointment is not eligible to be a member; an individual who is already subject to the State Board's authority may not be appointed to the State Board as a voting member.

A member is eligible for reappointment unless otherwise disqualified by this title. The members must meet the following geographic qualifications: the President and 1 other member may be appointed from the State at large; one member is a resident of the City of Wilmington; two members are residents of New Castle County outside the City of Wilmington; one member is a resident of Kent County; one member is a resident of Sussex County.

Terms

In accordance with 14 Del.C.§104(a). The President of the Board serves at the pleasure of the Governor. The terms for the remaining 6 voting members are appointed for terms up to 6 years to ensure that no more than 2 members' terms expire in the same year. Each of the 6 voting members serves until that member's successor qualifies.

Nonvoting members are appointed annually.

Compensation

The compensation of State Board members is specified in 14 Del. C. §104(h), which states the following:

(h) State Board members shall receive \$100 for each day's attendance at State Board meetings not to exceed 24 days' attendance in any 1 calendar year, and they shall be reimbursed for their actual travel and other necessary expenses incurred in attending meetings and transacting the business of the State Board.

Removal

The removal of State Board members is specified in 14 Del. C. §104(i), which states the following:

(j) The Governor may remove a State Board member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. A member is deemed in

neglect of duty if the member is absent from 3 consecutive, regular Board meetings or attends less than 50% of State Board meetings in a calendar year. The Governor may consider the member to have resigned, and may accept the member's resignation.

Powers, Duties and Responsibilities

The powers, duties, and responsibilities of the State Board of Education are delineated primarily in Delaware Code, Title 14. The general powers are specified in 14 Del.C. §104(b), which follows. However, the specific powers, duties, and responsibilities, as cited in the Code, are detailed more fully in Appendix A, where the specific citations and a brief paraphrase of the statutes are given.

- (1) Provide the Secretary of Education with advice regarding the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide advice on new initiatives which the Secretary may from time to time propose. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. The State Board may recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware.
- (2) Provide the Secretary of Education with advice on the Department's annual operating budget and capital budget requests.
- (3) Provide the Secretary of Education with advice in the preparation of the annual report specified in § 124 of this title, including recommendations for additional legislation and changes to existing legislation.
- (4) Provide the Secretary of Education with advice concerning the implementation of the student achievement and statewide assessment program specified in § 122(b)(4) of this title.
- (5) Decide, without expense to the parties concerned, certain types of controversies and disputes involving the administration of the public school system. The specific types of controversies and disputes appropriate for State Board resolution and the procedures for conducting hearings must be established by rules and regulations under § 121(a)(12) of this title.
- (6) Fix and establish the boundaries of school districts which may be doubtful or in dispute, or change district boundaries as provided in §§ 1025, 1026, and 1027 of this title.
- (7) Decide on all controversies involving rules and regulations of local boards of education under § 1058 of this title.
- (8) Subpoena witnesses and documents, administer and examine persons under oath, and appoint hearing officers as the State Board finds appropriate to conduct investigations and hearings under paragraphs (b)(5), (6), and (7) of this section.
- (9) Review decisions of the Secretary of Education, upon application for review, where specific provisions of this title provide for such review. The State Board may reverse the decision of the Secretary only if it decides, after consulting with legal counsel to the Department, that the Secretary's decision is contrary to a specific state

or federal law or regulation, not supported by substantial evidence, or arbitrary and capricious. In such cases, the State Board shall set forth in writing the legal basis for its conclusion.

(10) Approve Department rules and regulations that require State Board approval, under specific provisions of this title, before the rules and regulations are implemented.

(11) Approve rules and regulations governing institutions of postsecondary education that offer courses, programs of courses, or degrees within the State or by correspondence to residents of this State under § 121(a)(16) or § 122(b)(8) of this title.

(12) Any provision of Chapter 5 of this title to the contrary notwithstanding, decide appeals of decisions by the board of directors of a charter school to suspend or expel a student for disciplinary reasons. In deciding such cases, the State Board shall employ the standard of review under § 1058 of this title.

(13) Digitally record all of the State Board's regular monthly public board meetings and make the recordings available to the public on the Department of Education's website within 7 business days of each meeting. These recordings are not official board minutes, but are a means to enhance communication to the public and state legislators. The requirements of this section do not apply to meetings where recording equipment is not available, executive sessions, or other State Board meetings, such as workshops, retreats, and committee meetings. The Department of Education must provide a written transcript of a regular monthly public State Board meeting that is digitally recorded under this paragraph, or other reasonable accommodation, within 7 business days upon request of an individual with a hearing impairment.

(14) Under Chapter 33 of this title, serve as the State Board for Vocational-Technical Education (Career and Technical Education) and as the "eligible agency" and sole agency responsible for the supervision of administration of career and technical education for purposes of the federal Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (20 U.S.C. § 2301 et seq.), and any subsequent reauthorization thereof, and be subject to its requirements and any implementing regulations. As used in this title, "career and technical education" has the same meaning as "vocational-technical education."

Conduct of Members

Delaware Code, Title 29, Chapter 58 provides the laws regulating the conduct of officers and employees of the State of Delaware. Members of the State Board of Education are subject to certain of the provisions of that statute in that they are included in the definition of "state agency" 29 Del.C. §5804(11) and the definition of "honorary state official" 29 Del. C. §5804(6). For that reason, members of the Board are encouraged to become familiar with the provisions of that chapter. The following issues are of particular concern.

Conflicts of Interest

Section 5805 details the State's conflict of interest provisions, which apply to members of the State Board of Education. As applied to State Board that means that a member may not participate on behalf of the State in the review or dispositions of any matter pending before the State in which he or she has a personal or private interest 29

Del.C. §5805(a). There are also restrictions on representing another's interest §5805(b); against contracting with the State for goods or services §5805(c); or for representing or assisting private enterprise within two years after appointed service §5805(d). The code of conduct is further detailed in 29 Del.C. §5806.

Financial Disclosure

Subchapter II, Chapter 58, 29 Del.C., contains the requirements for financial disclosure of public officers. Because State Board of Education members are not included in the definition of "public officer" contained in §5812, it would appear that members are not required to file the annual disclosure reports mandated by this statute. However, nothing would prohibit a member who chose to do so from voluntarily completing such a report.

Dual Compensation

"There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State" 29 Del.C. §5821(a). The statute prohibits such individuals from receiving dual compensation for their time. Thus, State Board members, who are employed by the agencies and organizations specified, are encouraged to acquaint themselves with the specific provisions of this statute.

Organization

Officers

President

The Governor shall appoint, with Senate confirmation, the President of the Board who shall serve at his/her pleasure 14 Del.C. §104(a). The President is responsible for the integrity of the Board process. Integrity includes the efficient, orderly deliberation of Board issues and conduct of Board affairs.

The President has no authority over Department of Education activities. However, the President does have authority, subject to any applicable Board policy, to (1) call special meetings of the Board; (2) represent, in person or through a designee, Board positions and symbolize the Board image in public and at ceremonial events; and (3) decide mechanics of Board procedures. Subject to Board approval, the President (1) determines Board agendas and committee charges, and (2) makes Board appointments to committees. The President shall be an ex officio member of all committees, and shall have all privileges of membership but shall not be counted in the committee quorum.

The President shall have the same right to make or second motions and to vote on pending questions as any other member of the Board.

The President shall determine the appropriate action to take in reference to any uncertainty regarding any expense statement submitted by a member of the State Board.

The President shall be responsible for initiating the annual evaluation of the Board's

vision, mission, and goals.

Vice President

The Vice President shall be elected at the annual meeting held in July and shall serve until the next annual meeting or until a successor has been named 14 Del. C. §105(a). The Vice President shall assist the President in the duties of the President's office, as the President may direct, and shall preside at meetings and appoint members of committees during the President's absence. In the event of the President's death, resignation, incapacity, or disqualification, the Vice President shall act in place of the President in all respects until the vacancy shall be filled or the incapacity removed.

Executive Secretary

Pursuant to 14 Del. C. §104(c), the Secretary of Education, in addition to his or her other duties of office, shall serve as Executive Secretary of the State Board. The Executive Secretary is responsible for keeping of the minutes and other official records of the State Board, either in person or by an assistant.

Legal Counsel

Legal counsel to the State Board of Education is provided by the State Department of Justice and the Attorney General's Office in accordance with 29 Del.C. §2504. (In accordance with 29 Del.C. §2507, no agency board, or commission shall employ legal counsel except with approval of the Attorney General and Governor.)

Staff Assistance

Section 104(c), 14 Del.C., provides in part, that: "The Department, through the Secretary, shall provide reasonable staff support to assist the State Board in performing its duties under this title". The Department shall provide one staff member, an Executive Director. A majority of State Board members shall select the Executive Director. Once appointed, the Executive Director is an employee of the Department, subject to all of the Department's employment policies and procedures, and serves at the pleasure of the State Board. The Executive Director's duties are as follows: 1. Coordinate and implement all requirements for State Board meetings, including posting meeting notices and minutes. 2. Provide necessary reports and data regarding the State Board's responsibilities. 3. Support State Board members in necessary training and preparation to fulfill their roles and responsibilities. 4. Serve as the State Board's point of contact regarding matters specific to the State Board. 5. Produce and post minutes for each State Board meeting, including uploading digital recordings.

Committees

Subcommittees of the Board

The Board may, from time to time, establish temporary committees to help carry out its responsibilities. To preserve Board holism, committees will be used sparingly, only when other methods have been deemed inadequate or to improve efficiency of operations. Board committees, whether external or internal, may not speak for the Board. No more than three voting Board members may serve on a Board committee. Board members may express their interest and willingness to serve on any

committee. Subject to Board approval, the President will identify the charge of the committee and appoint a committee chair and members of the committee. It is expected that committees will report back to the full Board on a regular basis.

Special Board Committees

The Board may, from time to time, create special committees to advise the Board on specific issues, and shall vote to do so at a formal meeting of the Board. Such committees may include membership outside the Board or Department of Education.

Other Committees

Under Delaware Code, a member of the State Board must serve on each of the following committees:

- President of the Board serves as co-chair of the P-20 Council 14 Del.C. §107
- Representative from the State Board serves on the committee to review and make recommendations on the equalization formula 14 Del.C. §1707(i)
- President of the State Board serves ex-officio on the Board of Trustees of the University of Delaware 14 Del.C. §5105
- Representative from the State Board of Education serves ex-officio on the DPAS II Advisory Committee, appointed by the President of the State Board of Education 14 Del. C. §1275

Under Admin Code, a member of the State Board participates in the following:

- A member of the State Board may participate in the Charter School Accountability Committee (non-voting) 14 Admin Code, 275, 3.0
- A member of the State Board of Education shall participate on the panel of judges to recommend the State Teacher of the Year 14. Admin Code, 235, 2.0

Board members may also serve on external boards and committees at both the State and national level.

Committees Appointed by the Secretary of Education

In accordance with 14 Del. C. §103(a)(11), the Secretary must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval. The Board's view shall be expressed in the form of a vote on the proposed committee membership.

New State Board Member Orientation

The State Board of Education is responsible for the orientation of new members to the State Board. The Executive Director is responsible for the new member orientation materials and training. In addition, new members will participate in orientation sessions with the Board President and Vice-President and participate in new member training provided annually by the National Association of State Boards of Education (NASBE).

Board Member Development

The State Board of Education shall be responsible for its own development as a Board. This development shall take place through membership and participation in

organizations such as the National Association of State Boards of Education (NASBE), Delaware School Boards Association, the National School Boards Association, and other activities such as Board retreats, conferences, conventions, workshops, or committees.

Evaluation

The Board will monitor its own process and performance to ensure continuity of Board improvements, integrity of Board actions and progress toward Board goals. The Board will be accountable to the public for competent, conscientious, and effective accomplishment of its obligations as a Board.

The Board may seek the input from others regarding the effectiveness or impact of Board initiatives as part of the evaluation process, and may utilize the services of an independent consultant in doing so.

State Board Appropriations

Reimbursement to Board members for the normal mileage and incidental expenses are paid by the Department of Education from funds appropriated to the Board and budgeted for that purpose. Reimbursement requests for expenses for conferences or meetings outside the state must be initialed by the Board president. For other expenditures in excess of \$1,000, Board approval is required.

Board Member Conference Attendance

Conferences attended by Board members should focus on policy level decisions or provide information to inform policy makers. Content must be aligned to Board goals and initiatives. Conference attendance should be shared by all board members to the extent possible and must be approved by the President before any arrangements are made.

Meetings

Annual Meeting

Pursuant to 14 Del. C. §105(a), the annual meeting of the State Board of Education shall be held in Dover during the month of July. Election of the Vice President of the Board shall occur at this meeting.

Regular Meetings

Regular meetings of the State Board of Education are held once a month. Regular monthly meetings rotate locations among the 3 counties of this state, with each location to host, whenever possible, as agenda item this is relevant to the county in which it is being held, and rotating the locations among the 3 counties in such a way to facilitate parents', teachers', and other community members' attendance. The meetings are normally scheduled on the third Thursday of each month beginning at 5:00 p.m. but may vary, as need dictates.

Presentation Sessions

Meetings of the State Board of Education may be held to receive presentations on education initiatives, programs, and updates on the implementation of educational

programs; additionally they may hold meetings for in depth study, review, and discussion of an issue. Presentation Sessions are held at a time and place agreed upon by the Board.

Special Meetings

Special meetings of the State Board of Education may be held to address emergency issues, conduct hearings, develop goals, evaluate board operations, or for in depth study and review of an issue. Special meetings are held at a time and place agreed upon by the Board.

Executive Sessions

The State Board of Education may meet in executive session for the reasons specified in 29 Del.C. §10004. The Board must vote in a public meeting to go into executive session stating the purpose for the executive session.

Board Meeting Procedures

Public Notice of Meetings

As specified in 29 Del. C. §10004(e)(2) the State Board is required to give public notice of all meetings, including executive sessions closed to the public, at least 7 days prior to the meeting. The notice must include the agenda and the date, time, and place of the meeting. The notice is posted on the Statewide Calendar of Meetings & Events on the designated State of Delaware website approved by the Secretary of State, on the Department of Education website.

In addition, notices of all regular meetings are emailed to the district superintendents, state officials, the media, heads of state education organizations and other interested parties. Persons and organizations may request that they be placed on the mailing list by contacting the State Board of Education. Telephone 302/735-4010. Website: <http://www.destateboarded.k12.de.us>

Agenda Format - Order of Business

The order of business for regular meetings is as follows:

- I. Opening
 - A. Call to Order
 - B. Approval of Agenda
 - C. Approval of Minutes
- II- State Board Business (Public comment on Action items embedded as noticed)
 - A. Committee Reports/Discussions
 - B. Executive Director's Report
 - C. Budget Items
 - D. Other
- III. Secretary's Report, Review and Discussion
- IV. Presentations and Action Items (public comment embedded as noticed)
 - a. State Board of Education
 - b. Department of Education

- c. Charter Schools
- d. Professional Standards Board
- e. Other
- V. Formal Public Comment
- VI. Appeals and Reviews
- VII. Information Items

Agenda Preparation and Dissemination

Items included on the Board's agenda for regular meetings are recommended jointly by the Executive Director of the State Board and the Cabinet of the Department of Education. Any member of the Board may request that an item be placed on the agenda. The final agenda is subject to the approval of the Board President.

Agendas with all background materials are distributed to Board members at least 5 days prior to the meeting. Board agendas are also distributed via email to district and state officials and to others on a request basis.

The State Board Agenda is also posted on the Statewide Calendar of Meetings & Events on the designated State of Delaware website approved by the Secretary of State and on the State Board of Education website prior to the meeting at www.destateboarded.k12.de.us

Rules of Order

The Board uses the rules of parliamentary procedure to conduct its meetings, but it is not strictly bound by Robert's Rules of Order. The general conduct of the meeting is determined by the Board President with input from other board members and advice from the Board's legal counsel.

Quorum

Four (4) voting members of the State Board must be present to conduct the business of the Board 14 Del.C. §105(a).

Voting Method

Votes by the State Board are taken by voice. When the vote is not a unanimous one, a roll call vote is taken in alphabetical order with the President voting last. All questions before the Board must be approved by a majority (4) of the members of the whole Board.

Minutes

As prescribed in 29 Del.C. §10004(f), the State Board maintains minutes of all its meetings including executive sessions. The minutes must include the names of board members present and a record, by individual member, of all votes taken and action agreed upon. The minutes, along with the printed agenda and its backup materials, shall constitute the official record of the Board.

Official Board Minutes are posted on the Statewide Calendar of Meetings & Events on the State of Delaware website approved by the Secretary of State and on the Department of Education website within five days of their approval at the subsequent monthly meeting of the Board.

Public Participation at Board Meetings

Individuals and groups may address the Board at its regular meetings as follows:

An individual or group may request time on the Board's agenda to make a formal presentation to the Board. Such a request should be in writing using the request form outlined on the State Board of Education's website, and be submitted to the President of the State Board of Education and the Executive Director. The decision to include the presentation and the time frame for the presentation will be made by the Board President.

Individuals and/or groups may provide public comment on each agenda item before voting on the agenda item and in proximately to the time at which the State Board discusses the agenda item, subject to the limitations below.

Additionally, time will be allocated after presentation and action items for individuals or groups to address the State Board on general issues. Persons wishing to make general public comment should sign up on the appropriate form prior to the completion of the previous item on the agenda. Each group should choose one representative to speak and comments should be limited to two minutes for individuals and three minutes for agencies or organizations. Speakers will be recognized by the Board President in the order their names appear. If a large number of people sign up to speak, the Board President may at his/her discretion, limit the number of persons allowed to speak as well as designate the appropriate time for comments.

Limitations: The State Board will accept public comment on agenda items for discussion and action with the exception of action items on the agenda that have a formal comment period or defined discrete identified records which have already closed prior to the date of the State Board action such as Charter School applications or formal reviews, Amendments to Department of Education and Professional Standards Board regulations and student appeals. Individuals and groups are encouraged to use the procedures in place for providing comment on some of those types of matters, such as the public hearings for Charter School applications and the comment period and procedure identified with the publication of proposed regulations. Some matters, such as student disciplinary appeals, are not subject to public comment due to the private and confidential nature of those matters.

Normally the Board will not respond to questions or comments at the meeting but may respond in writing to each person or group.

Recording of Board Meetings

As required by 14 Del. C. §104(b)(13), the regular monthly meetings of the State Board are recorded. The recording is available to the public on the Department of Education's website within seven business days of each regular meeting. These recordings are not the official minutes of the State Board meetings.

Appeals and Reviews

The State Board of Education has several responsibilities under the Code to hear appeals and to review decisions of the Secretary of Education. Those responsibilities are outlined in 14 Del.C. §104(b)(5), (b)(6), (b)(7), (b)(9), and (b)(12). The types of controversies and disputes appropriate for Board resolution and the procedures for conducting such hearings are contained in Appendix B.

Policy Development

One of the primary functions of the State Board of Education is to assist the Secretary of Education in the development of policy, provide guidance on initiatives, and recommend educational policy initiatives that would improve public education in Delaware. Subsection 104(b)(1), 14 Delaware Code states:

(1) Provide the Secretary of Education with advice regarding the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide advice on new initiatives, which the Secretary may from time to propose. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. The State Board may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware.

In order to meet that responsibility, the State Board has set aside time at each regular meeting for discussions of State Board initiatives (Section II) the Secretary of Education's Report (Section III), presentations from educational groups, the Department of Education and for Board action on policy, rules, and regulations (Section IV).

It is the expectation of the Board that the Secretary and the Department of Education will use those opportunities as well as regularly working with the Board's staff to obtain advice and counsel from the board and be clear on the positions and priorities of the Board as a whole in keeping with the spirit of the statute quoted above.

The Board may discuss positions on public education issues, initiatives, focus areas, and policy priorities, as well as published or potential legislative items at public meetings and allow comment from the public on such positions. After discussion on these items, the Board will take action to approve its public education positions at a public meeting. Should additions or revisions need to be made to the positions the board may call a special meeting to discuss and take such action.

Appendix A

Powers, Duties, and Responsibilities of the State Board

The following is a list of the powers, duties, and responsibilities of the State Board of Education. Each chapter of the Title 14 of the Delaware Code that details a role or responsibility for the State Board is listed below. A general description of the powers, duties, and responsibilities can also be found in 14 Delaware Code, §104 and 105, which is quoted in its entirety earlier in the procedures manual.

Chapter 1 – Department of Education

§103 (a) (10) The Secretary may in consultation with the State Board of Education prepare a proposed annual operating and capital improvement budget for the Department and state support of the public school system to be submitted for the consideration to the Governor and General Assembly.

§103 (a) (11) The Secretary may appoint a committee or advisory entities to assist the Secretary in performing the duties of the Secretary's office. When the committee or entity is formed to assist in developing policies or regulations the adoption of which must be approved by the State Board, the Secretary shall consult with the State Board regarding the composition of such a committee or entity.

§104(b)

(1) Provide the Secretary of Education with advice:

- in the development of policy where rule and regulation making is entrusted jointly to the Secretary and State Board
- on new initiatives which are proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board.
- on certain initiatives that the SBE believes the Secretary should undertake to improve public education in Delaware

(2) Provide the Secretary with advice on the DOE's annual operating budget and capital budget requests.

(3) Provide the Secretary with advice in preparation of the annual report in §124, including recommendations for additional legislation and for changes to existing legislation

(4) Provide the Secretary with advice concerning the implementation of the student achievement and statewide assessment program specified in § 122(b)(4)

(5) Decide certain types of controversies and disputes involving the

administration of the public school system. These types of controversies and disputes and the rules and regulations to decide such controversies and disputes are established pursuant to §121(12)

(6) Fix and establish the boundaries of school districts which may be doubtful or in dispute, or change the district boundaries as provided in §1025 – 1027

(7) Decide all controversies involving rules and regulations of local boards of education pursuant to §1058

(8) Subpoena witnesses, and documents, administer and examine persons under oath, and appoint hearing officers to conduct investigations and hearings under paragraphs b(5), (6), and (7) of this section.

(9) Review decisions of the Secretary of Education, upon application for review, where specific provisions of this title provide for such review. The State Board may ~~can~~ reverse the decision of the Secretary only if it decides, after consulting with legal counsel to the Department, that the Secretary's decision is contrary to a specific state or federal law or regulation, not supported by substantial evidence, arbitrary and capricious. In such cases, the State Board shall set forth in writing the legal basis for its conclusion.

10) Approve Department rules and regulations that require State Board approval, under specific provisions of this title, before the rules and regulations are implemented.

11) Approve rules and regulations governing institutions of postsecondary education that offer courses, programs of courses, or degrees within the State or by correspondence to residents of the State pursuant to §121(a)(16) and/or §122(b)(8)

12) Decide appeals of decisions ~~of~~ by the board of directors of a charter school to suspend or expel a student for disciplinary reasons. In deciding such cases, the State Board shall employ ~~in~~ the same standard of review under §1058

13) Digitally record all of the State Board's regular monthly public board meetings and make the recordings available to the public on the Department of Education's website within 7 business days of each meeting. These recordings are not official board minutes, but are a means to enhance communication to the public and state legislators. The requirements of this section do not apply to meetings where recording equipment is not available, executive sessions, or other State Board meetings, such as workshops, retreats, and committee meetings. The Department of Education must provide a written transcript of a regular monthly public State Board meeting that is digitally recorded under this paragraph, or other reasonable accommodation, within 7 business days upon request of an individual with a hearing impairment.

14) Serve as the State Board for Vocational-Technical Education (Career and

Technical Education) and as the “eligible agency” and sole agency responsible for the supervision and administration of career and technical education for purposes of the federal Carl D. Perkins Act of 2006 and any subsequent reauthorization thereof, and be subject to its requirements and any implementing regulations. As used in this title, “career and technical education” has the same meaning as “vocational-technical education.”

§106 State Board shall participate in meetings of the Advisory Board to the Secretary of Education.

§107 The President of the State Board shall serve as the co-chair of the P-20 Council

§122 Rules and Regulations – approval of both the Secretary and State Board

- Governing the issuance of certificates and diplomas for public schools in the state.
- Minimal promotion requirements for students to pass from one level to another
- Determining minimum courses of study for all public schools
- Components of health instructional programs including physiology, hygiene, drugs, and alcohol effects on the human system
- Licensing of any higher education institution, not incorporated in the state, that offers courses in the state or to residents of the states through correspondence
- Excusal of educational hour requirements set forth in §1049(a)(1)
- Enforcement procedures and guidelines for school attendance laws
- Guidelines for driver education instruction during summer months
- Guidelines governing the conduct of interscholastic athletics through DIAA
- Guidelines of health and wellness programs for grades K-12
- Guidelines of mandatory drug and alcohol education programs in grades K-12
- Providing for the operation of adult basic education, family literacy programs, prison education, apprenticeship programs, and adult high school
- Governance for longitudinal data system, including collection, use, maintenance, disclosure, and sharing of educational records and data within
- Requirements related to administration and reimbursement of Educator Licensure fee for an educator’s first Delaware license
- Rules identifying “military-connected youth”

The State Board shall be advised of any waiver of a regulation, which required SBE approval, granted to a local board of education by the Secretary. The State Board may deny such waiver by action taken within 30 days of the waiver or by the next regularly scheduled meeting.

§124A Approve rules and regulations related to Education profile reports, consult with the Secretary regarding additional information to be included on such reports outside of the minimum requirements in statute

§127 Rules and regulations related to driver’s education instruction in non-public schools

§151 State Assessment system – Secretary ~~must~~ shall consult with the State Board in the design and implementation of the assessment system; State Board must approve rules and regulations related to statewide assessment of student achievement and assessment of educational attainments in the public school system

§152 State Board shall approve Department rules and regulations to award a regular State of Delaware High School Diploma relative to high school content standards, and achievement levels on assessments aligned to those standards. The State Board shall approve Department rules and regulations relative to the Diploma of Alternate Achievement Standards.

§153 Approve any alternative assessment administered to determine if students have met state achievement levels for graduation or promotion

§154, 155 Approve rules and regulations to implement school , school district, and school board accountability requirements consistent with ESEA

§183 – Approve rules and regulations developed through the Office of Higher Education

Chapter 2- The Public School System

§203 Approval of special programs for students who need programs not provided in regular classes or schools

§205 Approval of the creation of additional vocational-technical centers or schools

§223 Approval of Neighborhood School Plans

Chapter 3 – Delaware Interscholastic Athletic Association (DIAA)

§312 Responsibility to hear appeals of decisions of the DIAA Board related to controversies involving rules and regulations of DIAA

Chapter 5 – Charter Schools

§504A Approve rules and regulations with respect to real property acquired by charter schools using state funds

§508 Local school districts and charter school shall cooperate to ensure that the implementation of this chapter does not result in inefficient use of state appropriations for public school transportation and the State Board shall exercise its authority to approve bus routes so as to avoid such waste

§511 Whenever a charter school seeks a charter from the Department as approving

authority, such approval shall require the assent of both the Secretary and the State Board, as shall any action pursuant to §§ 515 and 516 of this title.

§511 Whenever approval of a charter school requires the assent of the State Board, as set forth in subsection (c) of this section, the State Board may, in addition to approving or disapproving the decision of the Secretary, place or modify conditions on the approval to address considerations of impact, consistent with the requirements of paragraph (b)(4) of this section.

§513 The Department of Education, the State Board, and the approving authority may conduct financial, programmatic, or compliance reviews of a charter school. In cooperation with the Department, the approving authority shall conduct such reviews no less often than every 3 years.

§515 Oversight, formal review, and revocation of a charter school

Chapter 8 – School Shared Decision Making

§803 – Approve guidelines for district transition plans

§805 – Approve guidelines for school transition plans

§806 – Approve guidelines for school grants supporting shared decision making and improvement

Chapter 10 – Reorganization of School Districts

§1025, §1026, §1027, §1028, §1065, (§1924, and §1925) Reorganization of School Districts The State Board of Education determines and establishes appropriate reorganized school districts through consolidation, division, or a combination of the two as well as establishing tax rates and tax districts and fixing disputed or doubtful boundaries for the same.

§1054 Vacancies on Local School Boards The State Board of Education appoints interim members to a local board of education in the event a majority or the entire membership vacates the seats at the same time. The Board may also set the date for a special election to fill the vacancies.

§1058 Deciding Controversies Concerning Local Rules and Regulations. The State Board of Education shall decide controversies involving rules and regulations of local school boards. Rules and regulations regarding such hearings by the Board are contained in Appendix B.

§1066A(b) Nominating Districts for the Brandywine, Christina, Colonial, and Red Clay School Districts shall be drawn by the State Election Commissioner and approved by the County Board of Election and the State Board of Education.

Chapter 11-Recruiting and Training of Professional Educators for Critical Curricular Areas

§1101 The State Board of Education must approve areas, which are to be designated as critical curriculum areas

§1103 Approve rules and regulations for the implementation of programs authorized by Chapter 11.

§1104 Approve academic year programs to meet certification requirements for a teacher in a critical curricular area, which may include reimbursement for tuition, textbooks or travel

§1105 Approve summer in-service programs for certification of teachers in critical curricular areas

§1106, §1108 Approve Teacher Scholarship Loan Programs and Student Loan Programs for training programs for teachers in critical curricular areas §1106, §1108

§1107 Approve program of training for persons who can present graduate or undergraduate degrees at or above the level of bachelor and who are interested in teaching in a field that has been declared a critical curricular area, but who lack the certificate requirements for teaching in that field

Chapter 12- Educator Licensure, Certification, Evaluation, Professional Development, and Preparation Programs

§1203 The State Board of Education must approve rules and regulations promulgated by the Professional Standards Board before they become effective ~~§1203~~. Such rules and regulations cover a number of areas including the following:

1. Qualifications for Licensure and certification of educators in the public schools §1201, §1210, §1210A, §1211, §1212, §1213, §1214, §1220, §1221, §1260, and §1261.
2. Establishment of a special institute for teacher certification §1250.
3. Regarding alternative routes for teacher certification §1260.

§1270 Approve Rules and Regulations related to the Delaware Performance Appraisal System

§1275 Serve as a non-voting, ex-officio member of the DPAS Advisory Committee

Chapter 13- Salaries and Working Conditions of School Employees

§1305(h) The State Board of Education must approve a reduction in the number of school hours and the length of full workdays for employees of the school system

Approval of Rules and Regulations of the Professional Standards Board

1. §1305(k) Regarding professional development activities that qualify for Skills and Knowledge Salary Supplements
2. §1305(l) Regarding authorization of stipends for employees who have achieved certification from the National Board for Professional Teaching Standards or an

- equivalent program
3. §1305(n) Regarding activities that qualify for Additional Responsibility Salary Supplements

Approve Department Rules and Regulations:

1. §1307(2) Concerning the employment of school principals
2. §1310(b) Regarding the employment of school nurses
3. §1332(d) Establishing parent advisory committees, a peer review committee, a human rights committee, and an autistic program monitoring board §1332(d).

§1321(e)(11), §1321(e)(12), §1321(e)(15)b, §1321(e)(16), §1332(d), and §1332(e). The State Board of Education may review decisions of the Department and Secretary of Education regarding district requests to elect cash options in lieu of receiving salary funds from the State

§1321(e) The State Board of Education must approve the designation of a district to serve as administrative agency for the deaf-blind program, and to administer a program for the physically impaired.

§1332 The State Board shall approve the designation of a school district or other entity to administer the statewide program for students with an educational classification of autism spectrum disorder.

§1331(b) The State Board of Education must approve standards prescribed for interpreter/tutors.

§1332(e).The State Board of Education may review decisions of the Department and Secretary of Education regarding requests to purchase specialized services instead of hiring staff to provide the education and training in the autistic program.

Chapter 16- Comprehensive School Discipline Improvement Program

§1606 The Department of Education is authorized to waive certain rules and regulations in the implementation of school discipline programs. The State Board of Education may deny the waiver within a fixed period of time.

Chapter 17- State Appropriations

§1703(o) and §1716A(h).The State Board of Education may review decisions on the use of special education funds that a district seeks to use in another way if an objection is made to the Department's decision.

§203, §1703(d), §1703(k), §1703(l), §1703(m), §1703(n) and §1721. The State Board of Education must approve the establishment of schools, classes, programs and regulations for Children with disabilities.

§1716A(c) and §1716A(d). Approve Department Rules and regulations on unit funding for children with disabilities.

§1707 A member of the State Board of Education shall participate on a committee to annually review and make recommendations on the equalization formula.

Chapter 27- School Attendance

§2705(b) The State Board of Education decides appeals of disputed decisions regarding exemptions from compulsory attendance requirements.

Chapter 31- Exceptional Children

§3110 Regarding the creation and operation of programs designed to serve exceptional students, primarily children with disabilities, but also includes gifted and talented children.

The State Board of Education may review a variety of decisions made by the Department regarding services to children with disabilities (numerous citations in Chapter 31).

§3110 Approval of community-based residential units for children with autism operated by a school district. Approval of educational requirements for the residential care specialists.

§3132 Approve procedures for educational surrogate parents and educational representatives.

Chapter 33- Vocational Education and Vocational Rehabilitation

§3310 State Board is Eligible Agency and sole agency responsible for the supervision and administration of the federal Carl D. Perkins CTE Act

Chapter 41- Regulatory Provisions

§4103. The State Board must approve the extent and content of the instruction in the public schools in the Constitution of the United States, the Constitution and government of Delaware and the free enterprise system.

§4116 Approve educational programming related to drug and alcohol abuse for grades K-12

§4139 Approve Computer Science standards. Approve guidelines addressing the standards and content requirements for courses that satisfy the graduation requirements.

§4166 Approve health standards.

Chapter 51- University of Delaware, Charter

§5105 State Board President serves as an ex-officio member of the University of Delaware Board of Trustees

Chapter 82- Educational Compacts

§8212. The State Board of Education must approve interstate agreements on the qualifications of educational personnel entered into by the Secretary of Education.

14 Delaware Administrative Code – Regulations that require the Approval of the State Board of Education

[101 State Assessment System](#)

[103 Accountability for Schools, Districts and the State](#)

[104 Education Profiles for Schools, Districts, and the State](#)

[106A Teacher Appraisal Process Delaware Performance Appraisal System \(DPAS II\) Revised](#)

[107A Specialist Appraisal Process Delaware Performance Appraisal System \(DPAS II\) Revised](#)

[108A Administrator Appraisal Process Delaware Performance Appraisal System \(DPAS II\) Revised](#)

[201 District and School Shared Decision Making](#)

[230 Promotion](#)

[240 Recruiting and Training of Professional Educators for Critical Curricular Areas](#)

[275 Charter Schools](#)

[286 Application Fee For Educator Licensure](#)

[292 Post Secondary Institutions and Degree Granting Institutions of Higher Education](#)

[294 Data Governance](#)

[501 State Content Standards](#)

[503 Instructional Program Requirements](#)

[505 High School Graduation Requirements and Diplomas](#)

[506 Policies for Dual Enrollment and Awarding Dual Credit](#)

[525 Requirements for Career and Technical Education Programs](#)

[540 Driver Education](#)

[545 K to 12 School Counseling Programs](#)

[612 Possession, Use or Distribution of Drugs and Alcohol](#)

[615 School Attendance](#)

[764 Credentials for an Interpreter Tutor for the Deaf/Hard of Hearing](#)

[765 Credentials for a Resident Advisor in the Statewide Programs for Autism and for the Deaf/Hard of Hearing](#)

[851 K to 12 Comprehensive Health Education Program](#)

[910 Delaware Requirements for issuance of the GED® Test Credential](#)

[915 James H. Groves High School](#)

[917 Accelerated Academic Programs](#)

[922 Children with Disabilities Subpart A, Purposes and Definitions](#)

[923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies](#)

[924 Children with Disabilities Subpart C Local Educational Agency \(LEA\) Eligibility](#)

[925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs](#)

[926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children](#)

[927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information](#)

[928 Children with Disabilities Subpart G Use and Administration of Funds](#)

[929 Children with Disabilities Subpart I Special Programs and Unique Educational Alternatives](#)

[932 Military-Connected Youth](#)

[1006 Delaware Interscholastic Athletic Association \(DIAA\)](#)

[1007 DIAA Sportsmanship](#)

[1008 DIAA Junior High and Middle School Interscholastic Athletics](#)

[1009 DIAA High School Interscholastic Athletics](#)

[1150 School Transportation](#)

[1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators](#)

[1502 Graduate Level Salary Increments](#)

[1503 Educator Mentoring](#)

[1505 Standard Certificate](#)

[1506 Emergency Certificate](#)

[1507 Alternative Routes to Teacher Licensure and Certification Program](#)

[1508 Special Institute for Teacher Licensure and Certification](#)

[1509 Meritorious New Teacher Candidate Designation](#)

[1510 Issuance of Initial License](#)

[1511 Issuance and Renewal of Continuing License](#)

[1512 Issuance and Renewal of Advanced License](#)

[1513 Denial of Licenses](#)

[1514 Revocation, Limitation, or Suspension of Licenses](#)

[1517 Paraeducator Permit](#)

[1520 Early Childhood Teacher](#)
[1521 Elementary Teacher](#)
[1522 Elementary School Counselor](#)
[1531 Middle Level English Language Arts Teacher](#)
[1532 Middle Level Mathematics Teacher](#)
[1533 Middle Level Science Teacher](#)
[1534 Middle Level Social Studies Teacher](#)
[1539 Health Education Teacher](#)
[1540 Secondary English Language Arts Teacher](#)
[1542 Secondary Mathematics Teacher](#)
[1543 Secondary Science Teacher](#)
[1544 Secondary Social Studies Teacher](#)
[1545 Secondary School Counselor](#)
[1549 Dance Teacher](#)
[1550 AgriScience Teacher](#)
[1551 Business Education Teacher](#)
[1553 Driver Education and Traffic Safety Education Teacher](#)
[1554 Family and Consumer Sciences Teacher](#)
[1555 Marketing Education Teacher](#)
[1556 School To Work Transition Teacher](#)
[1557 Technology Education Teacher](#)
[1558 Theater Teacher](#)
[1559 Skilled and Technical Sciences Teacher](#)
[1560 Art Teacher](#)
[1561 Bilingual Teacher](#)
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[1571 Special Education Teacher of Students with Disabilities](#)
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[1590 Delaware Administrator Standards](#)
[1591 School Principal and Assistant School Principal](#)
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[1595 Certification Programs for Leaders in Education](#)
[1597 Delaware Professional Teaching Standards](#)
[1598 Delaware Professional Development Standards](#)
[1599 Delaware Educational Technology Standards](#)

Appendix B
HEARING PROCEDURES AND RULES

RULE MAKING HISTORY: Initial adoption date September 1998
Revised 2000
Revised date 10-1-01 (see Register of Regulations at www.legis.state.de.us/onlinepublications)
Revised date 11-1-04 (see Register of Regulations at www.legis.state.de.us/onlinepublications)
[NEXT REVISION DATE TO BE ADDED]

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1.0 **Scope and Purpose of Rules**

The State Board of Education (“the State Board”) is authorized by several sections of the Education Code (Title 14 of the **Delaware Code**) to adopt or approve rules and regulations, resolve disputes, hear appeals, and review decisions of the Secretary of Education. The State Board is also governed by the Administrative Procedures Act (Chapter 101 of Title 29 of the **Delaware Code**), except where specifically exempted by other law.

These Hearing Procedures and Rules (“Rules”) shall govern the practice and procedure before the State Board in hearings, appeals, and regulatory proceedings.

2.1 **General Provisions**

2.2 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the State Board’s statutory responsibilities and with the Administrative Procedures Act.

2.3 The State Board may for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.

2.4 Whether a proceeding constitutes an evidentiary hearing, an appeal or regulatory action shall be decided by the State Board on the basis of the applicable laws. A party’s designation of the proceeding shall not be controlling on the State Board or binding on the party.

2.5 The State Board may appoint a representative to act as a hearing officer for any proceeding before the State Board. Except as otherwise specifically provided, the duties imposed, and the authority provided, to the State Board by these Rules shall also extend to its hearing officers.

2.6 Notwithstanding any part of these Rules to the contrary, the State Board, or its counsel, designee or hearing officer, may conduct pre-hearing conferences and teleconferences to clarify issues, confer interim relief, specify procedures, limit the time available to present evidence and argument, and otherwise expedite the proceedings.

2.7 The State Board may administer oaths, issue subpoenas, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

2.8 The State Board may elect to conduct joint hearings with the Department of

Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.

- 2.9 Any party to a proceeding before the State Board may be represented by counsel. An attorney representing a party in a proceeding before the State Board shall notify the Executive Secretary of the State Board (“Executive Secretary”) of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the State Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.
- 2.10 The State Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the State Board shall be submitted to the Executive Secretary in writing at least three (3) business days before the date scheduled for the proceeding. The President of the State Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.
- 2.11 A copy of any document filed with or submitted to the State Board or its hearing officer shall be provided to all other parties to the proceeding, or to their legal counsel. Where a local or other school board participates in a proceeding, copies of filed documents shall be directed to the executive secretary of the board, unless that board appoints a different representative for such purpose.
- 2.12 For purposes of these Rules, unless otherwise specified “day” shall mean a calendar day. “Business day” shall mean weekdays Monday through Friday, except when those days fall on a legal holiday.

3.1 **De Novo and Other Evidentiary Hearings**

- 3.2 Section 3.0 governs proceedings where a statute or regulation provides the right to an original or to a de novo hearing before the State Board to decide a specific controversy or dispute.

3.3 Petitions for Hearing

- 3.3.1 A party may initiate a hearing on matters within the State Board’s jurisdiction by mailing or delivering a petition for hearing to the

Executive Secretary. The petition shall be in writing and shall be signed by the party making the request (or by the party’s authorized representative). It shall set forth the grounds for the action in

reasonable detail and shall identify the source of the State Board's authority to decide the matter. Petitions may be delivered to the Executive Secretary by facsimile, but not by E-mail.

- 3.3.2 The petition for hearing shall be filed within a reasonable time after the controversy arises, but in no event shall a petition be filed more than thirty (30) days after the petitioning party's receipt of notice that official action has been taken by an authorized person, organization, board or agency.
- 3.3.3 A copy of the petition for hearing shall be delivered to all other parties to the proceeding at the time it is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board or its hearing officer shall, at the time of filing, also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.
- 3.3.4 Upon receipt of an adequately detailed petition for hearing, the Executive Secretary shall place the matter on the agenda of the next State Board meeting. At the next meeting, the State Board will either assign the matter to a hearing officer or determine a hearing date for the matter. The parties shall be given at least twenty (20) days notice of the hearing date.
- 3.3.5 A party shall be deemed to have consented to an informal hearing (as that term is used in Section 10123 of the Administrative Procedures Act) unless the party notifies the Executive Secretary in writing that a formal public hearing is required. Such notice must be delivered to the Executive Secretary within three (3) days of the receipt of the notice scheduling the hearing.

3.4 Record of Prior Proceedings

- 3.4.1 If proceedings were previously held on the matters complained of in the petition, the agency which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Secretary.
- 3.4.2 The record shall contain any written decision, a certified copy of any rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a certified, verbatim transcript of the proceedings conducted by the agency below and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

- 3.4.3 The record shall be filed with the Executive Secretary within ten

(10) days of the date the Executive Secretary notifies the agency that the petition has been filed, unless directed otherwise. A copy of the record shall be sent to the petitioner when it is submitted to the Executive Secretary.

3.5 Record Review

- 3.5.1 If a hearing was previously held on the matters complained of in the petition, the parties to the proceeding before the State Board may agree to submit the matter to the State Board or its hearing officer on the existing record without the presentation of additional evidence.
- 3.5.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The parties' written statements shall be submitted according to a schedule determined by the State Board.
- 3.5.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument by notifying the Executive Secretary in writing at least ten (10) days before the date written statements are due. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.
- 3.5.4 If the parties agree to submit the matter for decision on the existing record, the State Board's decision shall be based on the existing record, the written statements and oral argument, if any.

3.6 Evidentiary hearings

- 3.6.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the State Board or its hearing officer otherwise decide to receive additional evidence.
- 3.6.2 The hearing will proceed with the petitioner first presenting its evidence and case. The responding party may then present its case.

The petitioner will then have an opportunity to present rebuttal evidence.
- 3.6.3 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the State Board or hearing officer.

3.6.4 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the State Board or its hearing officer.

3.7 Evidence

3.7.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

3.7.2 The State Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.

3.7.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.7.4 Any document introduced into evidence at the hearing shall be marked by the State Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the State Board members present for the hearing unless otherwise directed.

3.7.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Secretary in writing at least fifteen (15) days before the date of the hearing, unless additional time is allowed for good cause. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

3.8 Creation of Record before State Board

3.8.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing or oral argument. The requesting party shall be

liable for the expense of the reporter and of any transcript the party requests.

3.8.2 If a stenographic reporter is not present at the hearing or argument, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing.

3.9 State Board Decision

- 3.9.1 When the State Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the State Board.
- 3.9.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within a reasonable time of the conclusion of the proceedings before the hearing officer.
- 3.9.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order.
- 3.9.4 To the extent possible, the State Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.
- 3.9.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

4.1 Appeals

- 4.2 Section 4.0 governs proceedings where a statute or regulation provides the right to appeal to the State Board a decision which resolved a specific controversy or dispute. These proceedings include, but are not limited to, appeals of school district decisions involving rules and regulations of the school board (14 **Del.C.** §1058') and appeals of decisions of the Delaware

Interscholastic Athletic Association (DIAA) (14 **Del.C.** §312) and appeals of decisions by the board of directors of a charter school to suspend or expel a student for disciplinary reasons (14 **Del.C.** §104(b)(12)).

Note ': The State Board of Education has held that the local boards of education are not subject to the *Administrative procedures Act* while conducting disciplinary proceedings. See *R.T. v. Sussex County Vocational-Technical School District Board o Education*, SBE No.99-12 (February 17, 2000) and *M.B. v. Sussex Technical School District Board of Education*, SBE No.-03 (April 3, 2000)

- 4.3 For purposes of Section 4.0:
 - 4.3.1 “Party” shall mean any person or organization who participated in the proceedings before the agency which rendered the decision being appealed.
 - 4.3.2 “Decision” shall mean the official action taken to resolve the dispute presented below and shall include the factual findings, the rule involved and the agency’s conclusion. “Decision” shall not include policy making or the adoption of rules and regulations of future applicability.
- 4.4 For purposes of determining the State Board’s jurisdiction under Section 1058 of the Education Code, “controversies involving the rules and regulations of the school board” shall mean the presentation before the local school board of a dispute involving the application of rules and regulations of the local board in a particular factual context. Certain decisions involving the application of rules and regulations of the local board may not be appealed to the State Board, including:
 - 4.4.1 Decisions involving student disciplinary actions where a student is suspended from school for ten (10) or fewer days, except where a request to expunge the disciplinary action from the student’s record has been denied by the local board.
 - 4.4.2 Personnel actions which are covered under a collective bargaining agreement or are otherwise subject to adjudication by the Public Employment Relations Board.
 - 4.4.3 Termination of employees conducted in accordance with Chapter 14 of the Education Code.
 - 4.4.4 Termination or non-renewal of public school administrators and confidential employees, as those terms are defined in Section 4002 of the Education Code, at the conclusion of an employment contract.
- 4.5 Decisions for the Board of Directors of a charter school to suspend a student from school for ten (10) or fewer days may not be appealed to the State Board, except where a request to expunge the disciplinary action from the student’s record has been denied by the board of directors.
- 4.6 Notice of appeal
 - 4.6.1 A party may initiate an appeal by mailing or delivering a notice of appeal to the Executive Secretary. The notice shall be in writing, shall be signed by the party making the request (or by the party’s authorized

representative. Notices of Appeal may be delivered to the Executive secretary by facsimile, but not by E-mail.

- 4.6.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.
- 4.6.3 A notice of appeal form is included at the end of these Rules. People filing appeals are not required to use the form, but may find it helpful to do so.
- 4.6.4 The notice of appeal must be postmarked by or delivered to the Executive Secretary within thirty (30) days of the day the party initiating the appeal receives the written decision from which the appeal is taken.
- 4.6.5 A copy of the notice of appeal shall be mailed or delivered to the agency which made the decision at the same time the original notice of appeal is mailed or delivered to the Executive Secretary. A copy of any other paper or document filed with the State Board or its hearing officer shall be provided to all parties to the proceeding at the same time it is filed with the State Board or its hearing officer.
- 4.6.6 Upon receipt of an adequately detailed notice of appeal involving a student disciplinary decision or a decision of the Delaware Interscholastic Athletic Association (DIAA), the Executive Secretary shall assign the matter to a hearing officer from a roster of hearing officers approved by the State Board. The Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting.
- 4.6.7 Upon receipt of an adequately detailed notice of appeal involving any matter other than a student disciplinary decision or a decision of DIAA, the Executive Secretary shall consult with the President of the State Board to determine whether the matter should be assigned to a hearing officer or placed on the State Board's next meeting agenda. The President shall have the authority to authorize the Executive Secretary to assign a hearing officer to the matter from a roster of hearing officers approved by the State Board. In such case, the Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting. Nothing in this subsection shall prevent the State Board from later assigning the matter to a hearing officer.

4.7 The record on appeal

- 4.7.1 Unless instructed otherwise, within ten (10) days of the receipt of the notice of appeal, the agency which made the decision under appeal shall forward the record of the proceedings below to the Executive Secretary. A copy of the record shall be sent to the party filing the appeal at the same time.
- 4.7.2 The record shall include the agency's written decision, a copy of any rule or regulation involved, the minutes of the meeting(s) at which the decision was made, a verbatim transcript of the hearing conducted by the agency or party below, and all exhibits presented to the agency. The transcript shall be prepared at the direction and expense of the agency below.
- 4.7.3 The agency's executive secretary, executive director or comparable administrator shall complete the "Certification of Record" form provided at the end of these Rules and attach it to the record when the record is forwarded to the Executive Secretary.
- 4.7.4 If a transcript of the proceedings below is not or cannot be provided to the State Board, the Executive Secretary shall remand the case to the agency with an instruction that the agency hold a new hearing within ten (10) days.

4.8 Proceedings on appeal

- 4.8.1 The State Board of Education or its hearing officer shall establish and notify the parties of the date when the State Board or its hearing officer will consider the appeal, hereafter referred to as the consideration date. The parties shall be given at least twenty (20) days notice of the consideration date. The parties may agree to shorten or waive the notice of the consideration date.
- 4.8.2 Written position statements and legal briefs or memoranda, if any, shall be filed no later than (10) days prior to the consideration date. A party who files a written position statement with the State Board or its hearing officer must send a copy to the opposing party at the same time. Failure to file a written statement by the time specified may result in a postponement of the consideration date until the statement is filed, or a consideration of the appeal without the written statement, at the discretion of the State Board or its hearing officer.
- 4.8.3 The written position statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal concerns a legal issue or interpretation.
- 4.8.4 Oral argument

- 4.8.4.1 A party may request that oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written position statement. There will be no oral argument unless it is requested when the written position statement is submitted.
- 4.8.4.2 Oral argument, if requested, shall be limited to fifteen (15) minutes per side with five additional minutes for rebuttal.
- 4.8.4.3 Any party may request the presence of a stenographic reporter at oral argument by notifying the Executive Secretary at least ten (10) days prior to the date of the argument. The requesting party shall be liable for the expense of the reporter. If a stenographic reporter is not present at the argument, the State Board or hearing officer shall cause an electronic transcript of the hearing to be made by tape recorder or other suitable device. Electronic transcripts shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the appeal.
- 4.8.4.4 If the State Board or hearing officer permits a party to present oral argument on an issue which was not identified by the party in their written position statement, briefs or legal memoranda, or if in the course of the argument, the State Board or hearing officer raises an issue which was not previously raised by either party, the parties shall have a reasonable opportunity to comment in writing within five (5) business days of the oral argument.
- 4.8.4.5 The State Board or its hearing officer may limit or restrict argument that is irrelevant, insubstantial or unduly repetitive.

4.9 Standard and Scope of Review

- 4.9.1 The appellate review of the State Board shall be limited to the record of the proceedings below. Neither the State Board nor the hearing officer will consider testimony or evidence which is not in the record. If the State Board determines that the record is insufficient for its review, it shall remand the case to the agency below with instructions to supplement the record.
- 4.9.2 The standard of review shall be determined by the law creating the right of appeal. In the absence of a specific statutory standard, the substantial evidence rule will be applied, that is, neither the State

Board nor the hearing officer will substitute its judgment for that of the agency below if there is substantial evidence in the record for its decision and the decision is not arbitrary or capricious. The State Board will make an independent judgment with respect to questions of law.

4.10 State Board Decision

- 4.10.1 After considering the record from the proceedings below, the written submissions and the arguments made by the parties, if any, the hearing officer shall submit a proposed written decision for the consideration of the State Board.
- 4.10.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. To the extent possible, the proposed decision shall be submitted to the State Board and the parties within fifteen (15) days of the consideration date or the filing of any post argument submissions.
- 4.10.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional comment. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Secretary.
- 4.10.4 The State Board shall consider the appeal at its next regular meeting following receipt of the parties' exceptions, comments, and arguments, if any, or the end of the comment period, whichever occurs first.
- 4.10.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and any written comments thereto, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

4.11 Student Discipline Appeals

- 4.11.1 To the extent possible, appeals of decisions involving student discipline will be scheduled for consideration by the hearing officer within thirty (30) days of the receipt of the notice of appeal.
- 4.11.2 If an appeal involves disciplinary action against a student receiving

special education and related services, the record must include evidence that a Manifestation Determination Review was conducted pursuant to the Department of Education's regulations governing special education. Failure to provide such evidence may result in reversal or remand to agency for additional proceedings.

4.11.3 An appeal of or dispute about the Manifestation Determination Review must be made to the Department of Education as provided in the Department's regulations governing special education. The State Board of Education will not review such determinations.

5.1 **Public Regulatory Hearings**

5.2 Section 5.0 governs public hearings before the State Board or its hearing officers where the State Board is required to hold, or decides to hold, such hearings before adopting or approving rules and regulations or taking other regulatory action. See Note 1.

5.3 Notice that the State Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the Administrative Procedures Act. Notice of the public hearing shall also be circulated to individuals and agencies on the State Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the State Board will conduct the hearing, or designate a hearing officer for that purpose.

5.4 Creation of record of public hearing

5.4.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

5.4.2 If a stenographic reporter is not present at the hearing, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

5.5 Subpoenas

5.5.1 The State Board or its hearing officer may issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) days prior to the public hearing.

5.5.2 The State Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Secretary at least fifteen (15) days prior to the date of the hearing, unless additional time is allowed for good cause.

5.5.3 The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

5.6 Documents

5.6.1 The State Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents which it will consider in

reaching its decision. Documents received during the hearing shall also be marked as exhibits.

5.6.2 Any person or party submitting a document before or during the public hearing shall provide at least eight (8) copies of the document to the State Board, unless directed otherwise.

5.7 Witnesses

5.7.1 The order of witnesses appearing at the hearing shall be determined by the State Board or its hearing officer. The State Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at the public hearing.

5.7.2 The State Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious comment and information.

5.7.3 Any person who testifies at a public hearing shall be subject to examination by the State Board or its hearing officer. The State Board or its hearing officer may in their discretion allow cross examination of any witness by other participants in the proceedings.

5.8 At the conclusion of the public hearing, the State Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the Administrative Procedures Act. The Board's order shall be rendered within a reasonable time after the public hearing.

Note : The State Board is not subject to the Administrative Procedures Act when approving (or refusing to approve)

regulations or regulatory action of the Department of Education, provided that the Department has complied with applicable portions of the Act. See 14 Del. C. '105(b).

**STATE BOARD OF EDUCATION
OF THE STATE OF DELAWARE**

xxxx,)	
Petitioner)	
)	
v.)	No. 200x-xx
)	
xxxx,)	
Respondent.)	

CERTIFICATION OF RECORD

I, [name of executive secretary, executive director or comparable administrator], am the
[title] of the {agency name}.

I hereby certify that the attached documents constitute the true and complete record of the proceedings that occurred before the {agency name} in the captioned matter.

I further certify that the following documents are included in the attached record:

- a. the agency’s written decision;
- b. the rules or regulations involved;
- c. the minutes of the meeting(s) at which the decision was made;
- d. a verbatim transcript of the hearing;
- e. all exhibits presented; and
- f. if this matter involves disciplinary action against a student receiving special education and related services, documentation evidencing the Manifestation Determination Review.

Signature _____

Date: _____

Reference: State Board of Education *Hearing Procedures and Rules*, Sections 4.5 and 4.9.3.

NOTICE OF APPEAL

TO THE STATE BOARD OF EDUCATION

To: Executive Secretary of the State Board of Education

I, [name of person filing appeal] request that the State Board of Education accept this appeal and enter a decision and order as further explained in this Notice.

1. I am filing this Notice of Appeal on behalf of _____ [myself or my child (give child's name)].

2. Please contact me at: _____ [give address, telephone number(s) and email address if available].

3. I am appealing a decision made by _____ [give name of agency] on _____ [date of written decision]. I received the written decision on _____ [date].

4. I believe the State Board may hear this appeal because it involves:

_____ A decision by a school district board of education that decided a controversy involving the district's rules and regulations (including disciplinary rules).

_____ A decision by the Delaware Interscholastic Athletic Association that decided a controversy involving athletic rules and regulations.

_____ A decision by the board of directors of a charter school to suspend or expel a student for disciplinary reasons.

_____ Other *(explain why the State Board of Education has authority to consider your appeal)*

5. I am appealing this decision because *(you may attach additional pages)*:

6. I want the State Board of Education to do the following:

The information I have provided in this Notice of Appeal is true and correct to the best of my understanding and knowledge. I will send a copy of this Notice to the agency involved when I mail or deliver the Notice of Appeal to the State Board of Education.

I understand that appeals to the State Board of Education are decided “on the record” of the hearing that was held by the agency and that the State Board will not accept new testimony or other new evidence during this appeal.

Signature

Date Signed

Additional Instructions

1. Please print or type.
2. Provide all of the information requested.
3. Attach a copy of the written decision that you are appealing. The State Board of Education may not consider an appeal until a written decision has been issued.
4. Keep a copy of this Notice for your use and reference.
5. Mail, fax, or deliver this Notice and any attachments to the Executive Secretary of the State Board of Education at 401 Federal Street, Suite 2, Dover, DE

19901; Facsimile No. ~~(302) 739-4654-7768~~.

6. Send a copy of this Notice and any attachments to the agency involved at the same time you mail or deliver the Notice to the State Board of Education.
7. The State Board of Education's *Hearing Procedures and Rules* are available at the State Board web page at www.doe.k12.de.us or by calling the State Board's offices at 302-735-4010. Rule 4 addresses appeals.

