



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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March 29, 2016

Ms. Tina Shockley, Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 19 DE Reg. 810 [DOE Proposed District & School Emergency Preparedness Policy Regulation (3/1/16)]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to repeal its District and School Emergency Preparedness Policy in its entirety. The proposed regulation was published as 19 DE Reg. 810 in the March 1, 2016 issue of the Register of Regulations. SCPD has the following observations.

The attached Omnibus School Safety Act makes the Department of Safety and Homeland Security (DSHS) primarily responsible for emergency preparedness in public schools. The Act includes the following provision:

(c) The Department ...shall have the overall responsibility for the implementation of the act. In connection therewith, the Department's duties and responsibilities shall include but not be limited to:

...(5) In consultation with the Department of Education, adopting such rules and regulations as shall be necessary or desirable to implement the provisions of the act;...

The Administrative Code reveals no Department of Safety & Homeland Security regulations implementing the law. Literally, regulations are optional under the statute.

The Department is also responsible for submission of a progress report "to the General Assembly by May 31 of each year until such time that implementation of the program is completed and it is fully operational." See Title 29 Del.C. §8237(g).

Repeal of the DOE regulation appears warranted given the statutory responsibility of DSHS under the OSSA. However, SCPD is inquiring about the status of any regulations authorized to

be developed “in consultation with the Department of Education” under Title 29 Del.C. §8237(c)(5). In addition, by way of copy to DSHS, SCPD is soliciting the latest progress report and an update on the status of implementation of the OSSA.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

Sincerely,

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Steven Godowsky, Ed.D, Secretary of Education
Mr. Chris Kenton, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski, Department of Education
Ms. Kathleen Geiszler, Esq., Department of Justice
Ms. Terry Hickey, Esq., Department of Justice
Ms. Ilona Kirshon, Esq., Department of Justice
Mr. Joe Swiski, DSHS
Mr. Darren Lester, DSHS
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor’s Advisory Council for Exceptional Citizens

19reg810 doe-district & school emergency preparedness policy 3-29-16

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19reg810 doe-district & school emergency preparedness policy 3-29-16

§ 8237 Omnibus School Safety Act.

(a) *Purpose.* — The purpose of the Omnibus School Safety Act is to enhance public safety in all of Delaware's public schools (including charter schools) and school districts through the development and maintenance of comprehensive, site-specific, National Incident Management System (NIMS)-compliant safety and emergency preparedness plans for each public school and district. This act is intended to promote a cohesive and coordinated approach between state and local emergency responders, education professionals, and other supporting agencies and disciplines during a critical incident within a school setting, in a manner that minimizes administrative and other burdens upon schools and districts.

(b) *Definitions.* — Unless the context otherwise requires, the following words and phrases shall have the meaning ascribed to them in this section:

- (1) "Act" means the Omnibus School Safety Act.
- (2) "Charter school" means a charter school established pursuant to Chapter 5 of Title 14.
- (3) "Critical incident" means any situation that causes or has the potential to cause injury or loss of life to faculty, staff, students or the public, and shall include but not be limited to any weather-, crime- or terrorism-related event that threatens: the life, health and safety of people; damages or destroys property; or causes major disruptions of regular activities.
- (4) "Critical incident or emergency event exercise" means any operational simulation performed in a school or district pursuant to this section for the purposes of training and practicing prevention, protection, mitigation, response and recovery capabilities in a realistic, but risk-free environment.
- (5) "CSSP" means a Comprehensive School Safety Plan.
- (6) "Department" means the Department of Safety and Homeland Security.
- (7) "District" means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14.
- (8) "DOE" means the Department of Education.
- (9) "Emergency Preparedness Guidelines" means the templates developed by the Department which outline the steps, processes, procedures, audits and actions that shall be used by a school or district to develop, implement, exercise and update its comprehensive school safety plans to respond to an emergency event or unusual crisis situation.
- (10) "First responder" means any federal, state and local law-enforcement officer, fire, and emergency medical services personnel, hazardous materials response team member, 911 dispatcher, emergency manager or any other individual who is responsible for the protection and preservation of life, property, or evidence.

(11) "NIMS" means the National Incident Management System developed by the federal government pursuant to Homeland Security Presidential Directive-5 and representing a core set of doctrines, concepts, principles, terminology, and organizational processes that enables effective, efficient, and collaborative incident management.

(12) "School" means any public school within the State, including any charter school.

(13) "School safety team" means those individuals who have been identified by a school or district as members of a team responsible for the development and implementation of a CSSP for a particular school or district.

(14) "Secretary" means the Secretary of the Department of Safety and Homeland Security or his or her designee.

(15) "Tabletop exercise" means a discussion-based critical incident or emergency event exercise involving key personnel comprised of first responders, emergency management personnel, school officials or other individuals where simulated scenarios are discussed in an informal setting.

(c) *Duties and responsibilities of Department.* — The Department, by and through the Secretary, shall have overall operational responsibility for the implementation of the act. In connection therewith, the Department's duties and responsibilities shall include but not be limited to:

- (1) Serving as the lead agency in the development of CSSPs for each school and district;
- (2) Assisting schools and districts in conducting critical incident and tabletop exercises;
- (3) Adopting, publishing and updating Emergency Preparedness Guidelines;
- (4) Reviewing and certifying CSSPs submitted by schools and districts;
- (5) In consultation with the Department of Education, adopting such rules and regulations as shall be necessary or desirable to implement the provisions of the act;
- (6) Reviewing proposed revisions and updates to CSSPs; and
- (7) Ensuring that the act is fully implemented and operational by September 10, 2014.

(d) *Duties and responsibilities of schools and districts.* — Each school and district shall:

- (1) Create a school safety team for each school and district;
- (2) Collaborate with the Department and any relevant first responders to develop and submit to the Department a school- or district-specific CSSP;
- (3) Conduct critical incident and tabletop exercises in accordance with subsection (f) of this section hereunder; and
- (4) Collaborate with the Department and any relevant first responders in submitting revisions and updates to CSSPs, at such times and upon such circumstances as shall be warranted.

(e) *Initial review and approval of CSSPs.* — Each school and district, through its school safety team, shall collaborate with the Department and any relevant first responders to develop and submit a school- or district-specific CSSP that is NIMS-compliant and is otherwise approved by the Department in accordance with the regulations adopted in connection with this section. The Department shall provide such assistance as shall be necessary in connection with the development of CSSPs, and shall coordinate schools and districts with first responders and other relevant stakeholders, including but not limited to the Capitol Police, for the development of CSSPs hereunder.

(f) *Critical incident and tabletop exercises; revisions to CSSPs.* —

(1) Each school and district, through its school safety team, shall collaborate with the Department and any relevant first responders to conduct at least 1 tabletop exercise every year, and at least 2 lockdown/intruder drills per school year. Such exercises shall assess emergency readiness as well as the effectiveness of the existing CSSP, and shall include such members of the school safety team, first responders and such other stakeholders as shall be appropriate. Exercises may also be utilized to identify gaps in the CSSP, assess and improve performance, test equipment and technology, and develop robust community and first responder resolve to prepare for major incidents.

(2) Following any exercise hereunder, a school or district shall submit to the Department verification of the exercise and proposed revisions or updates to its CSSP. However, nothing herein shall limit the ability of schools or districts to submit to the Department proposed revisions or updates to CSSPs at any other time during the year. Proposed revisions or updates shall be reviewed and approved by the Department in accordance with procedures established by the Department.

(g) *Progress reports.* — The Secretary shall provide a report on the progress on the implementation of the Omnibus School Safety Program to the General Assembly by May 31 of each year until such time that implementation of the program is completed and it is fully operational.

78 Del. Laws, c. 405, § 1; 79 Del. Laws, c. 426, § 1.;