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Cross references. — As to constitutional provisions relative to education, see Del. Const., art. X. As to corporations conferring academic or honorary degrees, see § 125 of Title 8. As to school crossing guards in New Castle County, see Chapter 27 of Title 9. As to loitering on property of a state-supported school, college or university, see § 1320 of Title 11. As to State Fire School, see §§ 6613-6617 of Title 16. As to licensing of commercial driver training schools, see Chapter 83 of Title 21. As to barber schools, see §§ 421-432 of Title 24. As to nursing schools, see § 1919 of Title 24. As to Sunday schools generally, see Chapter 3 of Title 27. As to Sabbath schools generally, see Chapter 5 of Title 27. As to training schools for delinquent children, see Chapter 51 of Title 31.

PART I

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Cross references. — As to establishment and maintenance of free public schools, see Del. Const., art. X, § 1.

CHAPTER 1

DEPARTMENT OF EDUCATION

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Revisor's note. — Section 1 of 71 Del. Laws, c. 180, provides: "This act may be referred to as the 'Department of Education Act of 1997'."

Section 195 of 71 Del. Laws, c. 180, provides: "The provisions of this act which address the tenure of current employees of the Department of Education shall not be effective as to any individual employee until the expiration of any contract between the State and such employee in effect on the effective date of this bill."

Section 196 of 71 Del. Laws, c. 180, provides: "Any rules and regulations of the State Board of Education prior to the effective date of this act shall remain in full force and effect until otherwise modified in accordance with Delaware law; provided, however, that if any rule or regulation heretofore adopted shall conflict with any of the provisions of this act, the language contained in this act shall prevail over that contained in such rule or regulation."

Section 197 of 71 Del. Laws, c. 180, provides: "Contracts issued prior to the effective date of this bill by the State Board of Education shall continue in force with the Department of Education as the successor to the State Board of Education."

Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

71 Del. Laws, c. 180, substituted "Department of Education" for "State Board of Education" in the chapter heading.

Subchapter I

Composition, Organization and Administration

Revision of subchapter. — 71 Del. Laws, c. 180, rewrote this subchapter, substituting present §§ 101 to 106 for former §§ 101 to

110. No detailed explanation of the changes made by the 1997 Act has been attempted, but, where appropriate, the historical citations to the former sections have been added to corresponding sections in the amended subchapter.

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

§ 101. Establishment of the Department of Education.

The general administration of the educational interests of the State shall be vested in a Department of Education within the Executive Branch, hereinafter in this title referred to as the "Department." (71 Del. Laws, c. 180, § 3.)

§ 102. Secretary; Deputy, Associate and Assistant Secretaries; Acting Secretary; appointment.

(a) The administrator and head of the Department shall be the Secretary of Education, who shall be a graduate of an accredited college and shall have not less than 5 years' experience in teaching and administration, with experience in each such category. The Secretary shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve at the pleasure of the Governor. He or she shall be paid a salary as determined by the General Assembly in the annual appropriations act. The Secretary of Education shall become a bona fide resident of the State within 6 months after his or her appointment; provided, however, that upon good cause shown, the Governor may grant an additional extension of 6 months.

(b) In the event the position of Secretary is vacant, the Governor, by appointment, shall have the power to fill the position or positions of Deputy, Associate, or Assistant Secretaries of Education as are vacant. Persons so appointed shall serve at the pleasure of the Governor and, upon the position of Secretary being filled, such persons may be removed by the Secretary with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Secretary and prior to the appointment of his or her successor, the Governor may appoint the Deputy Secretary or an Associate Secretary of Education to serve as Acting Secretary. The Secretary may, during his or her absence from the State, appoint the Deputy Secretary or an Associate Secretary to serve as Acting Secretary during such absence. In either case, the Acting Secretary shall have all the powers and perform all the duties and functions of the Secretary during his or her absence or incapacity or until his or her successor is duly qualified and appointed. (27 Del. Laws, c. 106; Code 1915, § 2274; 32 Del. Laws, c. 160, § 6; Code 1935, § 2627; 14 Del. C. 1953, § 107; 67 Del. Laws, c. 281, § 203; 67 Del. Laws, c. 431, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 529,

§ 1; 71 Del. Laws, c. 8, § 2; 71 Del. Laws, c. 180, § 3.)

State Department of Public Instruction is clearly state agency for purposes of Eleventh Amendment. Lillard v. Delaware State Hosp. for Chronically Ill, 552 F. Supp. 711 (D. Del. 1982).

§ 103. Powers, duties and functions of the Secretary.

(a) The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its offices, functions and employees;

(2) Appoint and fix the salary, with the written approval of the Governor, of the following officers: Deputy Secretary, Associate and Assistant Secretaries, and an Executive Assistant. These officers may be removed from office by the Secretary with the written approval of the Governor, and they shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary;

(3) Appoint such additional personnel as may be necessary for the administration and operations of the Department, within such limits as may be imposed by law;

(4) With the written approval of the Governor, establish, consolidate, abolish, transfer or combine the powers, duties and functions of the branches, work groups, offices or units within the Department as the Secretary may deem necessary, providing that all powers, duties and functions required by law shall be provided for and maintained;

(5) Make and enter into any and all contracts, agreements or stipulations; retain, employ and contract for the services of private and public consultants, and research and technical personnel; and procure by contract consulting, research, technical and other services and facilities whenever the same shall be deemed by the Secretary necessary or desirable in the performance of the functions of the Department or to determine and ensure the quality and effectiveness of education programs and initiatives, and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of Title 29 unless otherwise provided by law;

(6) Delegate any of his or her powers, duties or functions to the Deputy Secretary or an Associate or Assistant Secretary, except the power to remove employees of the Department or to fix employee compensation;

(7) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by him or her and which are not inconsistent with the laws of this State;

(8) Maintain such facilities throughout the State as may be necessary for the effective and efficient operation of the Department;

(9) Adopt an official seal or seals for the Department;

(10) 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 of the Governor and the General Assembly. The Department shall be operated within the limitations of the annual appropriation and any other funds appropriated to it by the General Assembly. Special funds may be used in accordance with approved grants, programs and appropriations; and

(11) Appoint committees or advisory entities to assist him or her in performing the duties of his or her 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 committee or entity.

(b) The Secretary shall develop and implement policy for grades 1-12 that will substantially decrease the number of nonperformance-based promotions, or social promotions, which allow students who have not passed a course or courses required for promotion to the next grade to advance to the next grade, with the goal of eliminating those promotions by the year 2001.

(c) The Secretary shall calculate a Voluntary School Assessment, which applicants shall have the option of paying in lieu of any school certification required by § 2661 of Title 9 or § 842 of Title 22. Voluntary School Assessments shall be calculated on a per unit basis for each project that seeks to pay such assessments in lieu of certification as follows: by (1) calculating the average cost (including land or, if the school district already owned such land, the then-fair market value of such land at the time of construction), per child, for the average new public schools (one elementary school, one middle school, one high school) constructed with state assistance in New Castle County as determined by the State of Delaware School Construction Technical Assistance Manual prepared by the Delaware Department of Education (as such manual exists as of June 30, 1999, such manual to be updated for purposes of this calculation no earlier than July 1, 2005, and thereafter updated as the Department normally updates such manual); (2) multiplying that number by the local percentage share then required by state law of the local school district in order to receive state capital assistance; (3) multiplying the resulting figure by 0.50, representing the average number of school-aged children projected to be housed within each residential unit, provided that in no event shall the Voluntary School Assessment exceed 5 percent of

the total cost of the residential unit. (27 Del. Laws, c. 106; Code 1915, § 2274; 32 Del. Laws, c. 160, § 6; Code 1935, § 2628; 14 Del. C. 1953, § 108; 71 Del. Laws, c. 180, § 3; 72 Del. Laws, c. 237, § 4.)

Revisor's note. — Section 5 of 72 Del. Laws, c. 237, provides: "If any provision of this act is held invalid, the act in its entirety shall be invalid."

Section 6 of 72 Del. Laws, c. 237, provides: "The Department of Education may promulgate rules and regulations to effectuate the purposes of this act."

Effect of Amendments. — 72 Del. Laws, c. 237, effective July 30, 1999, added (c).

§ 104. State Board of Education; composition; term; powers and duties; qualifications; vacancies; staggered appointments; office location; compensation.

(a) The State Board of Education shall be composed of 7 members who shall be citizens of the State and shall be appointed by the Governor and confirmed by the Senate. The Governor shall name the President of the Board who shall serve at the Governor's pleasure. Each of the remaining members of the Board shall be appointed to serve for 6 years and until his or her successor qualifies.

(b) The State Board of Education shall have powers, duties and responsibilities as specified in this title. Included among the powers, duties and responsibilities are those specified in this subsection. The State Board of Education shall:

(1) Provide the Secretary of Education with advice and guidance with respect to 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 guidance on new initiatives which may from time to time be 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. Consistent with its role in shaping critical educational policies, the State Board of Education may also 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 and guidance on the Department's annual operating budget and capital budget requests;

(3) Provide the Secretary of Education with guidance in the preparation of the annual report specified in § 124 of this title, including recommendations for additional legislation and for changes to existing legislation;

(4) Provide the Secretary of Education with guidance 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 shall be established by rules and regulations pursuant to § 121 (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 pursuant to § 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 pursuant to paragraphs (5), (6), and (7) of this subsection;

(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 was contrary to a specific state or federal law or regulation, was not supported by substantial evidence, or was arbitrary and capricious. In such cases, the State Board shall set forth in writing the legal basis for its conclusion;

(10) Approve such Department rules and regulations as require State Board approval, pursuant to specific provisions of this title, before such 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(16) and/or § 122(b)(8);

(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 same standard of review as is set forth in § 1058 of this title; and

(13) Approve all regulations of the Higher Education Commission.

(c) The Department, through the Secretary, shall provide reasonable staff support to assist the State Board in performing its duties pursuant to this title

and shall, upon request through the Secretary, provide the State Board with reports and data necessary to enable the State Board to perform its duties pursuant to this title. The Secretary of Education, in addition to his or her other duties of office, shall serve as Executive Secretary of the State Board.

(d) The members of the Board shall be appointed solely because of their character and fitness subject to the following qualifications: at least 2 members of the Board shall have had prior experience on a local board of education; no more than 4 members of the Board shall belong to the same political party; no person shall be eligible to appointment who has not been for at least 5 years immediately preceding appointment a resident of this State; and no person shall be appointed to the Board who is in any way subject to its authority.

Any member of the Board shall be eligible for reappointment unless otherwise disqualified by this title. In constituting the Board, the President shall be appointed from the State at large, but the appointments of the remaining 6 members shall be made so that there shall be on the Board at least 1 resident of the City of Wilmington, 3 residents from New Castle County outside the City of Wilmington, 1 from Kent County and 1 from Sussex County.

(e) Vacancies on the Board for any cause shall be filled by the Governor for the unexpired term and until a successor shall qualify.

(f) The Governor may appoint members for confirmation by the Senate for terms shorter than 6 years where that is necessary to ensure that Board members' terms expire on a rotating annual basis.

(g) The Board shall meet in meeting space provided by the Department.

(h) The members of the Board shall receive \$100 for each day's attendance at the meetings of the Board 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 Board. (21 Del. Laws, c. 67, § 1; 26 Del. Laws, c. 94, §§ 1, 2; Code 1915, § 2273; 32 Del. Laws, c. 160, § 2; 37 Del. Laws, c. 193, § 1; Code 1935, § 2623; 14 Del. C. 1953, § 101; 59 Del. Laws, c. 173, §§ 1, 2; 69 Del. Laws, c. 16, § 1; 71 Del. Laws, c. 180, § 3; 73 Del. Laws, c. 164, § 4; 73 Del. Laws, c. 188, § 7.)

Revisor's note. — Section 11 of 73 Del. Laws, c. 188, provides: "This bill shall become effective immediately upon passage as law." The act was signed by the Governor on July 17, 2001.

Effect of Amendments. — 73 Del. Laws, c. 164, effective July 12, 2001, added (b)(12).

73 Del. Laws, c. 188, added (b)(13).

This title is definitive law on public schools. — When the Revised Code Commission codified the manifold laws relating to the public schools, it undertook, as authorized and directed by the General Assembly, to rewrite the statutes in simple and direct language and to integrate and synthesize the multiplicity of statutes relating to the public schools. As so codified, Title 14 is

definitive law and must be construed as such. *Werntz v. Jennings*, 34 Del. Ch. 226, 101 A.2d 806 (1954).

§ 105. State Board procedures.

(a) The Board shall hold an annual meeting each year, in Dover, during the month of July. At this meeting the Board shall each year elect 1 of its members to serve as Vice-President. Other meetings shall be held at such times and places as the duties and business of the Board require. No motion or resolution shall be declared adopted without the concurrence of a majority of the whole Board.

(b) Whenever this Code requires that the State Board approve a regulation or other action proposed by the Department, the State Board shall approve such regulation or action at a meeting held in conformity with Chapter 100 of Title 29. Provided that the Department has complied with Chapter 101 of Title 29 in proposing a regulation or other regulatory action to the extent such action is governed by said Chapter 101, the State Board shall not be subject to said Chapter 101 in approving or refusing to approve such Departmental proposal. (71 Del. Laws, c. 180, § 3.)

§ 106. Advisory Board to the Secretary of Education.

There shall be formed an Advisory Board to the Secretary of Education consisting of a representative from each board of education and from each county vocational-technical district, and such additional representatives of educational stakeholder organizations as appointed by the Secretary and the State Board. This Board shall not meet less than twice in any calendar year and the State Board shall participate in such meetings. The Advisory Board shall:

(1) Review current state policies and submit recommendations to the Department of Education when appropriate for changes, modifications or deletions;

(2) Study and review planning guides for program improvement of the Delaware Public School System as submitted by the Department of Education and make appropriate recommendations to the Department of Education on legislative and policy implementation; and

(3) Meet at a time and place that shall be at the discretion of the Secretary of Education or the Deputy Secretary. The call for the meeting shall be through the office of the Secretary of Education. The members of the Advisory Board shall receive their actual expenses for 2 dinner meetings per year, but not including travel expenses. The Department of Education shall not expend more than \$1,000 for such expenses during any 1 fiscal year. (14 Del. C. 1953, § 110; 57 Del. Laws, c. 90; 71 Del. Laws, c. 180, § 3.)

Subchapter II

Powers and Duties

§ 121. General powers of the Department of Education.

The Department shall exercise general control and supervision over the public schools of the State, including:

(1) Developing and executing the educational policies and laws of the State and promoting public sentiment in support of public education;

(2) Consulting, advising and cooperating with the boards of education and superintendents of reorganized school districts, and other officers, principals, teachers and interested citizens in matters relating to education and to the conduct of schools;

(3) Appointing, through the Secretary, by execution of a written contract for a term of not less than 1 year nor more than 5 years, of additional officers necessary for administering and developing the policies, rules and regulations of the Department. As used in this section, the term "additional officers" shall be defined as the team leaders and directors authorized by § 1321(a) of this title and any certificated professional employees assigned to the office of the Secretary whose positions are not covered in § 103(a)(2) of this title. The Secretary may elect not to renew the contract of any additional officer upon its expiration. However, in such a case the Secretary shall notify the officer in writing by certified mail, return receipt requested, at least 4 months prior to the expiration date of the existing contract that he or she does not intend to renew the contract, thereby providing official notice that the services of the officer are to be terminated; provided, however, that any person so notified will automatically be entitled to a 2-month extension of his or her existing contract in order that he or she may be afforded a total of 6 months' notice. Failure to notify an additional officer covered by this subsection in writing by the required date shall result in an automatic extension of the existing contract for a period of 1 year from its expiration date;

(4) Hiring, through the Secretary, by execution of a written contract for a term of not less than 1 year and not more than 5 years, of certificated professional employees, other than those persons described in subsection (3) of this section and § 103(a)(2) of this title, necessary for carrying out the policies, rules and regulations of the Department. For the purposes of this subsection, the term "certificated professional employees" includes education associates, education specialists, field agents, technicians and other employees holding positions of

similar rank. The Secretary may elect not to renew the contract of a certificated professional employee upon its expiration. However, in such a case, the Secretary shall notify the employee in writing by certified mail, return receipt requested, at least 4 months prior to the expiration date of the existing contract that he or she does not intend to renew the contract, thereby providing official notice that the services of the employee are to be terminated; provided, however, that any person so notified will automatically be entitled to a 2-month extension of his or her existing contract in order that he or she may be afforded a total of 6 months' notice. Failure to notify a person covered under this subsection in writing by the required date shall result in an automatic extension of the existing contract for a period of 1 year from its expiration date. The written notification shall indicate that just cause exists for the Secretary's proposed action. For the purposes of this subsection, "just cause" shall be defined as including, but not limited to, reduction in force, inefficiency, or unsatisfactory performance of duties. Any employee notified of the Secretary's intention not to renew for reasons other than a reduction in force may request a formal hearing before a hearing officer appointed by the State Personnel Director to present information in his or her own defense and may have legal counsel at the hearing. Such hearing shall be held not earlier than 10 days nor more than 90 days after the issuance of the written notification of the Secretary's intent not to renew the contract, unless both parties mutually agree to a different schedule;

(5) Dismissing or disciplining, through the Secretary, during the contract period, for misconduct in office, incompetency, or willful neglect of duty, any officer or certificated professional employee appointed under this title or under any special school law, except an employee whose position is covered in § 103(a)(2) of this title, giving him or her a copy of the charges against him or her. In making a determination to dismiss or to impose a lesser disciplinary action, the Secretary shall assess and take into account any mitigating or extenuating circumstances as well as the employee's work history. Any employee dismissed pursuant to this subsection may request a formal hearing before a hearing officer appointed by the State Personnel Director to present information in his or her own defense and may have legal counsel at the hearing. Such hearing shall be held not earlier than 10 days nor more than 90 days after the issuance of written notification of dismissal from the Secretary;

(6) Hiring, through the Secretary, any clerical assistants and other non-certificated employees necessary to provide support in carrying out the policies, rules and regulations of the

Department or the State Board, or both. An employee hired pursuant to this subsection shall not enter into a written contract with the Department. Such employee shall be subject to dismissal or other disciplinary action imposed by the Secretary only for just cause. For the purposes of this subsection, "just cause" includes, but is not limited to, reduction in force, inefficiency, unsatisfactory performance of duties, misconduct, immorality, incompetency, and willful neglect of duty;

In making a determination to dismiss or to impose a lesser disciplinary action pursuant to this subsection, the Secretary shall assess and take into account any mitigating or extenuating circumstances as well as the employee's work history. An employee dismissed pursuant to this subsection may request a formal hearing before a hearing officer appointed by the State Personnel Director to present information in his or her own defense and may have legal counsel at the hearing. Such hearing shall be held not earlier than 10 days nor more than 90 days after the issuance of written notification of dismissal from the Secretary;

(7) Granting to any person employed by the Department pursuant to this section who is called to the service or voluntarily enters the Armed Forces of the United States or the National Guard of the State, when in continuous active service, a leave of absence which shall cover the period of voluntary service, not to exceed 3 years, or the term of service to which he or she has been called until that term of service is terminated; and upon the completion of the leave of absence, reinstating such person in the position which he or she held at the time that the leave of absence was granted, if such person has received a certificate of satisfactory completion of service;

(8) Appointing persons to replace employees on leaves of absence for active military service, as described in subsection (7) of this section, but such appointments shall be only for the period covered by said leaves of absence;

(9) Requiring boards of education of reorganized school districts to submit reports covering student achievement, discipline, expenditures, business methods, accounts, registration, attendance, and any other matter it finds necessary and advisable consistent with the State's policy, as reflected in § 122(d) and (e) and § 124A(f) of this title, to avoid duplicative or unnecessarily burdensome reporting obligations; and receiving and examining such reports and, through its staff, examining and giving advice on expenditures, business methods, and accounts of boards of education of reorganized school districts;

(10) Conducting investigations relating to the educational needs of the State and the means of improving the educational conditions;

and, for such investigations, employing additional expert assistants and appointing special agents when deemed advisable;

(11) Causing the provisions of this title to be carried into effect, so as to provide a general and efficient system of public schools throughout the State;

(12) Deciding, without expense to the parties concerned, certain types of controversies and disputes involving the administration of the public school system. The specific types of such controversies and disputes appropriate for Department resolution and the procedures for the resolution of such controversies and disputes shall be established by rules and regulation proposed by the Secretary subject to approval by the State Board. Hearing examiners or panels, including panels of the State Board of Education, may be appointed to hear such controversies and disputes;

(13) Obtaining witnesses and documents through subpoena, administering oaths, examining under oath, and causing such examinations to be reduced to writing, when necessary to enforce any provision of this title. The Secretary and the State Board of Education, and any hearing examiner or panel duly appointed by either, may exercise the provisions of this subsection;

(14) Entering into contracts with states bordering on the State, or with agencies, political subdivisions or school districts of such states, for the establishment and operation of joint educational facilities wherever it is found by the Department that such joint facilities would be of greater educational value to the citizens of the State than separate facilities. Tuition payments required by such contracts shall be paid from funds specifically appropriated in the annual budget for this purpose, from educational contingency funds, or from both. Tuition payments received under such contracts shall be deposited in the General Fund of the State, notwithstanding any other provisions of this title;

(15) Supervising generally the design of educational facilities by:

a. Establishing and applying evaluative criteria to all stages in the design of proposed educational facilities;

b. Analyzing and researching design factors as they relate to educational effectiveness;

c. Recommending to local school districts matters dealing with educational design; and

(16) Determining criteria to be met and procedures to be followed by institutions of postsecondary education that offer courses, programs of courses, or degrees within the State but that are not institutions either incorporated in Delaware or located in Delaware except for

the purpose of offering the particular courses, programs of courses, or degrees referred to above. The administration of the authority herein granted shall be carried out according to rules and regulations of the Department as authorized in § 122 of this title. (21 Del. Laws, c. 67, § 2; 26 Del. Laws, c. 94, § 2; 27 Del. Laws, c. 106; Code 1915, § 2275; 32 Del. Laws, c. 160, § 7; Code 1935, § 2629; Code 1935, c. 71, § 146; 42 Del. Laws, c. 122, § 1; 43 Del. Laws, c. 190, § 3; 14 Del. C. 1953, § 121; 49 Del. Laws, c. 163; 57 Del. Laws, c. 113; 58 Del. Laws, c. 231; 59 Del. Laws, c. 87, § 1; 59 Del. Laws, c. 205, § 1; 62 Del. Laws, c. 118, § 1; 67 Del. Laws, c. 281, § 204; 67 Del. Laws, c. 431, § 2; 68 Del. Laws, c. 290, § 225; 69 Del. Laws, c. 64, § 275; 70 Del. Laws, c. 425, §§ 343, 344; 71 Del. Laws, c. 180, § 5.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, rewrote the section.

Ultimate legal control of the educational process is in the hands of the State. *Morris v. Board of Educ.*, 401 F. Supp. 188 (D. Del. 1975).

Policy-making power. — By the school laws of the State, the State Board of Education is vested with general policy-making power and with authority to adopt rules and regulations for the administration of the public school system. *Steiner v. Simmons*, 35 Del. Ch. 83, 111 A.2d 574 (1955).

Control over school construction. — The State through its duly constituted boards of education may exercise complete control over every phase of school construction leaving no room whatever for the application of local codes or for inspections by local authorities. But authorities have permitted an administrative practice to develop which involves full compliance with local codes. *Corder v. City of Milford*, 57 Del. 150, 196 A.2d 406 (1963).

Election publicity. — A board of education, charged with the duty of managing the public schools in its district, maintaining them in good condition and providing for necessary improvements and expansion of the school system, is not prevented from using reasonable publicity to bring the election issues before the voters. *Brennan v. Black*, 34 Del. Ch. 380, 104 A.2d 777 (1954).

Local school boards not prevented from protecting their statutory authority by litigation. — The existence of the general control and supervision over the public schools of the State, including the power to decide controversies and disputes involving the administration of the public school system, does not prevent the local school boards from protecting, by litigation, the statutory authority vested in them. *Mount Pleasant Sch. Dist. v. Warder*, Del. Super. Ct., 375 A.2d 478 (1977).

§ 122. Rules and regulations.

(a) The Department shall adopt rules and regulations, consistent with the laws of this State, for the maintenance, administration and supervision throughout the State of a general and efficient system of free public schools in accordance with this title, including the rules and regulations specified in subsection (b) of this section. Such rules and regulations, when prescribed and published, shall not extend, modify or conflict with any law of this State or the reasonable implications thereof, and shall be binding throughout the State.

(b) The Department shall prescribe rules and regulations:

(1) Governing the hygienic, sanitary and protective construction of school buildings; the selection, arrangement and maintenance of school sites and grounds; and the condemnation, for school purposes, of public school buildings that do not conform to such rules and regulations;

(2) Governing the physical inspection of and the protection of the health and physical welfare of public school students in the State;

(3) Governing the issuance of certificates and diplomas for the public schools of the State. Rules and regulations on this subject shall be proposed by the Secretary subject to approval by the State Board of Education;

(4) Notwithstanding any other provision, rule, regulation or law to the contrary, determining the minimum number of core classes a student must take and pass each year in order to advance to a higher level; provided however, that the regulation shall, at a minimum, require students in first through eighth grades to pass at least 50% of all classes taken for credit, excluding physical education, and further provided that no student shall be passed to a higher grade level, without passing English/language arts or its equivalent each school year. These requirements shall be in addition to any limitations on grade level promotion or any other requirements imposed upon students pursuant to subchapter III of Chapter 1 of this title. Rules and regulations on this subject shall be proposed by the Secretary subject to approval by the State Board of Education.

(5) Determining the minimum courses of study for all public elementary schools and all public high schools of the State, including ensuring that all elementary school students have an opportunity to attend a school where all elementary school subjects, with the exception of foreign languages, are taught in the English language and requiring that all pupils of all public elementary schools and all public high schools of the State be instructed in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system. Rules and regulations on this subject shall be proposed by the Secretary subject to approval by the State Board of Education;

(6) Governing the attendance of teachers now employed and prospective teachers at the summer schools at the University of Delaware and Delaware State University, and, in cooperation with the Presidents of those institutions, determining the conditions by which such teachers and prospective teachers may receive from the State all or a part of the expenses incurred by such summer school attendance;

(7) Providing for the licensing of any institution of higher education, public or private,

which is not incorporated in the State or which is not established according to Delaware law, whether the main office of that institution is located within the State or in any state of the United States or in any nation of the world, if that institution offers any course, program of courses, or degree at a location within the State or by correspondence to residents of the State. Regulations on this subject shall include provisions for the identification and licensing of any agent of such an institution who contacts persons within the State, in person or by correspondence, for the purpose of soliciting enrollment by a permanent or temporary resident of the State in any such course, program of courses, or degree. The Department shall also determine the minimum requirements for the presentation of any course or program of courses and for the issuing of academic, normal school, collegiate, professional or university degrees of any level by such institutions as are not otherwise authorized by Delaware law to determine such requirements. Rules and regulations pursuant to this paragraph shall be proposed by the Secretary subject to approval by the State Board of Education;

(8) Determining the days on which the schools are closed by the authority of the local board for such reasons as storms, necessary repairs, quarantine, destruction of school property by fire, or other causes. Under the above conditions, a school employee shall suffer no loss of pay, and the total number of hours required by § 1049(1) of this title may be adjusted accordingly. Any excusal of educational hour requirements set forth in § 1049(1) shall be approved by the Secretary and the State Board of Education;

(9) Providing for the enforcement of school attendance laws of this State, controlling the necessary absence of pupils enrolled in the public schools, and determining the circumstances under which such absence shall be considered necessary. Rules and regulations on this subject shall be proposed by the Secretary subject to approval by the State Board of Education;

(10) Requiring a uniform series of forms and blanks for the keeping and reporting of all financial accounts, the annual school budget and all educational records; and providing a series of forms and blanks for the same;

(11) Providing for the physical examination of students and for the mental examination of such students who have made no advancement in their studies for 3 successive years of regular attendance and ensuring the implementation of § 3122 of this title;

(12) Assuring the permanent maintenance for a period of not less than the number of years required by the Delaware Public Archives of the

personnel records of all employees of all the school districts of the State, including those employees who terminate employment in the district. These records shall include, but not be limited to, all annual salaries and sick leave and vacation information;

(13) Providing for instruction in driver education during the summer months beyond the period usually designated as the school term. Rules and regulations on this subject shall be proposed by the Secretary subject to approval by the State Board of Education. Such rules and regulations shall provide for a comprehensive, quality program including at minimum that:

a. The program presented shall use dual-controlled vehicles and follow procedures provided in § 2710(c) of Title 21;

b. The program shall be available to any pupil who is a resident of the reorganized school district in which the program is offered or in which the program is offered in cooperation with other reorganized school districts, who has been enrolled in or is eligible for enrollment in the tenth grade or who is enrolled in grades 11 or 12, or who has reached his or her fifteenth birthday on or before July 15;

c. Teachers shall be assigned on a ratio of 1 teacher for each 125 qualified pupils, or one-fifth of a teacher may be assigned for each 25 qualified pupils, unless these ratios are modified by other sections of this title enacted after July 1, 1967;

d. Instruction shall be available to qualified pupils without charge to said pupils;

e. Driver education teachers shall be regularly certified to teach driver education;

f. Salaries paid to teachers assigned to the program shall be paid in accordance with Chapter 13 of this title;

(14) Governing the conduct of interscholastic athletics between all public schools and such nonpublic schools as shall become member schools in the Delaware Interscholastic Association. Rules and regulations on this subject shall be proposed by the Secretary subject to approval by the State Board of Education. The Secretary, with the approval of the State Board, shall delegate to the Delaware Interscholastic Athletic Association the authority, with Department oversight and subject to State Board review of disputes involving such rules and regulations, to implement the Department's rules and regulations on this subject. The Department shall not approve any rule or regulation that denies a student the right to simultaneously try out for, practice with or participate in games on a team similar to the school team on which he or she is a member, except that the authority for such dual membership and participation on a similar team shall be authorized

only upon written consent by the parent, custodian or guardian of the student. Such written consent shall clearly state the authority to participate on a particularly specified team of a designated organization or institution;

(15) Requiring health and wellness educational programs for grades K through 12, emphasizing the health enhancement benefits of seat belt usage, exercise, proper nutrition, and the avoidance of unhealthy behaviors such as smoking and drug abuse. Rules and regulations on this subject shall be proposed by the Secretary subject to approval by the State Board of Education. An advisory and resource committee comprised of the Secretary of Public Safety, the Secretary of Health and Social Services, and the Secretary of Education is hereby established to assist in the development of the program;

(16) Establishing mandatory drug and alcohol educational programs in each grade, kindergarten through grade 12, in each public school in this State. Rules and regulations on this subject shall be proposed by the Secretary subject to approval by the State Board of Education;

(17) Providing for the operation of adult education and family literacy programs including, but not limited to, adult basic education, literacy education, adult high school, prison education, apprenticeship programs and family literacy. Rules and regulations on this subject shall be proposed by the Secretary subject to approval by the State Board of Education;

(18) Providing, in cooperation with the Family Services Cabinet Council, for the operation of state-supported early education preschool intervention and birth mandate programs that are authorized by this title and designed to enhance individual student readiness for public school, unless specific authority is vested elsewhere by this Code;

(19) Establishing and monitoring the enforcement, in cooperation with the Department of Health and Social Services and the Department of Services for Children, Youth and Their Families, of standards for state-operated residential programs associated with state-operated educational programs that are authorized by this title; and

(20) Establishing mandatory research-based fire safety education in grades kindergarten through grade 6 in each public school in this State as part of the appropriate subject area curriculum. Fire safety education may be taught by professional or volunteer firefighters. The education program shall be agreed upon jointly by the Secretary of Education and the Director of the State Fire School.

(c) The Department shall implement rules and regulations promulgated and adopted by the Professional Standards Board and State Board of Educa-