
Delaware Register of Regulations

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Volume 24 - Issue 6, Pages 506 - 613



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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before November 15, 2020.

*Holly at Rehoboth Beach,
Delaware*

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

19 **DE Reg.** 1100 (06/01/16)

Refers to Volume 19, page 1100 of the *Delaware Register* issued on June 1, 2016.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 17	4:30 p.m.

DIVISION OF RESEARCH STAFF

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Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

- (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;
- (2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;
- (3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;
- (4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and
- (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) and 29 Delaware Code, Section 10119
(14 **Del.C.** §122(a) & 29 **Del.C.** §10119)
14 **DE Admin. Code** 731

ORDER**731 School Food Service Employees**

WHEREAS, the Centers for Disease Control and Prevention determined that a novel coronavirus ("COVID-19") presents a serious public health threat and, as a result, on March 12, 2020, the Governor issued a Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat ("State of Emergency Order"), which has been modified; and

WHEREAS, on July 15, 2020, the Department of Education ("DOE") released the State's guidance for reopening schools for the 2020-2021 school year, which outlines requirements for schools under three scenarios: if minimal community spread exists in the State (and school buildings are open), if minimal-to-moderate community spread exists in the State (situation dependent), and if significant community spread exists in the State (and school buildings are closed); and

WHEREAS, on August 4, 2020, the State determined that minimal-to-moderate community spread exists and, as a result, schools could reopen for the 2020-2021 school year using a hybrid model of remote instruction and in-person learning options with precautions in place; and

WHEREAS, on October 28, 2020, DOE determined that various Delaware school districts were operating under full remote, hybrid model, and in-person learning models. This created a change in how the districts are operating their school nutrition program from previous years. U.S. Department of Agriculture (USDA) provided a waiver for school districts to operate under the Summer Food Service Program (SFSP) rather than the School

Nutrition Program (SNP) which allowed the school districts to serve meals to all children birth through 18 years free of charge without the collection of individual meal eligibility status; and

WHEREAS, the COVID-19 related change in school nutrition food operations and inability to report the number of reimbursable breakfasts, reimbursable lunches, and other meals served by Delaware schools and reportable to the Department would render the salary formula of 14 **DE Admin. Code** 731 improper for the determination of compensation for and number of necessary school food service employees. DOE proposes that the amendments be adopted, effective immediately, and

WHEREAS, in accordance with 29 **Del.C.** §10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us; and

WHEREAS, in accordance with 29 **Del.C.** §10119(3), the Emergency Regulation shall be effective for 120 days from November 13, 2020 and may be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Order will be submitted to the Registrar of Regulations for publication in the next issue of the *Register of Regulations*.

NOW, THEREFORE, IT IS ORDERED this 13th day of November 2020 that the following amendments to 14 **DE Admin. Code** 731, attached hereto as Exhibit A shall take effect immediately.

IT IS SO ORDERED the 13th day of November 2020.

Department of Education

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

731 School Food Service Employees

1.0 Experience

School food service employees may be granted one (1) year of experience for each creditable year of experience in similar employment.

2.0 Determination of Employee Staffing and Formula

2.1 School districts shall determine the salaries paid to cafeteria workers as follows:

2.1.1 Of the total number of full time workers assigned to a food preparing cafeteria, a maximum of two may be paid as a cook and baker. Satellite schools are eligible for State funded positions as set forth in 14 **Del.C.** §1322(a).

3.0 Salary Formula

3.1 The salaries prescribed in 14 **Del.C.** §1322(c) for general workers, cooks and bakers shall be paid by the State from funds not derived from local food service operations as determined by the formula:

3.1.1 Seven (7) hours of labor per 100 meals determined as follows:

3.1.1.1 Total number of reimbursable lunches served in the base month; plus

3.1.1.2 Total number of reimbursable breakfasts served in the base month; plus

3.1.1.3 Total of all other meals served in the base month determined by aggregating all income.

3.1.1.3.1 The number of meals prepared and served for the 2020-21 academic year shall be based on the average reported for the month of October on the monthly reimbursement claim for the 2019-20 academic year.

- ~~3-2 Each school district shall submit to the Department of Education a computation sheet for cafeteria workers with data showing hourly rate and hours worked not to exceed the maximum allowed under state formula.~~
- ~~3-3 Each school district shall submit a roster of cafeteria managers to the Department of Education showing names of managers and the salaries prescribed in 14 Del.C. §1322(a). Each district shall also submit a computation sheet as prescribed by the Department of Education to determine the number of meals served according to the state formula.~~

4.0 Effective Date

This regulation shall be effective on November 13, 2020 and shall be in effect for 120 days unless it is renewed, amended, or repealed.

DEPARTMENT OF LABOR**DIVISION OF UNEMPLOYMENT INSURANCE**

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10119(4)
(19 Del.C. §3122 & 29 Del.C. §10119(4))
19 DE Admin. Code 1201

ORDER

(Extension of Emergency Order Dated July 22, 2020)

1201 Unemployment Insurance Appeal Board Regulations

WHEREAS, pursuant to 29 *Del. C.* § 10119, the Unemployment Insurance Appeal Board (the "Board") adopted through emergency order an amendment dated July 22, 2020, to Board Regulation 4.7.4, 19 *Del. Admin. C.* § 1201 (the "Emergency Order");

WHEREAS, the amendment adopted by the Emergency Order set forth in Board Regulation 4.7.4 temporarily removes the Board's prohibition against receiving testimony or documents offered electronically and states as follows: "The Board may receive into evidence any new testimony or document offered by means of a telephone or other electronic or electromagnetic device, and the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or electronic or electromagnetic device."

WHEREAS, the Emergency Order was published in the *Delaware Register of Regulations*, 24 *DE Reg.* 2, pp. 91-94 (08/01/20);

WHEREAS, pursuant to 29 *Del. C.* § 10119(3), the Emergency Order is effective for 120 days from its July 22, 2020 execution or through November 19, 2020 (unless withdrawn earlier by the Board);

WHEREAS, Governor Carney has extended Delaware's State of Emergency for an additional 30 days on October 30, 2020 in the Eighth Extension of the Declaration of a State of Emergency for The State of Delaware Due to a Public Health Threat;

WHEREAS, the Board regularly conducts hearings involving the attendance of parties, witnesses, attorneys, Board staff, and other interested persons;

WHEREAS, in the interest of protecting the foregoing individuals and the public, the Board found that adoption of a regulation temporarily amending the requirements set forth in Regulation 4.7.4 must occur on an emergency basis because the Board has determined that COVID-19 continues to present an imminent peril to the public health, safety or welfare of the public;

WHEREAS, the Board has determined that COVID-19 continues to present an imminent peril to the public health, safety or welfare of the public;

WHEREAS, on November 18, 2020, the Board has determined that in order to conduct business and to continue to protect parties, witnesses, attorneys, Board staff, and other interested persons, it is necessary to renew the Emergency Order for 60 days, pursuant to 29 *Del. C.* §10119(3); and

WHEREAS, a copy of this Order will be submitted to the Registrar for publication in the next issue of the *Delaware Register of Regulations*.

NOW, THEREFORE, IT IS ORDERED this 18th day of November 2020:

1. The July 22, 2020 Emergency Order is renewed for a period of 60 days in order to maintain the current interim measure set forth in Board Regulation 4.7.4 which the Board has deemed necessary to protect parties, witnesses, attorneys, Board staff, and other interested persons and to allow the Board to conduct business.
2. In accordance with the provisions of 29 *Del. C.* § 10119(4), the Board will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Emergency Order. Petitions should be presented to the Board Secretary, Unemployment Insurance Appeal Board c/o Department of Labor, 4425 North Market Street, Wilmington, Delaware 19802.
3. In accordance with the provisions of 29 *Del. C.* § 10119(3), the renewal of this Emergency Order shall take effect at 12:00 a.m. on November 19, 2020 and shall remain in effect up to 60 additional days unless withdrawn earlier by the Board.

IT IS SO ORDERED this 18th day of November, 2020.

Unemployment Insurance Appeal Board Members:

Chairman, Elmer L. Newlin	Vance G. Daniels
Beverly G. Bell	Drew A. Dorak
Sarah Buttner	

1201 Unemployment Insurance Appeal Board Regulations

1.0 Definitions

As used in these Rules and Regulations, the following definitions shall apply:

“**Board**” shall mean the Unemployment Insurance Appeal Board.

“**Chairman**” shall mean the Chairman of the Board.

“**Hearing Officer**” shall mean the Appeals Referee or his or her designate who heard the initial appeal.

“**Hearsay Evidence**” shall be such evidence so designated by the Delaware Rules of Evidence (D.R.E.).

“**Relevant Evidence**” shall mean evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without this evidence, as set forth in D.R.E. 401.

2.0 Location of Unemployment Insurance Appeal Board

- 2.1 All correspondence or other papers or documents filed with the Board shall be filed, either by mail or by hand delivery, at the following address: Unemployment Insurance Appeal Board, Department of Labor, 4425 North Market Street, Wilmington, DE 19802. The Board phone number is (302) 761-8370 and the Board’s fax number is (302) 761-6635.
- 2.2 Notices of Appeal to the Board may be filed, by mail or personal delivery, at any local Unemployment Office or at the Board Office listed at Rule 2.1. All notices of Appeal must be in writing.

3.0 Commencement

A hearing before the Board may be initiated by:

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- 3.1 Either party to the action heard by the Hearing Officer upon filing a timely Notice of Appeal with the Board;
 - 3.2 A party whose appeal was dismissed by the Hearing Officer for failure of that party to appear at the scheduled hearing before the Hearing Officer, upon filing of a timely Notice of Appeal with the Board, in which case the Board may, at its sole discretion, remand the case to the Hearing Officer for a prompt hearing to make a full and complete record; or
 - 3.3 The Board *sua sponte* with notice to the parties below or their counsel.

4.0 Hearings

- 4.1 Purpose. The purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer. The parties shall not re-litigate the case presented to the Referee, but may present additional evidence. Both the referee's record and any new evidence presented to the Board shall be considered by the Board in making its decision.
- 4.2 Presence of parties required. All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.
- 4.3 Representation.
 - 4.3.1 At any hearing, a party may appear *pro se* or be represented by an attorney-at-law duly admitted to practice law in the State of Delaware. A corporation or other artificial entity desiring legal representation must be represented by an attorney-at-law duly admitted to practice law in the State of Delaware.
 - 4.3.2 The Board or its attorney may examine any witnesses, and move the admissions of documents and things into evidence.
- 4.4 Continuances and Postponements.
 - 4.4.1 Applications for a continuance or postponement of any hearing shall be made in writing to the Board office no later than 6 days prior to the hearing. The request shall state the reasons for which the continuance or postponement is requested. The grant or denial of any request for continuance or postponement is within the discretion of the Board Chairman or his or her designee.
 - 4.4.2 Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted only for reasons of unanticipated emergencies.
 - 4.4.3 An appealing party may request to withdraw its appeal at any time prior to hearing. All requests for withdrawal must be made in writing.
- 4.5 Length of hearing. Hearings are scheduled to last 20 minutes from the time the presiding member calls the case, except that the Board may extend the length of the hearing at its discretion.
- 4.6 Record. A record shall be made of all hearings before the Board. The record may be made either by a stenographic record or by audio recording. The record does not need to be transcribed unless and until an appeal is taken to Superior Court from the Board's decision.
- 4.7 Evidence.
 - 4.7.1 The Board follows the Delaware Rules of Evidence. The Board may admit and consider hearsay evidence, however, the Board shall not base its decision solely on hearsay or other evidence not admissible under the Rules of Evidence.
 - 4.7.2 The Board may consider any relevant evidence relating to any issue raised below, whether or not that issue was decided by the Hearing Officer.
 - 4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.
 - 4.7.4 The Board ~~shall not~~ may receive into evidence any new testimony or document offered by means of a telephone or other electronic or electromagnetic device, ~~however~~ and the Board may review

testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device.

4.8 Subpoenas.

4.8.1 A party may request subpoenas to compel a witness or witnesses to appear at a hearing or to compel the production of documents at or prior to a hearing. Such a request shall be in writing, be received by the Board at least 7 days prior to the hearing, and state the full name and address of the person(s) to be subpoenaed and a detailed description of the documents to be produced. The issuance of such subpoena(s) shall be at the sole discretion of the Board and its attorney.

4.8.2 The Board *sua sponte* may issue subpoenas to compel witnesses to appear at a hearing or documents to be produced at or prior to a hearing.

4.9 Exhibits. Any party offering any document into evidence at a hearing shall provide at least 4 copies of such document at the time of the hearing.

4.10 Written Submissions. The Board or its attorney may at their discretion request written submissions from the parties prior to or following the hearing.

5.0 Remand

The Board may remand any case to the Hearing Officer at any time and for any purpose at its sole discretion.

6.0 Decisions

6.1 The Board shall render its decision promptly, usually within 14 days after the hearing.

6.2 The Board may affirm, modify, or reverse, in whole or in part, the decision of the Appeals Referee.

6.3 The Board may *sua sponte* affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.

6.4 Final decisions shall be accompanied by a notice of the right to appeal the Board's decision to Superior Court pursuant to 19 **Del.C.** §3323.

7.0 Rehearing

At any time subsequent to a Board decision but prior to the Board's decision becoming final, any party to the appeal may request by motion, with notice to all parties, a rehearing before the Board. The motion shall set forth briefly and distinctly the grounds for the motion. The Board shall promptly consider the motion for reconsideration. A copy of the Board's decision on the motion for rehearing shall be mailed to all parties or their counsel if represented by an attorney.

7.1 The grant or denial of a motion for rehearing is solely within the discretion of the Board.

7.2 The Board shall not consider any motion for rehearing filed after the Board's decision has become final.

7.3 The Board shall not consider any motion for rehearing of the Board's denial of a prior motion for rehearing.

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 731

PUBLIC NOTICE

Education Impact Analysis Pursuant to 14 **Del.C.** §122(d)

731 School Food Service Employees

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §1322(c), the Secretary of Education intends to amend 14 **DE Admin. Code** 731 School Food Service Employees. This regulation is being amended due to the COVID-19 related change in school nutrition food operations and the inability to report the number of reimbursable breakfasts, reimbursable lunches, and other meals served by Delaware schools, which consequently renders the salary formula of 14 **DE Admin. Code** 731 improper for the determination of compensation for and number of necessary school food service employees.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 4, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure school districts maintain the staffing levels necessary to provide meals to students. By doing so, the districts will continue to provide all students with an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure school districts maintain the staffing levels necessary to provide meals to students. The amended regulation will help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The amended regulation temporarily modifies the formula for calculating meals served and necessary kitchen staffing. The State and local school boards should incur future costs in line with historical meal delivery expenses.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/december2020/proposed/24 DE Reg 521RFA 12-01-20.pdf>

731 School Food Service Employees

1.0 Experience

School food service employees may be granted one (1) year of experience for each creditable year of experience in similar employment.

2.0 Determination of Employee Staffing and Formula

2.1 School districts shall determine the salaries paid to cafeteria workers as follows:

2.1.1 Of the total number of ~~full-time~~ full-time workers assigned to a food preparing cafeteria, a maximum of two may be paid as a cook and baker. Satellite schools are eligible for State funded positions as set forth in 14 Del.C. §1322(a).

3.0 Salary Formula

3.1 The salaries prescribed in 14 Del.C. §1322(c) for general workers, cooks and bakers shall be paid by the State from funds not derived from local food service operations as determined by ~~the formula~~:

- ~~3.1.1~~ ~~Seven (7) hours of labor per 100 meals determined as follows: the number of meals prepared and served based on the monthly average reported for the 2019-20 academic year.~~
- ~~3.1.1.1~~ ~~Total number of reimbursable lunches served in the base month; plus~~
- ~~3.1.1.2~~ ~~Total number of reimbursable breakfasts served in the base month; plus~~
- ~~3.1.1.3~~ ~~Total of all other meals served in the base month determined by aggregating all income.~~
- ~~3.1.1.3.1~~ ~~The number of meals prepared and served shall be based on the average reported for the month of October on the monthly reimbursement claim.~~
- 3.2 Each school district shall submit to the Department of Education a computation sheet for cafeteria workers with data showing hourly rate and hours worked not to exceed the maximum allowed under state formula.
- 3.3 Each school district shall submit a roster of cafeteria managers to the Department of Education showing names of managers and the salaries prescribed in 14 **Del.C.** §1322(a). Each district shall also submit a computation sheet as prescribed by the Department of Education to determine the number of meals served according to the state formula.
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PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1305(o) (14 **Del.C.** §§1203 & 1305(o))
14 **DE Admin. Code** 1501

PUBLIC NOTICE

Education Impact Analysis Pursuant to 14 **Del.C.** §122(d)

1501 Salary Supplements for Educators

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§1203 and 1305(o), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1501 Salary Supplements for Educators. The regulation concerns knowledge and skills salary supplements pursuant to 14 **Del.C.** §1305(k), national certification salary supplements pursuant to 14 **Del.C.** §1305(l), and additional responsibility assignment salary supplements pursuant to 14 **Del.C.** §1305(n). In accordance with 14 **Del.C.** §1305(o), the Board is required to annually review the supplements and promulgate recommendations as necessary. The proposed amendments to this regulation concern the previously approved additional responsibility assignment salary supplement for mentors. The Board proposes to add "Administrator Mentor" as a defined term and clarify the definitions of "Teacher or Specialist Lead Mentor" and "Teacher or Specialist Mentor" in Section 2.0. Additionally, in subsection 5.4.1, the Board proposes to clarify who qualifies for the additional responsibility assignment salary supplement for mentors. The Board is not proposing any amendments regarding knowledge and skills salary supplements or national certification salary supplements.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 4, 2021 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? In accordance with 14 **Del.C.** §1305(o), the national certifications in Section 4.0 and the additional responsibility assignment in Section 5.0 are intended to lead to improvements in teacher effectiveness and student achievement. The Board is not proposing any amendments to national certification salary supplements in Section 4.0. The proposed amendment to additional responsibility assignment salary supplements in Section 5.0 is to clarify who qualifies for the additional responsibility assignment salary supplement for mentors.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses salary supplements for educators and is not designed to help ensure students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses salary supplements for educators and is not designed to help ensure students' health and safety are protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses salary supplements for educators and is not designed to address students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The Board is not proposing any changes to Section 6.0, which provides that an educator is responsible for providing information to the employing school or district to verify the educator has fulfilled the requirements for an additional responsibility assignment salary supplement for mentors.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? By statute (14 **Del.C.** §1305(b)), the Department implements the rules and regulations developed under 14 **Del.C.** Ch. 12.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of this amended regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? The Department provides for funding salary supplements in its annual budget. The proposed amendments are consistent with the FY21 Appropriations Act (Senate Bill No. 240) that went into effect on June 30, 2020.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/december2020/proposed/24 DE Reg 523RFA 12-01-20.pdf>

1501 Salary Supplements for Educators**1.0 Content**

- 1.1 The following requirements shall be met in order to receive the salary supplements established by 14 **Del.C.** §1305. This regulation shall apply to the awarding of salary supplements as a percentage of the State portion of an Educator's annual salary paid in accordance with the provisions of 14 **Del.C.** §1305 for gaining knowledge and skills that lead to more effective instruction, for achieving national certification from the National Board for Professional Teaching Standards or from an equivalent program, and for accepting Additional Responsibility Assignments that impact student achievement.
- 1.2 Supplements are available subject to an annual appropriation from the General Assembly.

2.0 Definitions

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

"Additional Responsibility Assignments" means additional assignments for Educators that are academic in nature and that impact student achievement. For purposes of this regulation and pursuant to 14 **Del.C.** ~~§1305(n) extra-curricular~~ §1305(n), extracurricular or noninstructional supervisory activities are specifically excluded from additional responsibility assignments.

"Administrator Mentor" ~~means a certified administrator who holds a Continuing License, is currently employed as an administrator, performs the duties and responsibilities in the State's administrator mentor program, and is rated as satisfactory on the State's current evaluation system or the equivalent thereof on a state-approved alternative educator evaluation system. A certified administrator is an Educator who holds at least one of the following Standard Certificates: School Principal and Assistant School Principal Standard Certificate (14 **DE Admin. Code** 1591), Certified Central Office Personnel Standard Certificate (14 **DE Admin. Code** 1592), Superintendent and Assistant Superintendent Standard Certificate (14 **DE Admin. Code** 1593), and Special Education Director Standard Certificate (14 **DE Admin. Code** 1594).~~

"Base Salary" means the salary earned by an Educator as determined by the Educator's level of education and years of service on the Delaware educators' salary schedule pursuant to 14 **Del.C.** §1305.

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration, or other related professional support services in Delaware public schools, including charter schools, pursuant to the rules and regulations developed by the Professional Standards Board, in consultation and cooperation with the Department, and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Knowledge and Skills" means understandings and abilities that, when acquired by Educators, lead to more effective instruction.

"National Certification" means an Educator has achieved and maintains a current national certification as provided in 14 **Del.C.** §1305(l).

"Salary Supplement", when referring to knowledge, skills, national certification, and additional responsibility based supplements, means additional State salary as described in 14 **Del.C.** §1305.

~~**"Standards Board"** means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.~~

~~**"Teacher or Specialist Lead Mentor"** means an Educator a teacher or specialist who holds a Continuing or Advanced License, has participated in the training approved by the Department for Teacher or Specialist Lead Mentors, is employed by an employing authority as a Teacher or Specialist Lead Mentor, and performs the duties and responsibilities assigned to that position. Educators serving as Teacher or Specialist Lead Mentors must be rated as highly effective or effective on Delaware Performance Appraisal System II (DPAS II) evaluations, have all satisfactory evaluations on the State's current evaluation system, or the equivalent thereof on a state-approved alternative educator evaluation system, during the school year in which they are mentors and may not be on a DPAS II an improvement plan, or the equivalent therefore in a state-approved alternative educator evaluation system. Teacher or Specialist Lead Mentors oversee the comprehensive induction program at the building level, train Teacher or Specialist Mentors, and provide support to teachers or specialists in years three and four of the program. Teacher or Specialist Lead Mentors may mentor an Educator in years one and two of the program.~~

~~**"Teacher or Specialist Mentor"** means an Educator who holds a Continuing or Advanced License and has participated in the training for Mentors mentors of teachers and specialists specified by the Department and the employing authority. Educators serving as Teacher or Specialist Mentors must be rated as highly effective or effective on DPAS II evaluations, have satisfactory evaluations on the State's current evaluation system, or the equivalent thereof on a state-approved alternative educator evaluation system, during the school year in which they are mentors and may not be on a Delaware~~

PROPOSED REGULATIONS

~~Performance Appraisal System II (DPAS II) an~~ improvement plan, or the equivalent therefore in a state-approved alternative educator evaluation system. Teacher or Specialist Mentors provide one to one support for Educators in years one and two of the program.

3.0 Knowledge and Skills Salary Supplements

Currently, there are not any approved Knowledge and Skills Salary Supplements.

4.0 National Certification

- 4.1 An Educator may receive a Salary Supplement for achieving and currently maintaining the following certifications as provided in 14 **Del.C.** §1305(l):
- 4.1.1 National Board Certification from the National Board for Professional Teaching Standards;
 - 4.1.2 Certificate of Clinical Competence in Audiology (CCC-A) or Certificate of Clinical Competence Speech-Language Pathology (CCC-SLP) from the American Speech-Language-Hearing Association;
 - 4.1.3 National Certified School Counselor from the National Board for Certified Counselors;
 - 4.1.4 Music Therapist – Board Certified (MT-BC) from the Certification Board for Music Therapists;
 - 4.1.5 Nationally Certified School Psychologist (NCSP) from the National Association of School Psychologists; or
 - 4.1.6 Nationally Certified School Nurse (NCSN) from the National Board for Certification of School Nurses.
- 4.2 In order to be eligible for a National Certification Salary Supplement, the Educator shall maintain current certification through the applicable national organization.
- 4.3 An Educator who is employed as a superintendent, assistant superintendent, or director or in a non-instructional area of transportation, finance/business management, human resources/personnel management, purchasing, community/public relations, administrative services, pupil services, audiology, occupational therapist, physical therapist, psychologist, speech language pathologist, human relations, nurse, social work/services, information technology, or a specialized assignment comparable to these non-instructional areas shall not be eligible for a Salary Supplement for National Certification from the National Board for Professional Teaching Standards.
- 4.4 An Educator who achieves and maintains National Certification shall receive an annual Salary Supplement equal to 12 percent of the Educator's Base Salary for the certification in subsection 4.1.1 or 6 percent of the Educator's Base Salary for the certifications in subsections 4.1.2 through 4.1.6.

5.0 Additional Responsibility Assignments

- 5.1 Additional Responsibility Assignments shall be:
- 5.1.1 Focused on school improvement issues that impact student achievement;
 - 5.1.2 Supported by high quality, targeted professional development; and
 - 5.1.3 Academic in nature.
- 5.2 In order to qualify for an Additional Responsibility Assignment Salary Supplement, an Educator shall have completed the State approved training program for the position or, in the absence of a training program, shall meet the criteria set forth for the position by the State, school district, charter school, or other employing authority and shall provide State, school district, charter school, or other employing authority approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified assignment.
- 5.3 Additional Responsibility Assignment Salary Supplements may be renewed.
- 5.4 The following ~~assignment is~~ assignments are currently an approved Additional Responsibility Assignment:
- 5.4.1 ~~Lead Mentor and Mentor Administrator Mentor, Teacher or Specialist Lead Mentor, and Teacher or Specialist Mentor~~ as provided in ~~Section 10.0 of 14 DE Admin. Code 1503-Educator Mentoring.~~

6.0 Educators' Eligibility for Salary Supplements

Additional Responsibility Assignments: An Educator shall provide the school district, charter school, or other employing authority with such information as may be required to enable the school district, charter school, or other employing authority to verify that the Educator has fulfilled the requirements of subsection 5.2 of this regulation.

7.0 Payment of Salary Supplements

7.1 Salary Supplements for Additional Responsibility Assignments

7.1.1 Salary supplements earned by Educators who are paid in accordance with the provisions of 14 **Del.C.** §1305 as a result of fulfilling Additional Responsibility Assignments shall be effective following receipt by the Department of documentation from the school district, charter school, or other employing authority of satisfactory completion of the duties associated with the Additional Responsibility Assignment and shall be paid annually.

8.0 Limits on Salary Supplements

Salary supplements shall be paid to an Educator in accordance with the provisions of 14 **Del.C.** §1305.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1584

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 **Del.C.** §122(d)

1584 School Social Worker

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1584 School Social Worker. The regulation concerns the requirements for a School Social Worker Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a School Social Worker Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Social Worker Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a School Social Worker Standard Certificate; adding the requirements for retaining a School Social Worker Standard Certificate to Section 8.0; adding Section 9.0, which concerns disciplinary actions; adding Section 10.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 11.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 4, 2021 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, <http://regulations.delaware.gov/services/>

[current_issue.shtml](#) or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 and the requirements for reciprocity in Section 5.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 and the reciprocity requirements in Section 5.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a School Social Worker Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 10.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 6.0 apply to individual applicants.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of this amended regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/december2020/proposed/24 DE Reg 527RFA 12-01-20.pdf>

1584 School Social Worker

Effective July 1, 1994

1.0 Content

- 4.1 This regulation shall apply to the issuance of a School Social Worker Standard Certificate, Certificate pursuant to 14 Del.C. §1220(a), ~~for School Social Worker. This certification~~ The School Social Worker Standard Certificate is required for grades K to 12 in Delaware public schools.
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

The following words and terms, when used in this regulation, shall have the following meaning:

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

"LCSW" means a person who is licensed as a clinical social worker.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"LMSW" means a person who is licensed as a masters social worker.

"Passing Score" means a minimum score as established by the Standards Board in consultation with the Department and with the approval of the State Board of Education.

"Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.

"Valid and Current License or Certificate" means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a School Social Worker Standard Certificate ~~as a School Social Worker~~ to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and, 2003 and meets the requirements set forth in Section 4.0 of this regulation; or

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- 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a school social worker from another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
- 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~ Has met the requirements for licensure in Delaware and meets the requirements set forth in Section 5.0 of this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a School Social Worker Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

- 4.1 An educator shall also meet the following:
- 4.1.2 Master's degree in Social Work (MSW) from a regionally accredited college or university; and
- 4.1.2 Two years successful full time work experience as a social worker; and
- 4.1.3 One year of supervised experience in a school setting, or a one year internship of 1000 hours approved by the Department of Education and supervised by an appropriate school designee.
- 4.1 An applicant for a School Social Worker Standard Certificate shall have satisfied the requirements in subsections 4.1.1 through 4.1.3.
- 4.1.1 The applicant shall have earned a master's degree in social work (MSW) from a Regionally Accredited college or university.
- 4.1.2 The applicant shall hold a license to practice as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners that is in good standing.
- 4.1.3 The applicant shall have completed two years of full-time work experience as a social worker as approved by the Department. Post-degree supervised clinical social work experience completed in order to obtain an LCSW license shall count as work experience.

5.0 Reciprocity

- 5.1 If an applicant is already licensed or certified as a school social worker in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 and 5.1.2 in order for the Department to issue a School Social Worker Standard Certificate.
- 5.1.1 The applicant shall have earned a master's degree in social work (MSW) from a Regionally Accredited college or university.
- 5.1.2 The applicant shall hold a license to practice as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners that is in good standing.

6.0 Application Requirements

- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 6.2 For applicants who are applying for the School Social Worker Standard Certificate under subsection 3.1.1, the following documentation is required:
- 6.2.1 Official transcript from the applicant's Regionally Accredited college or university.
- 6.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
- 6.2.1.2 Sealed paper transcripts may be submitted.

- 6.2.1.3 The Department will not accept copies of transcripts; and
- 6.2.2 Documentation that the applicant is licensed to practice and is in good standing as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners; and
- 6.2.3 The Department-approved form verifying the applicant's completion of the experience requirement as provided in subsection 4.1.3; and
- 6.2.4 Additional documentation as required by the Department.
- 6.3 For applicants who are applying for the School Social Worker Standard Certificate under subsection 3.1.2, the following documentation is required:
 - 6.3.1 An official copy of the Valid and Current License or Certificate; and
 - 6.3.2 Documentation that the applicant is licensed to practice and is in good standing as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners; and
 - 6.3.3 Additional documentation as required by the Department.
- 6.4 For applicants who are applying for the School Social Worker Standard Certificate under subsection 3.1.3, the following documentation is required:
 - 6.4.1 An official copy of the Valid and Current License or Certificate; and
 - 6.4.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 6.4.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.4.2.2 Sealed paper transcripts may be submitted.
 - 6.4.2.3 The Department will not accept copies of transcripts; and
 - 6.4.3 Documentation that the applicant is licensed to practice and is in good standing as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners; and
 - 6.4.4 Additional documentation as required by the Department.

7.0 Validity of a Standard Certificate

- 7.1 A School Social Worker Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 7.2 A School Social Worker Standard Certificate is not subject to renewal.

8.0 Requirements Related to the Retention of a School Social Worker Standard Certificate

- 8.1 In order to retain a School Social Worker Standard Certificate, the Educator shall:
 - 8.1.1 Hold a license to practice as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners that is in good standing; and
 - 8.1.2 Annually affirm and document to the Department that the Educator satisfies the requirement in subsection 8.1.1.
- 8.2 If an Educator fails to meet any of the requirements related to retaining a School Social Worker Standard Certificate, the Educator shall immediately notify the Department in writing.
- 8.3 The requirements set forth in subsection 8.1 apply to all Educators regardless of the date the School Social Worker Standard Certificate was issued to them.

9.0 Disciplinary Action

- 9.1 An Educator's School Social Worker Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits or for the Educator's failure to comply with the requirements related to the retention of a School Social Worker Standard Certificate as provided in Section 8.0.
- 9.2 An Educator's School Social Worker Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.

9.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

10.0 Secretary of Education Review

10.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a School Social Worker Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School Social Worker Standard Certificate but whose effectiveness is documented by the local school district or charter school.

10.1.1 For school districts, requests shall be approved by the superintendent of the school district.

10.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

11.0 Past Certificate Recognized

The Department shall recognize a School Social Worker Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to practice as a school social worker.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)c (16 Del.C. §122(3)c)
16 DE Admin. Code 4462

PUBLIC NOTICE

4462 Public Drinking Water Systems

Pursuant to 16 Del.C. §122(3)c, Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems. On December 1, 2020, the Division of Public Health plans to publish as “proposed” revisions to the Public Drinking Water Systems regulations. The revisions include:

- EPA-required corrections for specific rule primacy;
- Fluoride requirements for systems required to provide fluoride under Delaware law;
- Definitions and a new chapter for cross-connections; and
- Minor clarifications and technical changes.

Copies of the proposed regulations are available for review in the December 1, 2020 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Thursday, December 31, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/december2020/proposed/24 DE Reg 532RFA 12-01-20.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

4462 Public Drinking Water Systems

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Sections 311, 2304 and 2312 (18 Del.C. §§311, 2304 & 2312)

18 DE Admin. Code 1214

PUBLIC NOTICE**1214 Suitability In Annuity Transactions****A. Type of Regulatory Action Required**

Proposal of amendments to Regulation 1214 Suitability In Annuity Transactions

B. Synopsis of Subject Matter of the Regulation

Regulation 1214 requires insurers and producers to establish a system to supervise recommendations made in the marketing and sale of annuities, which standards are also consistent with the standards imposed by the Financial Industry Regulatory Authority (FINRA). The regulation is an adoption of the National Association of Insurance Commissioners (NAIC) Model Regulation #275, Suitability in Annuity Transactions Model Regulation, as amended by the NAIC from time to time (Model #275).

In 2017, the NAIC appointed its Annuity Suitability (A) Working Group to review and revise, as necessary, Model #275, to promote greater uniformity across NAIC-member jurisdictions. Renewed interest in the model was prompted, in part, by work being done at the federal level. As described on the NAIC's website https://content.naic.org/cipr_topics/topic_annuity_suitability_best_interest_standard.htm:

In April 2016, the U.S. Department of Labor (DOL) completed regulations broadening its definition of "fiduciary investment advice" under the federal Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (IRC). However, the rule was vacated by the 5th U.S. Circuit Court of Appeals in March of 2018 before it took effect.

The U.S. Securities and Exchange Commission (SEC) released a proposed rule package on April 18, 2018, updating the standard of care broker-dealers and investment advisers would be required to provide to retail investors. The NAIC submitted comments to the SEC during the exposure period to further coordinate efforts so that the respective regulatory developments can provide consistency for consumers, industry, and regulators. The final rule took effect on June 30, 2020.

In 2018, the New York State Department of Financial Services proposed a new "best interest" standard for agents and brokers licensed to sell life insurance and annuity products in the state aligning with the now vacated DOL "fiduciary rule" for retirement savings. Under the rule, product sales must prioritize customer's interest over sales commissions and agents and brokers' compensation should not be influenced by the products recommended. The rule went into full effect on February 1, 2020.

In 2019, the NAIC Annuity Suitability (A) Working Group completed updates to Model #275 which began in November 2017. The goal of the Working Group was to seek clear, enhanced standards for annuity sales so consumers understand the products they purchase, are made aware of any material conflicts of interest, and are assured those selling the products do not place their financial interests above

consumers' interests.

The NAIC membership approved revisions to Model #275 in February of 2020 clarifying that all recommendations by agents and insurers must be in the "best interest" of the consumer and that agents and carriers may not place their financial interest ahead of the consumers' interest in making a recommendation. The model now requires agents and carriers to act with "reasonable diligence, care and skill" in making recommendations.

To satisfy the newly added "best interest" standard under Model #275 as amended in 2020, agents (producers) and carriers must satisfy four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation. The revisions also include enhancements to the current model's supervision system to assist agents (producers) and carriers in complying with the regulation (the "safe harbor" provisions).

It is noteworthy that states must work toward adopting the 2020 revisions within five years after adoption of the revisions by the full NAIC membership to maintain their authority to regulate the sale of fixed annuities. This is because Section 989J of the Dodd-Frank Act, known as the Harkin Amendment, applies to the revised model regulation. Section 989J confirms state authority to regulate the sale of fixed indexed annuities and exemption from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the carrier issuing the contract is domiciled: 1) has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of Model #275; and 2) "adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulation" within 5 years of the adoption by the NAIC.

The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1 - Purpose, as follows:

Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation." Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.

Accordingly, the Department is now proposing to update Regulation 1214 to incorporate the February 2020 amendments to Model #275. The authority for the proposed amendments is 18 **Del.C.** §§311, 2304, and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

C. Notice and Public Comment

As required by 18 **Del.C.** §2312, the Department has determined to hold a virtual public hearing on the proposed amendments to Regulation 1214 on Monday, December 21, 2020 at 9:00 a.m. The hearing will be facilitated through WebEx at <https://stateofdelaware.webex.com/stateofdelaware/j.php?MTID=m8ec115baff535326feed4cc487f11a32>, meeting number (access code): 173 085 6988 and meeting password: DAhnHBS28e5. Holding a virtual public meeting is specifically permitted by Paragraph 5 of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued by Governor John Carney on March 12, 2020 and extended monthly thereafter (see <https://governor.delaware.gov/health-soe/> for the complete list of modifications and extensions).

The proposed amendments appear below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 5th day of January 2021. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
1351 West North St., Ste. 101
Dover, DE 19904
(302) 674-7379

Email: Leslie.Ledogar@delaware.gov

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/december2020/proposed/24 DE Reg 533RFA 12-01-20.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[1214 Suitability In Annuity Transactions](#)

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed bold stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b)(3) (14 **Del.C.** §122(b)(3))
14 **DE Admin. Code** 505

REGULATORY IMPLEMENTING ORDER**505 High School Graduation Requirements and Diplomas****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §122(b)(3), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. This regulation is being amended to add the definition of Homeless Youth and to allow students that have experienced homelessness during any of their high school years to graduate based on the State's requirements. This amendment will remove barriers that could arise if a student experiencing homelessness transfers between high schools that have additional requirements. This idea was included in the State's ESSA Plan. Other minor changes were made to bring the regulation into compliance with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on September 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on September 1, 2020, in the form hereto attached as *Exhibit "A"*. One comment was received from the Governors' Advisory Council for Exceptional Citizens which supported the amended regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. This regulation is being amended to add the definition of Homeless Youth and to allow students that have experienced homelessness during any of their high school years to graduate based on the State's requirements. This amendment will remove barriers that could arise if a student experiencing

homelessness transfers between high schools that have additional requirements. This idea was included in the State's ESSA Plan. Other minor changes were made to bring the regulation into compliance with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 15, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of October, 2020.

Department of Education

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

Approved this 15th day of October, 2020.

State Board of Education

Whitney Townsend Sweeney, President (Absent)

/s/ Wali W. Rushdan, II, Vice President

/s/ Audrey J. Noble, Ph.D.

/s/ Candace Fifer

/s/ Vincent Lofink

Nina Lou Bunting (Absent)

/s/ Provey Powell, Jr.

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***Please note that no changes were made to the regulation as originally proposed and published in the September 2020 issue of the *Register* at page 220 (24 DE Reg. 220). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

505 High School Graduation Requirements and Diplomas

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303 (14 **Del.C.** §§122(b)(15) & 303)

14 **DE Admin. Code** 1006

REGULATORY IMPLEMENTING ORDER

1006 Delaware Interscholastic Athletic Association (DIAA)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Department of Education ("Department") is amending 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). The Delaware Interscholastic Athletic Association ("DIAA") is a unit of the Department. Subsection 1.2, which sets forth defined terms for 14 **DE Admin. Code** 1006, is being amended under the provisions of 29 **Del.C.** §10113(b)(4). The terms "legally in attendance" and "school day or school days" do not appear in the body of the regulation and, as such, the two terms are being stricken from the regulation. In addition, under the provisions of 29 **Del.C.** §10113(b)(2), Section 9.0 is being amended. Section 9.0 provides the rules of practice and procedure concerning requests for the DIAA Board of Directors to waive an interscholastic athletic rule or regulation.

The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §§10113(b)(2) and 10113(b)(4).

II. FINDINGS OF FACTS

The Department finds the terms "legally in attendance" and "school day or school days" only appear in subsection 1.2, so it is appropriate to strike the terms from the regulation. In addition, the Department finds that the proposed amendments to Section 9.0 provide rules of practice and procedure concerning waiver requests. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303 and 29 **Del.C.** §§10113(b)(2) and 10113(b)(4), 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 13th day of November, 2020.

Department of Education

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

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

1006 Delaware Interscholastic Athletic Association (DIAA)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 303(a) (14 **Del.C.** §§122(b) & 303(a))
14 **DE Admin. Code** 1008

REGULATORY IMPLEMENTING ORDER

1008 DIAA Junior High and Middle School Interscholastic Athletics

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The Delaware Interscholastic Athletic Association (“DIAA”), working in consultation and cooperation with the Delaware Department of Education (“Department”), developed the amendments to 14 **DE Admin. Code** 1008. The proposed amendments include adding the definitions of three terms in subsection 1.1; adding subsection 1.2.1.2 to clarify that the playing rules of the NFHS and US Lacrosse are adopted, except as modified, for girls’ lacrosse; in subsection 1.4, clarifying that DIAA may consider an appeal for a forfeit of a game that is not played but it does not resolve contractual disputes; add subsection 1.5.7, which limits teams to three scrimmages and play days total on three competition dates each season; revising subsection 2.2.1.4 so that it is consistent with the statute; adding the requirement that officials complete the NFHS’ “Concussion in Sports” course to subsection 8.3.1; amending the fees for officiating regular season contests in subsection 8.4.1; and increasing the aggregate retail value of permissible awards in Section 9.0. In addition, nonsubstantive changes to correct technical errors are proposed throughout the regulation.

Notice of the proposed regulation was published in the *Register of Regulations* on July 1, 2020. In addition, notice was published in *The News Journal* and *Delaware State News* on July 1, 2020 (Exhibit A). The DIAA Board of Directors did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On October 8, 2020, the DIAA Board of Directors voted to propose 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics, in the form attached hereto as Exhibit B, for adoption by the Department subject to the State Board of Education’s approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics subject to the State Board of Education’s approval. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics attached hereto as Exhibit B is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics adopted hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited as 14 **DE Admin. Code**

1008 DIAA Junior High and Middle School Interscholastic Athletics in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 15th day of October, 2020.
Department of Education

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

Approved this 15th day of October, 2020.

State Board of Education

Whitney Townsend Sweeney, President (Absent)	/s/ Vincent Lofink
/s/ Wali W. Rushdan, II, Vice President	Nina Lou Bunting (Absent)
/s/ Audrey J. Noble, Ph.D.	/s/ Provey Powell, Jr.
/s/ Candace Fifer	

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***Please note that no changes were made to the regulation as originally proposed and published in the July 2020 issue of the *Register* at page 19 (24 DE Reg. 19). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1008 DIAA Junior High and Middle School Interscholastic Athletics

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 303(a) (14 Del.C. §§122(b) & 303(a))
 14 DE Admin. Code 1009

REGULATORY IMPLEMENTING ORDER

1009 DIAA High School Interscholastic Athletics

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 DE Admin. Code 1009 DIAA High School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Delaware Department of Education ("Department"), developed the amendments to 14 DE Admin. Code 1009. The proposed amendments include adding the definitions of six terms in subsection 1.1; adding subsection 1.2.1.2 to clarify that the playing rules of the NFHS and US Lacrosse are adopted, except as modified, for girls' lacrosse; adding subsection 1.2.1.3, which adopts the Special Olympics of Delaware's playing rules for Unified flag football, adopts the NFHS playing rules for basketball and track for Unified basketball and Unified track and field, and authorizes the DIAA Board of Directors ("Board") to modify the playing rules in consultation with Special Olympics of Delaware; in subsection 1.4, clarifying that DIAA may consider an appeal for a forfeit of a game that is not played but it does not resolve contractual disputes; add subsection 1.5.7, which limits teams to three scrimmages and play days total on three competition dates each season; revising subsection 2.2.1.5 so that it is consistent with the

statute; adding Unified sports to subsection 2.10; adding subsection 4.3.6, which concerns Unified Partners participating on a non-Unified school team; amending subsections 5.1.3.2 and 5.1.3.3 regarding the number of participating schools required for Level 2 recognition and to establish a state championship for Unified sports; adding the requirement that certified, emergency, and volunteer coaches complete the NFHS' "Unified Sports" course to subsections 7.1, 7.2, and 7.3; adding the requirement that officials complete the NFHS' "Concussion in Sports" course to subsection 8.3.1; amending the fees for officiating regular season contests in subsection 8.4.1; increasing the aggregate retail value of permissible awards in Section 9.0; and adding Section 11.0, which concerns interscholastic Unified sports. In addition, nonsubstantive changes to correct technical errors are proposed throughout the regulation.

Notice of the proposed regulation was published in the *Register of Regulations* on July 1, 2020. In addition, notice was published in *The News Journal* and *Delaware State News* on July 1, 2020 (Exhibit A). The DIAA Board of Directors did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On October 8, 2020, the DIAA Board of Directors voted to propose 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics, in the form attached hereto as Exhibit B, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics attached hereto as Exhibit B is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics adopted hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited as 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 15th day of October, 2020.

Department of Education

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

Approved this 15th day of October, 2020.

State Board of Education

Whitney Townsend Sweeney, President (Absent)

/s/ Wali W. Rushdan, II, Vice President

/s/ Audrey J. Noble, Ph.D.

/s/ Candace Fifer

/s/ Vincent Lofink

Nina Lou Bunting (Absent)

/s/ Provey Powell, Jr.

*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).

*Please note that no changes were made to the regulation as originally proposed and published in the July 2020 issue of the *Register* at page 21 (24 DE Reg. 21). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1009 DIAA High School Interscholastic Athletics

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(15) and 303(a)-(c)
(14 Del.C. §§122(b)(15) & 303(a)-(c))
14 DE Admin. Code 1011

REGULATORY IMPLEMENTING ORDER

1011 Interscholastic Athletics during the COVID-19 Pandemic

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. Sections 122(b)(15) and 303(a)-(c), the Secretary of Education seeks the approval of the State Board of Education to adopt 14 DE Admin. Code 1011 Interscholastic Athletics during the COVID-19 Pandemic. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Delaware Department of Education ("Department"), developed 14 DE Admin. Code 1011, which applies to DIAA Member Schools during the public health emergency due to the COVID-19 pandemic. On June 30, 2020, the Department, with the State Board of Education's approval, adopted an emergency regulation, 14 DE Admin. Code 1010 Interscholastic Athletics during the COVID-19 Pandemic. 14 DE Admin. Code 1010 was effective on July 1, 2020 and was in effect for a period of 120 days. Effective October 30, 2020, 14 DE Admin. Code 1010 was renewed for a period of 60 days or until 14 DE Admin. Code 1011 goes into effect, whichever is sooner. The proposed regulation, 14 DE Admin. Code 1011, includes pre-participation physical examination requirements, addresses when interscholastic athletic activities are suspended, provides four Return to Play Stages, specifies the dates for the fall, winter, and spring sport seasons during the 2020-2021 school year, and sets forth sport-specific requirements that are designed to protect the physical well-being of student athletes during the COVID-19 pandemic. The proposed regulation is intended to replace the emergency regulation.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2020. The DIAA Board of Directors received written submittals from Ann Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC") and Terri Hancharick, Chairperson of the State Council for Persons with Disabilities ("SCPD"), regarding the adoption of 14 DE Admin. Code 1011.

GACEC commented that it is "concerned that [the] definition [of vulnerable individual] will likely affect a significant number of Delaware students with disabilities." SCPD commented that the defined term will likely impact a significant number of students with disabilities. Both GACEC and SCPD commented that the requirements and limitations for vulnerable individuals "are more severe than those for non-vulnerable populations." However, they each commented that "the more restrictive limitations proposed by [DIAA] for a 'vulnerable individual' are to ensure that the utmost safety and health of each individual student." GACEC further commented that "that is to be commended." In addition, GACEC and SCPD commented that DIAA needs to ensure equal access to interscholastic athletic programs under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. As such, GACEC "suggest[ed] there be an individualized assessment to determine whether it is appropriate for a student to participate" and recommended that an individualized assessment replace the current language of "shall not" in DIAA Return to Play Stages 1 and 2 (subsections 4.5.4.1 and 4.5.5.1). SCPD commented that it does not think the regulation "should completely restrict the participation for a vulnerable individual in interscholastic activities" and also recommended an individual assessment. SCPD further commented that "DIAA should consider the inclusion of a waiver process based on the needs of the individual" and gave an example of a student athlete with a disability who passes a physical to participate in interscholastic athletics but may be considered a vulnerable individual under the proposed definition.

II. FINDINGS OF FACTS

On November 5, 2020, the DIAA Board of Directors considered the written submittals. The DIAA Board of Directors found that definition of "vulnerable individual" is based on the Delaware Division of Public Health's guidelines for persons who are higher risk for serious illness from COVID-19. In addition, the DIAA Board of Directors found that student athletes are required to be cleared by a physician or other healthcare professional for participation in interscholastic athletics. The DIAA Board of Directors also found that a student athlete who is cleared to participate in interscholastic athletics but who meets the definition of "vulnerable individual" can apply for a waiver of subsections 4.5.4.1 and 4.5.5.1 under 14 **Del.C.** §304(5) and follow the procedures set forth in Section 9.0 of 14 **DE Admin. Code** 1006. Requests for waivers of athletic rules and regulations are reviewed by the DIAA Board of Directors on an individual basis and allow for an individualized assessment as GACEC and SCPD suggested.

Additionally, the DIAA Board of Directors considered changes to the proposed regulation. The changes included striking school nurse from subsections 3.2.2, 3.3.1.1, 3.3.2.1, and 4.5.3.2.4; replacing "22" with "23" in subsection 5.3.1; and replacing "center of the court" with "area designated by the officials," replacing "plate umpire" with "officials," and removing "one captain from each team" in subsection 5.6.1.15.3. In accordance with 29 **Del.C.** §10118(c), the DIAA Board of Directors' Chairperson determined the changes are not substantive and, as a result, DIAA is not required to repropose the changes.

The Board determined that further changes in response to the written submittals were not necessary and voted to propose 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic, with the non-substantive amendments, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 3 during the public health emergency due to the COVID-19 pandemic. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303(a)-(c), 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic attached hereto as Exhibit A is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic adopted hereby shall be in the form attached hereto as Exhibit A, and said regulation shall be cited as 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 13th day of November, 2020.

Department of Education

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

Approved this 13th day of November, 2020.

State Board of Education

/s/ Whitney Townsend Sweeney, President

/s/ Audrey J. Noble, Ph.D.

/s/ Wali W. Rushdan, II, Vice President

/s/ Provey Powell, Jr.

/s/ Candace Fifer

/s/ Vincent Lofink

*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).

1011 Interscholastic Athletics during the COVID-19 Pandemic
(Break in Continuity of Sections)

3.0 Pre-Participation Physical Examination*(Break in Continuity Within Section)***3.2 Returning Student Athletes Who Obtained a Physical for the 2020-2021 School Year***(Break in Continuity Within Section)*

3.2.2 The student athlete is not required to submit a completed 2020-2021 PPE Form unless the student athlete requires a Reexamination. A student athlete who is determined by the Qualified Healthcare Professional or is required to wear a mask and has a history of a cardiac or respiratory disorder or sickle cell trait, shall obtain medical clearance by a doctor (MD or DO), ~~school nurse,~~ nurse practitioner, or physician assistant prior to participation in interscholastic athletic activities.

3.3 Returning Student Athletes Who Have Not Obtained a Physical for the 2020-2021 School Year

3.3.1 Returning Middle School Student Athletes - Notwithstanding subsection 3.1.1 of 14 **DE Admin. Code** 1008, a Member School's Qualified Healthcare Professional shall review a student athlete's 2020-2021 History Form and Athlete Medical Card to determine if the student athlete is required to obtain a physical and evaluation before participating in interscholastic athletic activities at the middle school level during the 2020-2021 school year if the student athlete had a valid pre-participation physical evaluation during the 2019-2020 school year and does not require a Reexamination. If the Qualified Healthcare Professional determines that a student athlete is not required to obtain a physical and evaluation before participating, the student athlete shall obtain a physical and evaluation and submit the completed 2020-2021 PPE Form by December 31, 2020 in order to continue being eligible to participate.

3.3.1.1 Subsection 3.3.1 shall not apply to a student athlete who is required to wear a mask and has a history of a cardiac or respiratory disorder, sickle cell trait, or being diagnosed with COVID-19. The student athlete shall obtain medical clearance by a doctor (MD or DO), ~~school nurse,~~ nurse practitioner, or physician assistant prior to participation in interscholastic athletic activities.

3.3.2 Returning High School Student Athletes - Notwithstanding subsection 3.1.1 of 14 **DE Admin. Code** 1009, a Member School's Qualified Healthcare Professional shall review a student athlete's 2020-2021 History Form and Athlete Medical Card to determine if the student athlete is required to obtain a physical and evaluation before participating in interscholastic athletic activities at the high school level during the 2020-2021 school year if the student athlete had a valid pre-participation physical evaluation during the 2019-2020 school year and does not require a Reexamination. If the Qualified Healthcare Professional determines that a student athlete is not required to obtain a physical and evaluation before participating, the student athlete shall obtain a physical and evaluation and submit the completed 2020-2021 PPE Form by December 31, 2020 in order to continue being eligible to participate.

3.3.2.1 Subsection 3.3.2 shall not apply to a student athlete who is required to wear a mask and has a history of a cardiac or respiratory disorder, sickle cell trait, or being diagnosed with COVID-19. The student athlete shall obtain medical clearance by a doctor (MD or DO), ~~school nurse,~~ nurse practitioner, or physician assistant prior to participation in interscholastic athletic activities.

4.0 Suspension of Interscholastic Athletic Activities and DIAA Return to Play Stages

(Break in Continuity Within Section)

4.5 If subsection 4.3 or 4.4 applies, the Board shall determine the applicable DIAA Return to Play Stage for Member Schools that choose to have Interscholastic Athletics.

(Break in Continuity Within Section)

4.5.3 Requirements That Apply to DIAA Return to Play Stages 1, 2, 3, and 4

(Break in Continuity Within Section)

4.5.3.2 Member Schools shall perform screenings for COVID-19 symptoms before every activity, including team meetings.

(Break in Continuity Within Section)

4.5.3.2.4 A student athlete who tests positive for COVID-19 shall obtain medical clearance from a doctor (MD or DO), ~~school nurse,~~ nurse practitioner, or physician assistant and submit a completed DIAA COVID-19 Return to Play form to the student athlete's Member School in order to resume participating in any interscholastic athletic activities.

5.0 2020-2021 Fall, Winter, and Spring Sports Seasons and Sport-Specific Requirements

(Break in Continuity Within Section)

5.3 Notwithstanding subsection ~~[4.1-4.1]~~ 4.1 of 14 DE Admin. Code 1008 and 14 DE Admin. Code 1009, the start date and end dates for Scrimmages and Competitions for 2020-2021 sports seasons shall be as follows:

5.3.1 For all fall sports except for football, Season 1 (Fall) Scrimmages and Competitions may start on October 19, 2020 and shall end by November 28, 2020. For football, Season 1 (Fall) may start on October ~~[22 23]~~, 2020 and shall end by December 5, 2020.

(Break in Continuity Within Section)

5.6 Sport-Specific Requirements

5.6.1 In addition to the requirements for the applicable DIAA Return to Play Stage set forth in subsection 4.5, the following sport-specific requirements shall apply.

(Break in Continuity Within Section)

5.6.1.15 Volleyball

(Break in Continuity Within Section)

5.6.1.15.3 The pre-game conference shall be held in the ~~center of the court~~ area designated by the officials] and attendees shall be limited to the ~~plate umpire, officials and] the head coach from each team~~, and one captain from each team].

*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2020 issue of the Register at page 313 (24 DE Reg. 313). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1011 Interscholastic Athletics during the COVID-19 Pandemic

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))

14 **DE Admin. Code** 1591

REGULATORY IMPLEMENTING ORDER**1591 School Principal and Assistant School Principal****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1591 School Principal and Assistant School Principal. The regulation concerns the requirements for a School Principal and Assistant School Principal Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a School Principal and Assistant School Principal Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Principal and Assistant School Principal Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a School Principal and Assistant School Principal Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 10.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on September 1, 2020.

The Professional Standards Board received written submittals from Jason Cameron, President of the Delaware Association of School Personnel Administrators; Tammy Croce, Ed.D., Executive Director of the Delaware Association of School Administrators; Kevin Fitzgerald, Ed.D., President of the Delaware Chief School Officers Association; and Frank Shockley, President of the Delaware School Counselors Association, in support of the proposed amendments to the regulation.

In addition, Eric Pizzini, Ed.S. and Emily Klein, Ed.S. of the Delaware Association of School Psychologists commented that the proposed requirements "would ensure that a school psychologist (or any specialist) would be adequately prepared for [this] leadership position." Amanda Wells, a Nationally Certified School Psychologist, commented that the "proposed changes will enhance the leadership and diversity throughout Delaware schools."

Shannon Gronau, Angela Johnson, Lisa Street, Michael Tyndall, Mark Wells, and Mark Whitacre, school counselors, and Gabrielle Koury, Ed.D., a school psychologist, supported changing the experience requirement in subsection 4.1.3. Gerard Kelly, a school counselor, commented that school counselors "are very well versed in classroom management and lesson plan writing and implementing." Andrea Woodard, a school counselor and school-based Family Crisis Therapist, commented that "it is important to offer an alternative path to school leadership."

Tyrrea Graves, a Board Certified Behavior Analyst, commented that specialists with experience in Appoquinimink School District's Reaching Independence through Structured Education (RISE) program "will be needed to fill administrative roles that traditional candidates may not possess" and that "we have successful principals now that were specialists" who received their certification through reciprocity.

Brieanna Brown commented that the proposed amendments "would allow for more diversity of thought in leadership positions, which will translate to success for all of our students." Angela Harvey-Brown, the Executive Director of 4th-Dimension Leaders, commented that "Delaware's highest need schools require resilient, equity-rooted, transformational leaders" and that 4th-Dimension Leaders has "had to - on several occasions - turn away former psychologists, guidance counselors, speech pathologists, social workers, and other non-teaching educational professionals, who for not having 5 years of classroom experience, were unable to realize their leadership potential in Delaware." Samantha Lopez, a principal, commented that "[i]t may not always take 5 years or more of classroom experience to make an educator ready to lead; it may be a combination of their professional and classroom experience that provides a platform of effectiveness, in conjunction with the preparation of a school leadership program."

Sam Orr commented that "having teaching experience is vital to becoming an administrator," evaluating "teachers when you have never done the job is something that no person in any career would condone," administrators "need to be able to relate to the majority of the staff in the building, which is the teachers, and they must understand the challenges faced daily," and a person "who has never been a teacher . . . [does not] know as enough, cannot relate as well, and [is] not as qualified as those with teaching experience."

II. FINDINGS OF FACTS

On October 8, 2020, the Professional Standards Board considered the written submittals. The Professional Standards Board found that what specialists do today for trauma-informed schools is different from previous times and that all specialists' experience makes a difference in schools. The Professional Standards Board found that school counselors can be part of an administrator's activities (e.g., the master schedule) and that school nurses can be part of student assistance teams to help students who are struggling. The Professional Standards Board also found that schools are not just academic facilities. Students no longer need information in the 21st Century; they need to be able to use the information.

The Professional Standards Board determined that further changes in response to the written submittals were not necessary and voted to propose 14 **DE Admin. Code** 1591 School Principal and Assistant School Principal, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1591 School Principal and Assistant School Principal.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1591 School Principal and Assistant School Principal subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1591 School Principal and Assistant School Principal, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1591 School Principal and Assistant School Principal adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1591 School Principal and Assistant School Principal in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 15th day of October, 2020.
Department of Education

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

Approved this 15th day of October, 2020.

State Board of Education

Whitney Townsend Sweeney, President (Absent)

/s/ Wali W. Rushdan, II, Vice President

/s/ Audrey J. Noble, Ph.D.

/s/ Candace Fifer

/s/ Vincent Lofink

Nina Lou Bunting (Absent)

/s/ Provey Powell, Jr.

*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).

1591 School Principal and Assistant School Principal

1.0 Content

- 4.1 This regulation shall apply to the issuance of a School Principal and Assistant School Principal Standard Certificate, Certificate pursuant to 14 ~~Del.C.~~ §1220(a) ~~for School Principal and Assistant Principal. This certification Standard Certificate is required for all School Principals and Assistant School Principals working in Delaware's public school system principals and assistant principals who are working in Delaware public schools.~~
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

~~**"Certification Program for Leaders in Education"** means a program comprised of education components as defined and approved by the Standards Board and the State Board pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.~~

~~**"Department"** means the Delaware Department of Education.~~

~~**"Educator"** means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term "educator" does not include substitute teachers.~~

~~**"Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.~~

~~**"Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.~~

~~**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~**"Major or Its Equivalent"** means a minimum of 30 semester hours of coursework in a particular content area.~~

~~**"Passing Score"** means a minimum score as established by the Standards Board, in consultation with the Department, and with the approval of the State Board of Education.~~

~~**"Regionally Accredited"** means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.~~

~~**"School Principal Course of Study"** means a course of study approved by the Standards Board and the State Board pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.~~

~~**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.~~

~~**"Standards Board"** means the Professional Standards Board established pursuant to 14 Del.C. §1201.~~

“Valid and Current License or Certificate” means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 **Issuance of a Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a School Principal and Assistant School Principal Standard Certificate as a School Principal or an Assistant School Principal to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 ~~Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a school principal or assistant school principal from another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~ Has met the requirements for licensure in Delaware and meets the requirements set forth in Section 5.0 of this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a School Principal and Assistant School Principal Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation’s resolution.

4.0 **Additional Prescribed Education, Knowledge, and Skill Requirements**

~~An educator must also have met the following additional requirements.~~

4.1 ~~Education requirements.~~

- 4.1.1 ~~An educator shall also have satisfied at least one (1) of the following additional education requirements:~~
 - 4.1.1.1 ~~A master’s or doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or~~
 - 4.1.1.2 ~~A master’s or doctoral degree from a regionally accredited college or university in any field and the successful completion of one of the following:~~
 - 4.1.1.2.1 ~~A School Principal Course of Study, as defined in 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education; or~~
 - 4.1.1.2.2 ~~A School Principal Certification Program pursuant to 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education.~~

4.2 ~~Experience requirements.~~

- 4.2.1 ~~An educator must have a minimum of five (5) years of teaching experience.~~

4.1 The Department may issue a School Principal and Assistant School Principal Standard Certificate to an applicant who has satisfied the requirements in subsections 4.1.1 through 4.1.3.

- 4.1.1 The applicant shall have satisfied one of the following education requirements:

- 4.1.1.1 Earned a master's or doctoral degree with a Major or Its Equivalent in Pre-K to 12 educational leadership from a Regionally Accredited college or university with advanced preparation accreditation by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP); or
- 4.1.1.2 Earned a master's or doctoral degree in any content area from a Regionally Accredited college or university and satisfactorily completed an alternative routes for licensure or certification program for school principals as provided in 14 **Del.C.** §§1260 – 1266; or
- 4.1.1.3 Earned a master's or doctoral degree from a Regionally Accredited college or university in any content area and satisfactorily completed a Department-approved educator preparation program for school principals as provided in 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs.
- 4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:
- 4.1.2.1 A Passing Score of 160 on the School Leaders Licensure Assessment (ETS Test Code # 6011); or
- 4.1.2.2 A Passing Score of 160 on the School Superintendent Assessment (ETS Test Code # 6021); or
- 4.1.2.3 A Passing Score of 151 on the School Leaders Licensure Assessment (ETS Test Code # 6990); or
- 4.1.2.4 A Passing Score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).
- 4.1.3 The applicant shall have completed a minimum of five years of experience as an educator with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system under a state credential in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department.

5.0 Procedures for School Principal Preparation Programs

5.1 Program Application Procedures

- 5.1.1 ~~Program application procedures are specified in 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education.~~

5.2 Program Evaluation Procedure

- 5.2.1 ~~Program Evaluation Procedures are specified in 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education.~~

5.0 Reciprocity

- 5.1 If an applicant is already licensed or certified as a school principal or assistant school principal in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.3 in order for the Department to issue a School Principal and Assistant School Principal Standard Certificate:
- 5.1.1 The applicant shall hold a Valid and Current License or Certificate as a school principal or assistant school principal.
- 5.1.2 The applicant shall have earned a master's or doctoral degree in a Pre-K to 12 education-related field from a Regionally Accredited college or university.
- 5.1.3 If the applicant has less than five years' experience working as a principal or assistant principal in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department, the applicant shall have achieved a Passing Score on one of the following examinations:
- 5.1.3.1 A Passing Score of 160 on the School Leaders Licensure Assessment (ETS Test Code # 6011); or
- 5.1.3.2 A Passing Score of 160 on the School Superintendent Assessment (ETS Test Code # 6021); or

- 5.1.3.3 A Passing Score of 151 on the School Leaders Licensure Assessment (ETS Test Code # 6990); or
- 5.1.3.4 A Passing Score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).

6.0 **Validity Application Requirements**

- ~~6.1 This regulation shall be effective no less than ten (10) days from the date the Order amending the regulation has been published in its final form in the Delaware *Register of Regulations*.~~
 - ~~6.1.1 Educators currently enrolled in a school leader course of study prior to the effective date of this regulation will have eighteen (18) months subsequent to the effective date to apply for the previous School Principal or Assistant Principal Standard Certificate. Educators are responsible for providing the Department evidence of enrollment via submission of appropriate transcripts.~~
- ~~6.2 An Emergency Certificate for a School Principal or Assistant Principal is not available.~~
- ~~6.3 The Department shall also recognize a Standard Certificate for School Principal or Assistant Principal issued by the Department prior to the effective date of this regulation.~~
- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with an application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 6.2 For applicants who are applying for the School Principal and Assistant School Principal Standard Certificate under subsection 3.1.1, the following documentation is required:
 - 6.2.1 Official transcript from the applicant's Regionally Accredited college or university with advanced preparation accreditation by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) for applicants who are applying under subsection 4.1.1.1 or official transcript from the applicant's Regionally Accredited college or university for applicants who are applying under subsections 4.1.1.2 and 4.1.1.3.
 - 6.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.2.1.2 Sealed paper transcripts may be submitted.
 - 6.2.1.3 The Department will not accept copies of transcripts; and
 - 6.2.2 Official score on an examination as provided in subsection 4.1.2.
 - 6.2.3 The Department-approved form verifying the applicant's completion of the experience requirement as provided in subsection 4.1.3; and
 - 6.2.4 Additional documentation as required by the Department.
- 6.3 For applicants who are applying for the School Principal and Assistant School Principal Standard Certificate under subsection 3.1.2, the following documentation is required:
 - 6.3.1 An official copy of the Valid and Current License or Certificate; and
 - 6.3.2 Additional documentation as required by the Department.
- 6.4 For applicants who are applying for the School Principal and Assistant School Principal Standard Certificate under subsection 3.1.3, the following documentation is required:
 - 6.4.1 An official copy of the Valid and Current License or Certificate; and
 - 6.4.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 6.4.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.4.2.2 Sealed paper transcripts may be submitted.
 - 6.4.2.3 The Department will not accept copies of transcripts; and
 - 6.4.3 Official score on an examination as provided in subsection 5.1.3.
 - 6.4.4 Additional documentation as required by the Department.

7.0 Validity of a Standard Certificate

- 7.1 A School Principal and Assistant School Principal Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 7.2 A School Principal and Assistant School Principal Standard Certificate is not subject to renewal.

8.0 Disciplinary Action

- 8.1 An Educator's School Principal and Assistant School Principal Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 8.2 An Educator's School Principal and Assistant School Principal Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 8.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

9.0 Secretary of Education Review

- 9.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a School Principal and Assistant School Principal Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School Principal and Assistant School Principal Standard Certificate but whose effectiveness is documented by the local school district or charter school.
- 9.1.1 For school districts, requests shall be approved by the superintendent of the school district.
- 9.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

10.0 Past Certificate Recognized

The Department shall recognize a School Leader I and a School Principal and Assistant School Principal Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to practice as a school principal and an assistant school principal.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1592

REGULATORY IMPLEMENTING ORDER**1592 Certified Central Office Personnel****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1592 Certified Central Office Personnel. The regulation concerns the requirements for a Certified

Central Office Personnel Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Certified Central Office Personnel Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Certified Central Office Personnel Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a Certified Central Office Personnel Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 10.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on September 1, 2020.

The Professional Standards Board received written submittals from Jason Cameron, President of the Delaware Association of School Personnel Administrators; Tammy Croce, Ed.D., Executive Director of the Delaware Association of School Administrators; Kevin Fitzgerald, Ed.D., President of the Delaware Chief School Officers Association; and Frank Shockley, President of the Delaware School Counselors Association, in support of the proposed amendments to the regulation.

In addition, Eric Pizzini, Ed.S. and Emily Klein, Ed.S. of the Delaware Association of School Psychologists commented that the proposed requirements "would ensure that a school psychologist (or any specialist) would be adequately prepared for [this] leadership position." Amanda Wells, a Nationally Certified School Psychologist, commented that the "proposed changes will enhance the leadership and diversity throughout Delaware schools."

Shannon Gronau, Angela Johnson, Lisa Street, Mark Wells, and Mark Whitacre, school counselors; Gabrielle Koury, Ed.D., a school psychologist; and Dr. Angela Thompson, a principal, supported changing the experience requirement in subsection 4.1.3. Gerard Kelly, a school counselor, commented that school counselors "are very well versed in classroom management and lesson plan writing and implementing." Andrea Woodard, a school counselor and school-based Family Crisis Therapist, commented that "it is important to offer an alternative path to school leadership."

Tyrrea Graves, a Board Certified Behavior Analyst, commented that specialists with experience in Appoquinimink School District's Reaching Independence through Structured Education (RISE) program "will be needed to fill administrative roles that traditional candidates may not possess" and that "we have successful principals now that were specialists" who received their certification through reciprocity.

Brieanna Brown commented that the proposed amendments "would allow for more diversity of thought in leadership positions, which will translate to success for all of our students." Angela Harvey-Brown, the Executive Director of 4th-Dimension Leaders, commented that "Delaware's highest need schools require resilient, equity-rooted, transformational leaders" and that 4th-Dimension Leaders has "had to - on several occasions - turn away former psychologists, guidance counselors, speech pathologists, social workers, and other non-teaching educational professionals, who for not having 5 years of classroom experience, were unable to realize their leadership potential in Delaware." Samantha Lopez, a principal, commented that "[i]t may not always take 5 years or more of classroom experience to make an educator ready to lead; it may be a combination of their professional and classroom experience that provides a platform of effectiveness, in conjunction with the preparation of a school leadership program."

Sam Orr commented that "having teaching experience is vital to becoming an administrator," evaluating "teachers when you have never done the job is something that no person in any career would condone," administrators "need to be able to relate to the majority of the staff in the building, which is the teachers, and they must understand the challenges faced daily," and a person "who has never been a teacher . . . [does not] know as enough, cannot relate as well, and [is] not as qualified as those with teaching experience."

II. FINDINGS OF FACTS

On October 8, 2020, the Professional Standards Board considered the written submittals. The Professional Standards Board found that what specialists do today for trauma-informed schools is different from previous times and that all specialists' experience makes a difference in schools. The Professional Standards Board found that school counselors can be part of an administrator's activities (e.g., the master schedule) and that school nurses can be part of student assistance teams to help students who are struggling. The Professional Standards Board also found that schools are not just academic facilities. Students no longer need information in the 21st Century; they need to be able to use the information.

The Professional Standards Board determined that further changes in response to the written submittals were not necessary and voted to propose 14 **DE Admin. Code** 1592 Certified Central Office Personnel, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1592 Certified Central Office Personnel.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1592 Certified Central Office Personnel subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1592 Certified Central Office Personnel, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1592 Certified Central Office Personnel adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1592 Certified Central Office Personnel in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 15th day of October, 2020.

Department of Education

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

Approved this 15th day of October, 2020.

State Board of Education

Whitney Townsend Sweeney, President (Absent)	/s/ Vincent Lofink
/s/ Wali W. Rushdan, II, Vice President	Nina Lou Bunting (Absent)
/s/ Audrey J. Noble, Ph.D.	/s/ Provey Powell, Jr.
/s/ Candace Fifer	

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

1592 Certified Central Office Personnel

1.0 Content

- 4-4 This regulation shall apply to the issuance of a Certified Central Office Personnel Standard Certificate, Certificate pursuant to 14 **Del.C.** §1220(a), ~~for Certified Central Office Personnel. This Standard Certificate is required for all instructional administrators who are working in Delaware public schools, including directors, supervisors, administrative assistants, coordinators, and managers, except for special education directors who are subject to the requirements set forth in 14 **DE Admin. Code** 1594 Special Education Director.~~

1.1.1 ~~This Standard Certificate is for Directors, Supervisors, Administrative Assistants, Coordinators, and Managers in instructional areas, except for Directors of Special Education (See 14 DE Admin. Code 1594).~~

1.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

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

~~“Certification Program for Leaders in Education” means a program comprised of education components as defined and approved by the Standards Board and the State Board pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.~~

~~“Department” means the Delaware Department of Education.~~

~~“Educator” means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term “educator” does not include substitute teachers.~~

~~“Employing Authority” means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.~~

~~“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of the educator’s unfitness or otherwise.~~

~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~“Major or Its Equivalent” means a minimum of 30 semester hours of coursework in a particular content area.~~

~~“Passing Score” means a minimum score as established by the Standards Board, in consultation with the Department, and with the approval of the State Board of Education.~~

~~“Professional Development” means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants’ attitudes, insights, and perspectives and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.~~

~~“Regionally Accredited” means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.~~

~~“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.~~

~~“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.~~

~~“Valid and Current License or Certificate” means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.~~

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Certified Central Office Personnel Standard Certificate ~~as Certified Central Office Personnel to an educator who has met the following to an applicant who:~~
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; ~~or a Limited Standard, or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and~~ and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as central office personnel from another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~ Has met the requirements for licensure in Delaware and meets the requirements set forth in Section 5.0 of this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Certified Central Office Personnel Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

An educator must also have met the following additional requirements:

4.1 Education requirements.

- 4.1.1 ~~An educator shall also have satisfied at least one (1) of the following additional education requirements:~~
- 4.1.1.1 ~~A master's or doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or~~
 - 4.1.1.2 ~~A masters degree from a regionally accredited college or university in any field and one of the following:~~
 - 4.1.1.2.1 ~~The successful completion of an approved Program pursuant to 14 DE Admin. Code 1505 Certification Programs for Leaders in Education; or~~
 - 4.1.1.2.2 ~~Holding a Standard Certificate School Principal and successful completion of an additional nine (9) graduate level credit hours from a regionally accredited college or university in educational leadership or the equivalent in professional development approved by the Department.~~

4.2 Experience requirements.

- 4.2.1 ~~An educator must have a minimum of five (5) years of teaching experience.~~

4.1 The Department may issue a Certified Central Office Personnel Standard Certificate to an applicant who has satisfied the requirements in subsections 4.1.1 through 4.1.3.**4.1.1 The applicant shall have satisfied one of the following education requirements:**

- 4.1.1.1 Earned a master's or doctoral degree with a Major or Its Equivalent in Pre-K to 12 educational leadership from a Regionally Accredited college or university with advanced preparation accreditation by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP); or

4.1.1.2 Earned a master's or doctoral degree in any content area from a Regionally Accredited college or university and satisfactorily completed an alternative routes for licensure or certification program for central office personnel as provided in 14 Del.C. §§1260 – 1266; or

4.1.1.3 Earned a master's or doctoral degree in any content area from a Regionally Accredited college or university and satisfactorily completed a Department-approved educator preparation program for central office personnel as provided in 14 DE Admin. Code 290 Approval of Educator Preparation Programs; or

4.1.1.4 Earned a master's or doctoral degree in any content area from a Regionally Accredited college or university; holds a School Principal and Assistant Principal Standard Certificate (14 DE Admin. Code 1591) that was issued by the Department; and satisfactorily completed an additional nine graduate-level credit hours in Pre-K to 12 educational leadership from a Regionally Accredited college or university or the equivalent in Professional Development approved by the Department. The additional nine graduate-level credit hours must be completed after the applicant earned his or her master's or doctoral degree.

4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:

4.1.2.1 A Passing Score of 146 on the Educational Leadership: Administration and Supervision Assessment (ETS Test Code # 5412); or

4.1.2.2 A Passing Score of 160 on the School Leaders Licensure Assessment (ETS Test Code # 6011); or

4.1.2.3 A Passing Score of 160 on the School Superintendent Assessment (ETS Test Code # 6021); or

4.1.2.4 A Passing Score of 151 on the School Leaders Licensure Assessment (ETS Test Code # 6990); or

4.1.2.5 A Passing Score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).

4.1.3 The applicant shall have completed a minimum of five years of experience as an educator with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system under a state credential in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department.

5.0 **Validity**

~~5.1 This regulation shall be effective no less than ten (10) days from the date the Order amending the regulation has been published in its final form in the Delaware Register of Regulations.~~

~~5.1.1 Educators currently enrolled in a certified central office personnel course of study prior to the effective date of this regulation will have eighteen (18) months subsequent to the effective date to apply for the previous School Leader I Standard Certificate. Educators are responsible for providing to the Department evidence of enrollment via submission of appropriate transcripts.~~

~~5.2 An Emergency Certificate for Certified Central Office Personnel is not available.~~

~~5.3 The Department shall also recognize a Standard Certificate for School Leader I issued by the Department prior to the effective date of this regulation.~~

5.0 **Reciprocity**

5.1 If an applicant is already licensed or certified as central office personnel in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.3 in order for the Department to issue a Certified Central Office Personnel Standard Certificate:

5.1.1 The applicant shall hold a Valid and Current License or Certificate as central office personnel.

- 5.1.2 The applicant shall have earned a master's or doctoral degree in a Pre-K to 12 education-related field from a Regionally Accredited college or university.
- 5.1.3 If the applicant has less than five years' experience working as central office administrator in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department, the applicant shall have achieved a Passing Score on one of the following examinations:
 - 5.1.3.1 A Passing Score of 146 on the Educational Leadership: Administration and Supervision Assessment (ETS Test Code # 5412); or
 - 5.1.3.2 A Passing Score of 160 on the School Leaders Licensure Assessment (ETS Test Code # 6011); or
 - 5.1.3.3 A Passing Score of 160 on the School Superintendent Assessment (ETS Test Code # 6021); or
 - 5.1.3.4 A Passing Score of 151 on the School Leaders Licensure Assessment (ETS Test Code # 6990); or
 - 5.1.3.5 A Passing Score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).

6.0 Application Requirements

- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with an application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 6.2 For applicants who are applying for the Certified Central Office Standard Certificate under subsection 3.1.1, the following documentation is required:
 - 6.2.1 Official transcript from the applicant's Regionally Accredited college or university with advanced preparation accreditation by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) for applicants who are applying under subsection 4.1.1.1 or official transcript from the applicant's Regionally Accredited college or university for applicants who are applying under subsections 4.1.1.2, 4.1.1.3, and 4.1.1.4.
 - 6.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.2.1.2 Sealed paper transcripts may be submitted.
 - 6.2.1.3 The Department will not accept copies of transcripts; and
 - 6.2.2 Documents verifying successful completion of Department-approved Professional Development, if applicable; and
 - 6.2.3 Official score on an examination as provided in subsection 4.1.2; and
 - 6.2.4 The Department-approved form verifying the applicant's completion of the experience requirement as provided in subsection 4.1.3; and
 - 6.2.5 Additional documentation as required by the Department.
- 6.3 For applicants who are applying for the Certified Central Office Standard Certificate under subsection 3.1.2, the following documentation is required:
 - 6.3.1 An official copy of the Valid and Current License or Certificate; and
 - 6.3.2 Additional documentation as required by the Department.
- 6.4 For applicants who are applying for the Certified Central Office Standard Certificate under subsection 3.1.3, the following documentation is required:
 - 6.4.1 An official copy of the Valid and Current License or Certificate; and
 - 6.4.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 6.4.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.4.2.2 Sealed paper transcripts may be submitted.

- 6.4.2.3 The Department will not accept copies of transcripts; and
- 6.4.3 Official score on an examination as provided in subsection 5.1.3; and
- 6.4.4 Additional documentation as required by the Department.

7.0 Validity of a Standard Certificate

- 7.1 A Certified Central Office Personnel Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 7.2 A Certified Central Office Personnel Standard Certificate is not subject to renewal.

8.0 Disciplinary Action

- 8.1 An Educator's Certified Central Office Personnel Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 8.2 An Educator's Certified Central Office Personnel Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 8.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

9.0 Secretary of Education Review

- 9.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Certified Central Office Personnel Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Certified Central Office Personnel Standard Certificate but whose effectiveness is documented by the local school district or charter school.
 - 9.1.1 For school districts, requests shall be approved by the superintendent of the school district.
 - 9.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

10.0 Past Certificate Recognized

The Department shall recognize a School Leader II and a Certified Central Office Personnel Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to practice as central office personnel.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1593

REGULATORY IMPLEMENTING ORDER

1593 Superintendent or Assistant Superintendent

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation

and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1593 Superintendent or Assistant Superintendent. The regulation concerns the requirements for a Superintendent and Assistant Superintendent Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Superintendent and Assistant Superintendent Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Superintendent and Assistant Superintendent Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a Superintendent and Assistant Superintendent Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 10.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on September 1, 2020.

The Professional Standards Board received written submittals from Jason Cameron, President of the Delaware Association of School Personnel Administrators; Tammy Croce, Ed.D., Executive Director of the Delaware Association of School Administrators; Kevin Fitzgerald, Ed.D., President of the Delaware Chief School Officers Association; and Frank Shockley, President of the Delaware School Counselors Association, in support of the proposed amendments to the regulation.

In addition, Eric Pizzini, Ed.S. and Emily Klein, Ed.S. of the Delaware Association of School Psychologists commented that the proposed requirements "would ensure that a school psychologist (or any specialist) would be adequately prepared for [this] leadership position." Amanda Wells, a Nationally Certified School Psychologist, commented that the "proposed changes will enhance the leadership and diversity throughout Delaware schools."

Shannon Gronau, Angela Johnson, Lisa Street, Mark Wells, and Mark Whitacre, school counselors; Gabrielle Koury, Ed.D., a school psychologist; and Dr. Angela Thompson, a principal, supported changing the experience requirement in subsection 4.1.3.1. Gerard Kelly, a school counselor, commented that school counselors "are very well versed in classroom management and lesson plan writing and implementing." Andrea Woodard, a school counselor and school-based Family Crisis Therapist, commented that "it is important to offer an alternative path to school leadership."

Tyrrea Graves, a Board Certified Behavior Analyst, commented that specialists with experience in Appoquinimink School District's Reaching Independence through Structured Education (RISE) program "will be needed to fill administrative roles that traditional candidates may not possess" and that "we have successful principals now that were specialists" who received their certification through reciprocity.

Brieanna Brown commented that the proposed amendments "would allow for more diversity of thought in leadership positions, which will translate to success for all of our students." Angela Harvey-Brown, the Executive Director of 4th-Dimension Leaders, commented that "Delaware's highest need schools require resilient, equity-rooted, transformational leaders" and that 4th-Dimension Leaders has "had to - on several occasions - turn away former psychologists, guidance counselors, speech pathologists, social workers, and other non-teaching educational professionals, who for not having 5 years of classroom experience, were unable to realize their leadership potential in Delaware." Samantha Lopez, a principal, commented that "[i]t may not always take 5 years or more of classroom experience to make an educator ready to lead; it may be a combination of their professional and classroom experience that provides a platform of effectiveness, in conjunction with the preparation of a school leadership program."

Sam Orr commented that "having teaching experience is vital to becoming an administrator," evaluating "teachers when you have never done the job is something that no person in any career would condone," administrators "need to be able to relate to the majority of the staff in the building, which is the teachers, and they must understand the challenges faced daily," and a person "who has never been a teacher . . . [does not] know as enough, cannot relate as well, and [is] not as qualified as those with teaching experience."

II. FINDINGS OF FACTS

On October 8, 2020, the Professional Standards Board considered the written submittals. The Professional Standards Board found that what specialists do today for trauma-informed schools is different from previous times and that all specialists' experience makes a difference in schools. The Professional Standards Board found that school counselors can be part of an administrator's activities (e.g., the master schedule) and that school nurses can be part of student assistance teams to help students who are struggling. The Professional Standards Board

also found that schools are not just academic facilities. Students no longer need information in the 21st Century; they need to be able to use the information.

The Professional Standards Board determined that further changes in response to the written submittals were not necessary and voted to propose 14 **DE Admin. Code** 1593 Superintendent or Assistant Superintendent, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1593 Superintendent or Assistant Superintendent.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1593 Superintendent or Assistant Superintendent subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1593 Superintendent or Assistant Superintendent, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1593 Superintendent or Assistant Superintendent adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1593 Superintendent and Assistant Superintendent in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 15th day of October, 2020.

Department of Education

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

Approved this 15th day of October, 2020.

State Board of Education

Whitney Townsend Sweeney, President (Absent)

/s/ Vincent Lofink

/s/ Wali W. Rushdan, II, Vice President

Nina Lou Bunting (Absent)

/s/ Audrey J. Noble, Ph.D.

/s/ Provey Powell, Jr.

/s/ Candace Fifer

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

1593 Superintendent ~~or~~ and Assistant Superintendent

1.0 Content

- 4.4 This regulation shall apply to the issuance of a Superintendent and Assistant Superintendent Standard Certificate, ~~pursuant pursuant to 14 Del.C. §1220(a), for Superintendent or Assistant Superintendent.~~ This Standard Certificate is required for all superintendents and assistant superintendents who are working in Delaware public schools.

- 1.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

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

"Certified Central Office Experience" means being certified and employed as a Director, Supervisor, Administrative Assistant, Coordinator or Manager in an instructional area in an employing authority's central office.

"Department" means the Delaware Department of Education.

"Education Experience" means working with students under a State credential in any PreK to 12 public school setting or the equivalent as approved by the Department.

"Educator" means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term "educator" does not include substitute teachers.

"Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Major or Its Equivalent" means a minimum of 30 semester hours of coursework in a particular content area.

"Passing Score" means a minimum score as established by the Standards Board, in consultation with the Department, and with the approval of the State Board of Education.

"Professional Development" means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and perspectives and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

"Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.

"Valid and Current License or Certificate" means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Superintendent and Assistant Superintendent Standard Certificate ~~as a Superintendent or Assistant Superintendent to an educator who has met the following to an applicant who:~~
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; ~~or a Limited Standard, or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and~~ and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a superintendent or assistant superintendent from another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~ Has met the requirements for licensure in Delaware and meets the requirements set forth in Section 5.0 of this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Superintendent and Assistant Superintendent Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

An educator must also have met the following additional requirements:

4.1 ~~Education requirements.~~

- 4.1.1 ~~An educator shall also have satisfied at least one (1) of the following additional education requirements:~~
- 4.1.1.1 ~~A doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or~~
 - 4.1.1.2 ~~A masters or doctoral degree from a regionally accredited college or university in any field and one of the following:~~
 - 4.1.1.2.1 ~~The successful completion of an approved Superintendent Program pursuant to 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education; or~~
 - 4.1.1.2.2 ~~Holding a Standard Certificate Certified Central Office Personnel or a Standard Certificate Special Education Director; and successful completion of an additional nine (9) graduate level credit hours from a regionally accredited college or university in educational leadership or the equivalent in professional development approved by the Department.~~

4.2 ~~Experience requirements.~~

- 4.2.1 ~~An educator must have a minimum of seven (7) years of education experience consisting of the following:~~
- 4.2.1.1 ~~A minimum of five (5) years of teaching experience; and~~
 - 4.2.1.2 ~~A minimum of two (2) years of full time leadership experience working in any of the following areas:~~
 - 4.2.1.2.1 ~~A School Principal or an Assistant School Principal; or~~
 - 4.2.1.2.2 ~~A Certified Central Office Personnel educator; or~~
 - 4.2.1.2.3 ~~A Special Education Director; or~~
 - 4.2.1.2.4 ~~Other leadership position.~~

FINAL REGULATIONS

- 4.1 The Department may issue a Superintendent and Assistant Superintendent Standard Certificate to an applicant who has satisfied the requirements in subsections 4.1.1 through 4.1.3.
- 4.1.1 The applicant shall have satisfied one of the following education requirements:
- 4.1.1.1 Earned a doctoral degree with a Major or Its Equivalent in Pre-K to 12 educational leadership from a Regionally Accredited college or university with advanced preparation accreditation by the by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP); or
- 4.1.1.2 Earned a master's or doctoral degree in any content area from a Regionally Accredited college or university and satisfactorily completed an alternative routes for licensure or certification program for superintendents as provided in 14 **Del.C.** §§1260 – 1266; or
- 4.1.1.3 Earned a master's or doctoral degree in any content area from a Regionally Accredited college or university and satisfactorily completed a Department-approved educator preparation program for superintendents as provided in 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs; or
- 4.1.1.4 Earned a master's or doctoral degree in any content area from a Regionally Accredited college or university; holds Certified Central Office Personnel Standard Certificate (14 **DE Admin. Code** 1592) or Special Education Director Standard Certificate (14 **DE Admin. Code** 1594) that was issued by the Department; and satisfactorily completed an additional nine graduate-level credit hours in Pre-K to 12 educational leadership from a Regionally Accredited college or university or the equivalent in Professional Development approved by the Department. The additional nine graduate-level credit hours must be completed after the applicant was issued his or her Certified Central Office Personnel Standard Certificate (14 **DE Admin. Code** 1592) or Special Education Director Standard Certificate (14 **DE Admin. Code** 1594).
- 4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:
- 4.1.2.1 A Passing Score of 160 on the School Superintendent Assessment (ETS Test Code # 6021); or
- 4.1.2.2 A Passing Score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).
- 4.1.3 The applicant shall have completed a minimum of seven years of education experience as provided in subsections 4.1.3.1 and 4.1.3.2.
- 4.1.3.1 The applicant shall have completed a minimum of five years of experience as an educator with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system under a state credential in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department; and
- 4.1.3.2 The applicant shall have completed a minimum of two years of one of the following full-time leadership experience requirements with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system under a state credential in any Pre-K to 12 public school setting as approved by the Department:
- 4.1.3.2.1 Working as a school principal or assistant school principal; or
- 4.1.3.2.2 Working as a certified central office administrator; or
- 4.1.3.2.3 Working as a special education director; or
- 4.1.3.2.4 Working in another administrative instructional leadership position; or
- 4.1.3.2.5 Any combination of the leadership experience requirements in subsections 4.1.3.2.1 through 4.1.3.2.4.

5.0 Validity

- 5.1 This regulation shall be effective no less than ten (10) days from the date the Order amending the regulation has been published in its final form in the Delaware *Register of Regulations*.

- ~~5.1.1 Educators currently enrolled in a School Leader II course of study will have eighteen (18) months subsequent to the effective date to apply for the previous School Leader II Standard Certificate. Educators are responsible for providing the Department evidence of enrollment via submission of appropriate transcripts.~~
- ~~5.2 An Emergency Certificate for Superintendent or Assistant Superintendent is not available.~~
- ~~5.3 The Department shall also recognize a Standards Certificate for Superintendent or Assistant Superintendent issued by the Department prior to the effective date of this regulation.~~

5.0 Reciprocity

- 5.1 If an applicant is already licensed or certified as a superintendent or assistant superintendent in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.3 in order for the Department to issue a Superintendent and Assistant Superintendent Standard Certificate:
 - 5.1.1 The applicant shall hold a Valid and Current License or Certificate as superintendent or assistant superintendent.
 - 5.1.2 The applicant shall have earned a master's or doctoral degree in a Pre-K to 12 education-related field from a Regionally Accredited college or university.
 - 5.1.3 If the applicant has less than five years' experience working as a superintendent or assistant superintendent in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department, the applicant shall have achieved a Passing Score on one of the following examinations:
 - 5.1.3.1 A Passing Score of 160 on the School Superintendent Assessment (ETS Test Code # 6021); or
 - 5.1.3.2 A Passing Score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).

6.0 Application Requirements

- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with an application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 6.2 For applicants who are applying for the Superintendent and Assistant Superintendent Standard Certificate under subsection 3.1.1, the following documentation is required:
 - 6.2.1 Official transcript from the applicant's Regionally Accredited college or university with advanced preparation accreditation by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) for applicants who are applying under subsection 4.1.1.1 or official transcript from the applicant's Regionally Accredited college or university for applicants who are applying under subsections 4.1.1.2, 4.1.1.3, and 4.1.1.4.
 - 6.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.2.1.2 Sealed paper transcripts may be submitted.
 - 6.2.1.3 The Department will not accept copies of transcripts; and
 - 6.2.2 Documents verifying successful completion of Department-approved Professional Development, if applicable; and
 - 6.2.3 Official score on an examination as provided in subsection 4.1.2; and
 - 6.2.4 The Department-approved form verifying the applicant's completion of the experience requirement as provided in subsection 4.1.3; and
 - 6.2.5 Additional documentation as required by the Department.
- 6.3 For applicants who are applying for the Superintendent and Assistant Superintendent Standard Certificate under subsection 3.1.2, the following documentation is required:

6.3.1 An official copy of the Valid and Current License or Certificate; and

6.3.2 Additional documentation as required by the Department.

6.4 For applicants who are applying for the Superintendent and Assistant Superintendent Standard Certificate under subsection 3.1.3, the following documentation is required:

6.4.1 An official copy of the Valid and Current License or Certificate; and

6.4.2 Official transcript from the applicant's Regionally Accredited college or university.

6.4.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

6.4.2.2 Sealed paper transcripts may be submitted.

6.4.2.3 The Department will not accept copies of transcripts; and

6.4.3 Official score on an examination as provided in subsection 5.1.3; and

6.4.4 Additional documentation as required by the Department.

7.0 Validity of a Standard Certificate

7.1 A Superintendent and Assistant Superintendent Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

7.2 A Superintendent and Assistant Superintendent Standard Certificate is not subject to renewal.

8.0 Disciplinary Action

8.1 An Educator's Superintendent and Assistant Superintendent Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.

8.2 An Educator's Superintendent and Assistant Superintendent Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.

8.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

9.0 Secretary of Education Review

9.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Superintendent and Assistant Superintendent Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Superintendent and Assistant Superintendent Standard Certificate but whose effectiveness is documented by the local school district or charter school.

9.1.1 For school districts, requests shall be approved by the superintendent of the school district.

9.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

10.0 Past Certificate Recognized

The Department shall recognize a School Leader II and a Superintendent or Assistant Superintendent Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to practice as a superintendent and an assistant superintendent.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1594

REGULATORY IMPLEMENTING ORDER

1594 Special Education Director

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1594 Special Education Director. The regulation concerns the requirements for a Special Education Director Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Special Education Director Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Special Education Director Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a Special Education Director Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 10.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on September 1, 2020.

The Professional Standards Board received written submittals from Jason Cameron, President of the Delaware Association of School Personnel Administrators; Tammy Croce, Ed.D., Executive Director of the Delaware Association of School Administrators; and Kevin Fitzgerald, Ed.D., President of the Delaware Chief School Officers Association in support of the proposed amendments to the regulation.

In addition, Eric Pizzini, Ed.S. and Emily Klein, Ed.S. of the Delaware Association of School Psychologists commented that the proposed requirements "would ensure that a school psychologist (or any specialist) would be adequately prepared for [this] leadership position." Amanda Wells, a Nationally Certified School Psychologist, commented that the "proposed changes will enhance the leadership and diversity throughout Delaware schools."

The Professional Standards Board also received written submittals from Terri Hancharick, Chairperson of the State Council for Persons with Disabilities ("SCPD") and Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"). GACEC supports the proposed amendments to the regulation. SCPD and GACEC recommended that "pupil personnel services" in subsection 4.1.3.4 be defined. In addition, SCPD and GACEC commented that the Professional Standards Board does not prescribe specific professional development for educators and it is possible that an educator with a Special Education Director Standard Certificate will not actually participate in any professional development related to the certification. SCPD and GACEC recommended that the Department consider whether including requirements for renewal of the Special Education Director Standard Certificate is warranted. SCPD recommended that Section 9.0 be removed from the regulation because educators with a Special Education Director Standard Certificate "need to be some of the most capable individuals and educators in Delaware." GACEC made a similar recommendation regarding Section 9.0. GACEC also commented that special education directors "should have a minimum of five years of teaching special education students as a requirement of their certification" because "otherwise you end up with an administrator who does not possess the knowledge and understanding of what is required to educate students with special educational needs."

II. FINDINGS OF FACTS

On October 8, 2020, the Professional Standards Board considered the written submittals. The Professional Standards Board found that when a term is not defined in a regulation, it is accorded its common meaning and that "pupil personnel services" in subsection 4.1.3.4 refers to a person who provided personnel services to special education students.

Additionally, the Professional Standards Board found that the proposed subsection 7.2, which provides that the

Special Education Director Standard Certificate is not renewed, is consistent with the statute concerning standard certificates. The statute, 14 **Del.C.** §1220(a), provides that the "Department shall issue a standard certificate to an applicant who . . . has acquired the prescribed knowledge, skill, or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students." 14 **Del.C.** Ch. 12 does not authorize the Department to renew a standard certificate once it has been issued, which is different from a continuing license that may be renewed for five years if an educator has completed 90 clock-hours of approved professional development (14 **Del.C.** §1212). The Professional Standards Board found that subsection 5.1 of the regulation concerning continuing licenses (14 **DE Admin. Code** 1511) provides that "[a]t least one half of the required hours [forty-five (45) hours every five (5) years] for educators shall be in activities that relate to the educator's work with students or staff." Moreover, one criterion for determining if a professional development activity is acceptable for clock-hour credit is that a professional development activity address "one of the standards for the educator's area of the profession" (14 **DE Admin. Code** 1511-5.4.2.3). The Professional Standards Board found that, with recommendations from the Professional Development and Associated Compensation Committee, it can continue to work with the Department to address the broader question of whether to change the current system for professional development in the future.

The Professional Standards Board also found that the proposed Section 9.0, Secretary of Education Review, is an important tool that is available for all certifications by statute (14 **Del.C.** §1224).

The Professional Standards Board concluded that further changes in response to the written submittals were not necessary and voted to propose 14 **DE Admin. Code** 1594 Special Education Director, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1594 Special Education Director.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1594 Special Education Director subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1594 Special Education Director, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1594 Special Education Director adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1594 Special Education Director in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 15th day of October, 2020.

Department of Education

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

Approved this 15th day of October, 2020.

State Board of Education

Whitney Townsend Sweeney, President (Absent) /s/ Vincent Lofink
/s/ Wali W. Rushdan, II, Vice President Nina Lou Bunting (Absent)
/s/ Audrey J. Noble, Ph.D. /s/ Provey Powell, Jr.
/s/ Candace Fifer

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

1594 Special Education Director

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Special Education Director Standard Certificate for Director of Special Education, pursuant to 14 **Del.C.** §1220(a). This Standard Certificate is required for all special education directors who are working in Delaware public schools.
- 1.2 ~~Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2.1 ~~The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

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

~~"**Certification Program for Leaders in Education**" means a program comprised of education components as defined and approved by the Standards Board and the State Board pursuant to 14 **DE Admin. Code** 1505 Certification Programs for Leaders in Education.~~

"**Department**" means the Delaware Department of Education.

"**Educator**" means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term "educator" does not include substitute teachers.

"**Employing Authority**" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"**Immorality**" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

"**License**" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"**Major or Its Equivalent**" means a minimum of 30 semester hours of coursework in a particular content area.

"**Passing Score**" means a minimum score as established by the Standards Board, in consultation with the Department, and with the approval of the State Board of Education.

"**Professional Development**" means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and perspectives and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

"**Regionally Accredited**" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of

education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.

“Valid and Current License or Certificate” means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 **Issuance of a Standard Certificate**

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Special Education Director Standard Certificate as a Special Education Director to an educator who has met the following to an applicant who:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a special education director from another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
 - 3.1.3 Has satisfied the additional requirements in this regulation. Has met the requirements for licensure in Delaware and meets the requirements set forth in Section 5.0 of this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Special Education Director Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation’s resolution.

4.0 **Additional Prescribed Education, Knowledge, and Skill Requirements**

An educator must also have met the following additional requirements:

- 4.1 Education requirements:
- 4.1.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:
 - 4.1.1.1 A master’s or doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; and
 - 4.1.1.1.1 Thirty (30) graduate level semester hours from a regionally accredited college or university in Special Education taken either as part of a degree program or in addition to it, or the equivalent in professional development pre-approved by the Department; or
 - 4.1.1.2 A master’s or doctoral degree from a regionally accredited college or university in Special Education offered by an NCATE specialty organization recognized educator preparation

program or from a state-approved educator preparation program where the state approval body employed the appropriate NCATE specialty organization standards; and

~~4.1.1.2.1 The successful completion of any approved Program pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education; or~~

~~4.1.1.3 A master's or doctoral degree from a regionally accredited college or university in any field; and~~

~~4.1.1.3.1 The successful completion of an approved Special Education Director Program pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.~~

4.2 Experience requirements:

~~4.2.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:~~

~~4.2.1.1 A minimum of five (5) years of teaching experience with exceptional children special education students at the PreK to 12 public school level or the equivalent as approved by the Department; or~~

~~4.2.1.2 A minimum of five (5) years professional experience under a Delaware Standard Certificate or other Delaware professional license including but not limited to a school psychologist, speech pathologist, or audiologist, working with exceptional children special education students at the PreK to 12 level or the equivalent as approved by the Department; or~~

~~4.2.1.3 A minimum of five (5) years administrative experience working with exceptional children special education students at the PreK to 12 level or the equivalent as approved by the Department;~~

~~4.2.1.4] Any combination of the types of experiences prescribed in subsections 4.2.1.1, 4.2.1.2 and 4.2.1.3 which totals a minimum of five (5) years.~~

4.1 The Department may issue a Special Education Director Standard Certificate to an applicant who has satisfied the requirements in subsections 4.1.1 through 4.1.3.

4.1.1 The applicant shall have satisfied one of the following education requirements:

4.1.1.1 Earned a master's or doctoral degree with a Major or Its Equivalent in special education leadership from a Regionally Accredited college or university with advanced preparation accreditation by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP); or

4.1.1.2 Earned a master's or doctoral degree in special education from a Regionally Accredited college or university with advanced preparation accreditation by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) and satisfactorily completed an alternative routes for licensure or certification program for leaders as provided in 14 Del.C. §§1260 – 1266; or

4.1.1.3 Earned a master's or doctoral degree in any content area from a Regionally Accredited college or university and satisfactorily completed a Department-approved educator preparation program for special education directors as provided in 14 DE Admin. Code 290 Approval of Educator Preparation Programs; or

4.1.1.4 Earned a master's or doctoral degree with a Major or Its Equivalent in Pre-K to 12 educational leadership from a Regionally Accredited college or university with advanced preparation accreditation by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) and completed an additional 30 graduate-level credit hours in special education from a Regionally Accredited college or university or the equivalent in Professional Development approved by the Department.

4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:

4.1.2.1 A Passing Score of 146 on the Educational Leadership: Administration and Supervision Assessment (ETS Test Code # 5412); or

- 4.1.2.2 A Passing Score of 160 on the School Leaders Licensure Assessment (ETS Test Code # 6011); or
- 4.1.2.3 A Passing Score of 160 on the School Superintendent Assessment (ETS Test Code # 6021); or
- 4.1.2.4 A Passing Score of 151 on the School Leaders Licensure Assessment (ETS Test Code # 6990); or
- 4.1.2.5 A Passing Score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).
- 4.1.3 The applicant shall have completed a minimum of five years of one of the following experience requirements in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department:
 - 4.1.3.1 Teaching special education students under a state credential with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system; or
 - 4.1.3.2 Working with special education students as a school psychologist, speech pathologist, or audiologist under a Delaware Standard Certificate or a Delaware professional license; or
 - 4.1.3.3 Working with special education students as an educational diagnostician or special education coordinator; or
 - 4.1.3.4 Providing pupil personnel services to special education students under a Delaware professional license; or
 - 4.1.3.5 Supervising staff who teach special education students with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system; or
 - 4.1.3.6 Any combination of the experience requirements in subsections 4.1.3.1 through 4.1.3.5.

5.0 Validity

- 5.1 ~~This regulation shall be effective no less than ten (10) days from the date the Order amending the regulation has been published in its final form in the Delaware *Register of Regulations*.~~
- 5.1.1 ~~Educators currently enrolled in a Special Education Director course of study prior to the effective date of this regulation will have until eighteen (18) months subsequent to the effective date to apply for the previous Special Education Director Standard Certificate. Educators are responsible for providing to the Department evidence of enrollment via submission of appropriate transcripts.~~
- 5.2 ~~An Emergency Certificate for Special Education Director is not available.~~
- 5.3 ~~The Department shall also recognize a Standard Certificate for Special Education Director issued by the Department prior to the effective date of this regulation.~~

5.0 Reciprocity

- 5.1 If an applicant is already licensed or certified as a special education director in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.4 in order for the Department to issue a Special Education Director Standard Certificate:
 - 5.1.1 The applicant shall hold a Valid and Current License or Certificate as a special education director.
 - 5.1.2 The applicant shall have earned a master's or doctoral degree in a Pre-K to 12 education-related field from a Regionally Accredited college or university.
 - 5.1.3 If the applicant has less than five years' experience working as a special education director or supervisor in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department, the applicant shall have achieved a Passing Score on one of the following examinations:
 - 5.1.3.1 A Passing Score of 146 on the Educational Leadership: Administration and Supervision Assessment (ETS Test Code # 5412); or

- 5.1.3.2 A Passing Score of 160 on the School Leaders Licensure Assessment (ETS Test Code # 6011); or
- 5.1.3.3 A Passing Score of 160 on the School Superintendent Assessment (ETS Test Code # 6021); or
- 5.1.3.4 A Passing Score of 151 on the School Leaders Licensure Assessment (ETS Test Code # 6990); or
- 5.1.3.5 A Passing Score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).

6.0 **Application Requirements**

- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with an application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 6.2 For applicants who are applying for the Special Education Director Standard Certificate under subsection 3.1.1, the following documentation is required:
 - 6.2.1 Official transcript from the applicant's Regionally Accredited college or university with advanced preparation accreditation by the National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) for applicants who are applying under subsections 4.1.1.1 and 4.1.1.4 or official transcript from the applicant's Regionally Accredited college or university for applicants who are applying under subsections 4.1.1.2 or 4.1.1.3.
 - 6.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.2.1.2 Sealed paper transcripts may be submitted.
 - 6.2.1.3 The Department will not accept copies of transcripts; and
 - 6.2.2 Documents verifying successful completion of Department-approved Professional Development, if applicable; and
 - 6.2.3 Official score on an examination as provided in subsection 4.1.2; and
 - 6.2.4 The Department-approved form verifying the applicant's completion of the experience requirement as provided in subsection 4.1.3; and
 - 6.2.5 Additional documentation as required by the Department.
- 6.3 For applicants who are applying for the Special Education Director Standard Certificate under subsection 3.1.2, the following documentation is required:
 - 6.3.1 An official copy of the Valid and Current License or Certificate; and
 - 6.3.2 Additional documentation as required by the Department.
- 6.4 For applicants who are applying for the Special Education Director Standard Certificate under subsection 3.1.3, the following documentation is required:
 - 6.4.1 An official copy of the Valid and Current License or Certificate; and
 - 6.4.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 6.4.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.4.2.2 Sealed paper transcripts may be submitted.
 - 6.4.2.3 The Department will not accept copies of transcripts; and
 - 6.4.3 Official score on an examination as provided in subsection 5.1.3; and
 - 6.4.4 Additional documentation as required by the Department.

7.0 **Validity of a Standard Certificate**

- 7.1 A Special Education Director Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

7.2 A Special Education Director Standard Certificate is not subject to renewal.

8.0 Disciplinary Action

- 8.1 An Educator's Special Education Director Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 8.2 An Educator's Special Education Director Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 8.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

9.0 Secretary of Education Review

- 9.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Special Education Director Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Special Education Director Standard Certificate but whose effectiveness is documented by the local school district or charter school.
- 9.1.1 For school districts, requests shall be approved by the superintendent of the school district.
- 9.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

10.0 Past Certificate Recognized

The Department shall recognize a Special Education Supervisor and a Special Education Director Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to practice as a special education director.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3201

ORDER

3201 Skilled and Intermediate Care Nursing Facilities

Nature of The Proceedings

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Skilled and Intermediate Care Nursing Facilities. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code Section 1119C.

On June 1, 2020, DHSS published in the *Delaware Register of Regulations* its notice of emergency regulations pursuant to 16 Del.C. §1119C and 29 Del.C. §10119. On October 1, 2020 (Volume 24, Issue 4), DHSS published in the *Delaware Register of Regulations* its notice of both emergency and proposed regulations, pursuant to 16 Del.C. §1119C and to 29 Del.C. §10119 and 29 Del.C. §10115, respectively. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by November 2, 2020, after which time DHSS would review information, factual evidence and public comment to the said proposed

regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

Summary of Proposal

Effective December 1, 2020, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Skilled and Intermediate Care Nursing Facilities.

Background

Rapid and widespread transmission of COVID-19 is of significant concern within congregate settings, particularly within nursing facilities, assisted living facilities, rest (residential) facilities, and intermediate care facilities for persons with intellectual disabilities.

Because asymptomatic or presymptomatic residents and staff might play an important role in transmission in facilities, additional prevention measures merit consideration, including using testing to guide the use of transmission-based precautions, isolation, and cohorting strategies. The ability to test large numbers of residents and staff may significantly decrease transmission of COVID-19 within facilities.

Statutory Authority

16 Del.C. §1119C

Purpose

The purpose of the amendment was to update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for skilled and intermediate care nursing facilities.

Fiscal Impact

N/A

SUMMARY OF EVIDENCE

STATE OF DELAWARE REGULATIONS GOVERNING SKILLED AND INTERMEDIATE CARE NURSING FACILITIES

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Skilled and Intermediate Care Nursing Facilities were published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (October 1, 2020 through November 2, 2020).

Public comments and the DHSS (Department) responses are as follows:

Ann C. Fisher, Chairperson Governor’s Advisory Council for Exceptional Citizens

Comment: The Governor’s Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) Emergency and Proposed regulations governing testing for COVID-19 in nursing homes, immediate care nursing facilities, assisted living facilities and rest (residential) facilities. Council understands that the emergency regulations (304, 306 and 308) extend the mandatory testing and other protocols for each type of facility for 60 days, based on the Governor’s Emergency Orders. The proposed regulations (315, 317 and 320) are identical to the emergency regulations and allow the public an opportunity to provide comments. Council would like to share the following observations and will group our comments as they all pertain to each of the facility types noted.

First, section 6.11.1.1 suggests but does not compel resident testing upon identification of another resident with symptoms consistent with COVID-19 or if staff have tested positive. The Division of Public Health (DPH) could mandate testing of residents. Shouldn’t residents be tested if staff are suspected of COVID rather than waiting for positive test results before testing?

Response: Thank you for your comment. Staff with symptoms or signs of COVID-19 must be tested for COVID-19 and are expected to be restricted from the facility pending the results of COVID-19 testing. Residents who have

signs or symptoms of COVID-19 should also be tested for COVID-19. While test results are pending, residents with signs or symptoms should be placed on transmission-based precautions (TBP) in accordance with Centers for Disease Control and Prevention guidance. Upon identification of a single new case of COVID-19 infection in any staff, all residents should be tested per the Centers for Disease Control and Prevention and the Division of Public Health guidance. Per 16 Delaware Code §1121, each resident has the right to refuse medication or treatment. The skilled and intermediate care nursing facility must offer COVID-19 testing and explain the consequences of not testing; however, the facility cannot force a resident to be tested for COVID-19.

Comment: Second, section 6.11.1.2 states that all other testing should be consistent with DPH guidance during the emergency. Council feels this should be mandatory language beyond the pandemic. Is it up to the facility to decide whether to follow DPH guidance? Even when COVID-19 is no longer at pandemic level it will still be a dangerous infectious disease, particularly for residents of these types of facilities. Therefore, it should still be a requirement to test for positive cases until the Centers for Disease Control (CDC) and state health department indicate that there is no remaining threat of transmission.

Response: Thank you for your comment. The Department of Health and Social Services will address this issue in a future revision.

Comment: Third, section 6.11.1.3 states that all testing must be documented in the medical record and section 6.11.1.4 states that all resident results must be reported to DPH. Likewise, section 6.11.2.1 states that all staff, vendors and volunteers must be tested within two weeks of the effective date of the regulation. This language is confusing. Are the facilities being asked to do a new run of testing or keep going with the existing protocol?

Fourth, section 6.11.2.2 states that all new staff, vendors and volunteers who cannot provide proof of a previous positive testing must be tested prior to their start date. There is no evidence regarding the duration of any immunity that previous infection may create. There is no timeframe for when any prior positive test might have occurred. Therefore, any new staff, vendor or volunteer needs to have a recent (within several days) negative test prior to accessing any facility.

Response: Thank you for your comment. All long term care facilities are required to document all test results in the resident medical record. In addition, all test results must be reported to the Division of Public Health. Long term care facilities have been completing COVID-19 testing in accordance with the Division of Public Health guidance since June 2020. Due to the changing guidance regarding the testing of persons that previously tested positive for COVID-19, the regulations will be clarified as follows:

6.11.2.1 remove

6.11.2.2 Prior to their start date, all new staff, vendors and volunteers must be tested in accordance with the Delaware Division of Public Health Guidance.

Comment: Fifth, section 6.11.2.3 states that all staff, vendors and volunteers must be retested consistent with DPH guidelines for the duration of the public health emergency. Council queries what happens after the public health emergency? Should facilities be screening staff, vendors and volunteers for COVID-19 in some fashion on an ongoing basis until the CDC and DPH indicate there is no remaining threat of transmission?

Response: Thank you for your comment. The Department of Health and Social Services will address the testing of staff, vendors and volunteers after the public health emergency in a future revision.

Comment: Sixth, section 6.11.2.5 is confusing. It states that facilities must follow the recommendations of CDC and DPH regarding provision of care and services for residents by staff, vendor or volunteer found to be positive for COVID-19. Is this suggesting that facilities can allow staff and others who test positive to continue to care for residents consistent with CDC guidelines? Council understands there was some discussion early in the pandemic about allowing asymptomatic COVID-19 positive staff to continue to work because of shortages. Council would not endorse this practice and asks for clarification on the meaning of this section.

Response: Thank you for your comment. This regulation requires skilled and intermediate care nursing facilities to follow the recommendations and guidance from the Centers for Disease Control and Prevention and the Delaware Division of Public Health, both of which are based on nationally recognized standards of practice.

Comment: Seventh, section 6.11.2.6 discusses a series of provisions requiring facilities to amend communicable diseases policies and procedures regarding work exclusion and return to work protocols, staff refusals to test, staff

refusals to consent to release of test results, procedures to obtain staff authorizations for obtaining test results, and plans to address staffing shortages and facility demands. Council notes that this particular regulation provides no particulars or guidance about the parameters or requirements for these policies. For example, would it not make sense to indicate that staff that refuse testing should be suspended from work until they agree and are tested? Without having some degree of specificity and guidelines, this requirement is essentially meaningless. Can facilities each make up their own rules for when a positive employee can return to work?

Response: Thank you for your comment. Facilities must base policies and procedures on recognized standards of practice. Per regulation 6.11.2.5, facilities must follow the recommendations of the Centers for Disease Control and Prevention and the Delaware Division of Public Health.

Comment: Eighth, section 8.3 adds the requirement that facilities include plans to address staff shortages and facility demands as part of their Emergency Preparedness Plan. Council appreciates this requirement.

Response: Thank you for your comment.

Terri Hancharick, Chairperson, State Council for Persons with Disabilities (SCPD)

Comment: The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Health Care Quality's (DHCQ's) emergency and proposed regulations regarding COVID-19 testing at Skilled and Intermediate Care Nursing Facilities, Assisted Living Facilities and Rest (Residential) Facilities. The emergency regulations were published as 24 DE Reg. 304, 306 and 308, and the proposed regulations were published at 315, 317 and 320 in the October 1, 2020 issue of the Register of Regulations. The emergency regulations appear to renew policies for mandatory testing and other protocols for each type of facility and the proposed regulations offer an opportunity for public input. SCPD has the following observations.

6.11.1.1 suggests, but does not compel, resident testing upon identification of another resident with symptoms consistent with COVID or if staff have tested positive. SCPD believes DHCQ could mandate testing of residents and strongly recommends such testing. In addition, shouldn't they test residents if staff are suspected of COVID and not wait for a positive test?

Response: Thank you for your comments. Staff with symptoms or signs of COVID-19 must be tested for COVID-19 and are expected to be restricted from the facility pending the results of COVID-19 testing. Residents who have signs or symptoms of COVID-19 should also be tested for COVID-19. While test results are pending, residents with signs or symptoms should be placed on transmission-based precautions (TBP) in accordance with Centers for Disease Control and Prevention guidance. Upon identification of a single new case of COVID-19 infection in any staff, all residents should be tested per the Centers for Disease Control and Prevention and the Division of Public Health guidance. Per 16 Delaware Code, §1121, each resident has the right to refuse medication or treatment. The skilled and intermediate care nursing facility must offer COVID-19 testing and explain the consequences of not testing; however, the facility cannot force a resident to be tested for COVID-19.

Comment: 6.11.1.2 states that all other testing should be consistent with DPH guidance during the emergency. SCPD strongly recommends that this be mandatory language? Is it up to the facility to decide whether to follow DPH guidance? Shouldn't the requirement to test if there are positive cases continue even if the public health emergency is no longer in effect? It is absolutely conceivable that coronavirus will be in existence after the emergency has ended.

Response: Thank you for your comment. The testing is mandatory and Department of Health and Social Services will address the issue of the timeframe in a future revision.

Comment: 6.11.1.3 requires that all testing be documented in the medical record.

6.11.1.4 requires that all resident results be reported to DPH.

6.11.2.1 requires all staff, vendors and volunteers be tested within two weeks of the effective date of the regulation. SCPD believes it makes no sense to keep this language. Are they asking for the facilities to do a new run of testing or keep going with the existing protocol?

6.11.2.2 requires all new staff, vendors and volunteers who cannot provide proof of a previous positive testing be tested prior to their start date. There is no evidence regarding the duration of any immunity that previous infection may create. There is no timeframe for when any prior positive test might have occurred. Therefore, any new staff, vendor or volunteer needs to have a recent (within several days) negative test prior to accessing any facility.

Response: Thank you for your comment. All long term care facilities are required to document all test results in the resident medical record. In addition, all test results must be reported to the Division of Public Health. Long term care facilities have been completing COVID-19 testing in accordance with the Division of Public Health guidance since June 2020. Due to the changing guidance regarding the testing of persons that previously tested positive for COVID-19, the regulations will be clarified as follows:

6.11.2.1 remove

6.11.2.2 Prior to their start date, all new staff, vendors and volunteers must be tested in accordance with the Delaware Division of Public Health Guidance.

Comment: 6.11.2.3 requires all staff, vendors and volunteers be retested consistent with DPH guidelines for the duration of the public health emergency. Again, what about after the public health emergency? Facilities should be screening staff, vendors and volunteers for COVID-19 in some fashion on an ongoing basis?

Response: Thank you for your comment. The Department of Health and Social Services will address the testing of staff, vendors and volunteers after the public health emergency in a future revision.

Comment: 6.11.2.4 requires that facilities must report all staff, vendor and volunteer testing results to DPH.

6.11.2.5 requires that facilities follow recommendations of CDC and DPH regarding provision of care and services for residents by staff vendor or volunteer found to be positive for COVID-19. SCPD is not entirely sure what this means. Is it suggesting that facilities can allow staff and others who test positive to continue to care for residents consistent with CDC guidelines? There was some discussion early in the pandemic about allowing asymptomatic COVID positive staff to continue to work because of shortages. This section may be more to do with how long staff need to stay off work or get negative testing, although that appears to be addressed in Section 6.11.2.6. SCPD respectfully requests clarification on this issue.

Response: Thank you for your comment. This regulation requires skilled and intermediate care nursing facilities to follow the recommendations and guidance from the Centers for Disease Control and Prevention and the Delaware Division of Public Health, both of which are based on nationally recognized standards of practice.

Comment: 6.11.2.6 includes provisions requiring facilities to amend communicable diseases policies and procedures regarding work exclusion and return to work protocols, staff refusals to test, staff refusals to consent to release of test results, procedures to obtain staff authorizations for obtaining test results, and plans to address staffing shortages and facility demands. SCPD recommends that this section of the regulation provides particulars or guidance about the parameters or requirements for these policies – it currently does not provide such information. For example, wouldn't it make sense to indicate that staff that refuse testing should be suspended from work until they get tested? Without having some degree of specificity and guidelines, this requirement is essentially meaningless. Can facilities each make up their own rules for when a positive employee can return to work?

Response: Thank you for your comment. Facilities must base policies and procedures on recognized standards of practice. Per regulation 6.11.2.5, facilities must follow the recommendations of the Centers for Disease Control and Prevention and the Delaware Division of Public Health.

Comment: 12.8.3 [8.3.1] adds the requirement that facilities include plans to address staff shortages and facility demands as part of their Emergency Preparedness Plan. SCPD endorses this requirement.

SCPD strongly encourages DHCQ to implement the aforementioned recommendations. Regarding outbreaks at long-term care facilities, a Delaware Online October 30th article reports that, "(of) the state's 704 coronavirus-related deaths, 409 (58%) were residents in such facilities." <https://www.delawareonline.com/story/news/coronavirus-in-delaware/2020/10/30/delawares-covid-19-death-count-tops-700-latest-state-update-coronavirus-in-delaware/6089390002/>

Delaware continues to be far worse than the national average in protecting residents in long-term care facilities. An October 30th New York Times article reported that (s)ince the outbreak, the deaths of residents of long-term care facilities swelled to account for almost 40 percent of the country's 229,600 coronavirus deaths. <https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nytimes.com%2F2020%2F10%2F30%2Fus%2Fnursing-homes-isolation->

[virus.html&data=04%7C01%7CKyle.Hodges%40delaware.gov%7Cfec60f17a67745e79ccf08d87daa5cee%7C8c09e56951c54deeabb28b99c32a4396%7C0%7C0%7C637397517964119292%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&data=9ZdWGzDBMZWL%2FuQuwMdSF2%2FGIB%2FMSahxfNqY2SskLw%3D&reserved=0](#)

Delaware, in the short-term, must implement mandatory standards to reverse this trend. In addition, it has become evident that living in congregate living facilities is literally dangerous and far more unsafe than living in the community. Therefore, as SCPD has long advocated, more funding is needed now and in the future for home and community-based services.

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

Response: Thank you for your comments.

Findings of Fact:

Non-substantive changes were made to the regulations based on the comments received and detailed in the "Summary of Evidence." The Department finds that the proposed regulations, as set forth in the attached copy with additions pursuant to 29 Delaware Code Section 10118(c), should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Skilled and Intermediate Care Nursing Facilities is adopted and shall become effective December 11, 2020, after publication of the final regulation in the *Delaware Register of Regulations*.

11/16/2020

Date

Molly K. Magarik, Secretary, DHSS

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

3201 Skilled and Intermediate Care Nursing Facilities

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 **Del.C.** §1119C)
16 **DE Admin. Code** 3225

ORDER

3225 Assisted Living Facilities

Nature of The Proceedings

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Assisted Living Facilities. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code Section 1119C.

On June 1, 2020, DHSS published in the *Delaware Register of Regulations* its notice of emergency regulations pursuant to 16 *Del.C.* §1119C and 29 *Del.C.* §10119. On October 1, 2020 (Volume 24, Issue 4), DHSS published in the *Delaware Register of Regulations* its notice of both emergency and proposed regulations, pursuant to 16 *Del.C.* §1119C and 29 *Del.C.* §10119 and 29 *Del.C.* §10115, respectively. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by November 2, 2020, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Summary of Proposal

Effective December 1, 2020, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Assisted Living Facilities.

Background

Rapid and widespread transmission of COVID-19 is of significant concern within congregate settings, particularly within nursing facilities, assisted living facilities, rest (residential) facilities, and intermediate care facilities for persons with intellectual disabilities.

Because asymptomatic or presymptomatic residents and staff might play an important role in transmission in facilities, additional prevention measures merit consideration, including using testing to guide the use of transmission-based precautions, isolation, and cohorting strategies. The ability to test large numbers of residents and staff may significantly decrease transmission of COVID-19 within facilities.

Statutory Authority

16 Del.C. §1119C

Purpose

The purpose of the amendment was to update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for assisted living facilities.

Fiscal Impact

N/A

SUMMARY OF EVIDENCE**STATE OF DELAWARE REGULATIONS GOVERNING ASSISTED LIVING FACILITIES**

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Assisted Living Facilities were published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (October 1, 2020 through November 2, 2020).

Public comments and the DHSS (Department) responses are as follows:

Ann C. Fisher, Chairperson Governor's Advisory Council for Exceptional Citizens

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) Emergency and Proposed regulations governing testing for COVID-19 in nursing homes, immediate care nursing facilities, assisted living facilities and rest (residential) facilities. Council understands that the emergency regulations (304, 306 and 308) extend the mandatory testing and other protocols for each type of facility for 60 days, based on the Governor's Emergency Orders. The proposed regulations (315, 317 and 320) are identical to the emergency regulations and allow the public an opportunity to provide comments. Council would like to share the following observations and will group our comments as they all pertain to each of the facility types noted.

First, section 6.11.1.1 [9.8.1.1] suggests but does not compel resident testing upon identification of another resident with symptoms consistent with COVID-19 or if staff have tested positive. The Division of Public Health (DPH) could mandate testing of residents. Shouldn't residents be tested if staff are suspected of COVID rather than waiting for positive test results before testing?

Response: Thank you for your comment. Staff with symptoms or signs of COVID-19 must be tested for COVID-19 and are expected to be restricted from the facility pending the results of COVID-19 testing. Residents who have signs or symptoms of COVID-19 should also be tested for COVID-19. While test results are pending, residents with signs or symptoms should be placed on transmission-based precautions (TBP) in accordance with Centers for Disease Control and Prevention guidance. Upon identification of a single new case of COVID-19 infection in any

staff, all residents should be tested per the Centers for Disease Control and Prevention and the Division of Public Health guidance. Per 16 Delaware Code §1121, each resident has the right to refuse medication or treatment. The skilled and intermediate care nursing facility must offer COVID-19 testing and explain the consequences of not testing; however, the facility cannot force a resident to be tested for COVID-19.

Comment: Second, section 6.11.1.2 [9.8.1.2] states that all other testing should be consistent with DPH guidance during the emergency. Council feels this should be mandatory language beyond the pandemic. Is it up to the facility to decide whether to follow DPH guidance? Even when COVID-19 is no longer at pandemic level it will still be a dangerous infectious disease, particularly for residents of these types of facilities. Therefore, it should still be a requirement to test for positive cases until the Centers for Disease Control (CDC) and state health department indicate that there is no remaining threat of transmission.

Response: Thank you for your comment. The Department of Health and Social Services will address this issue in a future revision.

Comment: Third, section 6.11.1.3 [9.8.1.3] states that all testing must be documented in the medical record and section 6.11.1.4 [9.8.1.4] states that all resident results must be reported to DPH. Likewise, section 6.11.2.1 [9.8.2.1] states that all staff, vendors and volunteers must be tested within two weeks of the effective date of the regulation. This language is confusing. Are the facilities being asked to do a new run of testing or keep going with the existing protocol?

Fourth, section 6.11.2.2 [9.8.2.2] states that all new staff, vendors and volunteers who cannot provide proof of a previous positive testing must be tested prior to their start date. There is no evidence regarding the duration of any immunity that previous infection may create. There is no timeframe for when any prior positive test might have occurred. Therefore, any new staff, vendor or volunteer needs to have a recent (within several days) negative test prior to accessing any facility.

Response: Thank you for your comment. All long term care facilities are required to document all test results in the resident medical record. In addition, all test results must be reported to the Division of Public Health. Long term care facilities have been completing COVID-19 testing in accordance with the Division of Public Health guidance since June 2020. Due to the changing guidance regarding the testing of persons that previously tested positive for COVID-19, the regulations will be clarified as follows:

6.11.2.1 [9.8.2.1] remove

6.11.2.2 [9.8.2.2] Prior to their start date, all new staff, vendors and volunteers must be tested in accordance with the Delaware Division of Public Health Guidance.

Comment: Fifth, section 6.11.2.3 [9.8.2.3] states that all staff, vendors and volunteers must be retested consistent with DPH guidelines for the duration of the public health emergency. Council queries what happens after the public health emergency? Should facilities be screening staff, vendors and volunteers for COVID-19 in some fashion on an ongoing basis until the CDC and DPH indicate there is no remaining threat of transmission?

Response: Thank you for your comment. The Department of Health and Social Services will address the testing of staff, vendors and volunteers after the public health emergency in a future revision.

Comment: Sixth, section 6.11.2.5 [9.8.2.5] is confusing. It states that facilities must follow the recommendations of CDC and DPH regarding provision of care and services for residents by staff, vendor or volunteer found to be positive for COVID-19. Is this suggesting that facilities can allow staff and others who test positive to continue to care for residents consistent with CDC guidelines? Council understands there was some discussion early in the pandemic about allowing asymptomatic COVID-19 positive staff to continue to work because of shortages. Council would not endorse this practice and asks for clarification on the meaning of this section.

Response: Thank you for your comment. This regulation requires skilled and intermediate care nursing facilities to follow the recommendations and guidance from the Centers for Disease Control and Prevention and the Delaware Division of Public Health, both of which are based on nationally recognized standards of practice.

Comment: Seventh, section 6.11.2.6 [9.8.2.6] discusses a series of provisions requiring facilities to amend communicable diseases policies and procedures regarding work exclusion and return to work protocols, staff refusals to test, staff refusals to consent to release of test results, procedures to obtain staff authorizations for obtaining test results, and plans to address staffing shortages and facility demands. Council notes that this

particular regulation provides no particulars or guidance about the parameters or requirements for these policies. For example, would it not make sense to indicate that staff that refuse testing should be suspended from work until they agree and are tested? Without having some degree of specificity and guidelines, this requirement is essentially meaningless. Can facilities each make up their own rules for when a positive employee can return to work?

Response: Thank you for your comment. Facilities must base policies and procedures on recognized standards of practice. Per regulation 6.11.2.5 [9.8.2.5], facilities must follow the recommendations of the Centers for Disease Control and Prevention and the Delaware Division of Public Health.

Comment: Eighth, section 8.3 [18.3] adds the requirement that facilities include plans to address staff shortages and facility demands as part of their Emergency Preparedness Plan. Council appreciates this requirement.

Response: Thank you for your comment.

Terri Hancharick, Chairperson, State Council for Persons with Disabilities (SCPD)

Comment: The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Health Care Quality's (DHCQ's) emergency and proposed regulations regarding COVID-19 testing at Skilled and Intermediate Care Nursing Facilities, Assisted Living Facilities and Rest (Residential) Facilities. The emergency regulations were published as 24 DE Reg. 304, 306 and 308, and the proposed regulations were published at 315, 317 and 320 in the October 1, 2020 issue of the Register of Regulations. The emergency regulations appear to renew policies for mandatory testing and other protocols for each type of facility and the proposed regulations offer an opportunity for public input. SCPD has the following observations.

6.11.1.1 [9.8.1.1] suggests, but does not compel, resident testing upon identification of another resident with symptoms consistent with COVID or if staff have tested positive. SCPD believes DHCQ could mandate testing of residents and strongly recommends such testing. In addition, shouldn't they test residents if staff are suspected of COVID and not wait for a positive test?

Response: Thank you for your comments. Staff with symptoms or signs of COVID-19 must be tested for COVID-19 and are expected to be restricted from the facility pending the results of COVID-19 testing. Residents who have signs or symptoms of COVID-19 should also be tested for COVID-19. While test results are pending, residents with signs or symptoms should be placed on transmission-based precautions (TBP) in accordance with Centers for Disease Control and Prevention guidance. Upon identification of a single new case of COVID-19 infection in any staff, all residents should be tested per the Centers for Disease Control and Prevention and the Division of Public Health guidance. Per 16 Delaware Code, §1121, each resident has the right to refuse medication or treatment. The skilled and intermediate care nursing facility must offer COVID-19 testing and explain the consequences of not testing; however, the facility cannot force a resident to be tested for COVID-19.

Comment: 6.11.1.2 [9.8.1.2] states that all other testing should be consistent with DPH guidance during the emergency. SCPD strongly recommends that this be mandatory language? Is it up to the facility to decide whether to follow DPH guidance? Shouldn't the requirement to test if there are positive cases continue even if the public health emergency is no longer in effect? It is absolutely conceivable that coronavirus will be in existence after the emergency has ended.

Response: Thank you for your comment. The testing is mandatory and Department of Health and Social Services will address the issue of the timeframe in a future revision.

Comment: 6.11.1.3 [9.8.1.3] requires that all testing be documented in the medical record.

6.11.1.4 [9.8.1.4] requires that all resident results be reported to DPH.

6.11.2.1 [9.8.2.1] requires all staff, vendors and volunteers be tested within two weeks of the effective date of the regulation. SCPD believes it makes no sense to keep this language. Are they asking for the facilities to do a new run of testing or keep going with the existing protocol?

6.11.2.2 [9.8.2.2] requires all new staff, vendors and volunteers who cannot provide proof of a previous positive testing be tested prior to their start date. There is no evidence regarding the duration of any immunity that previous infection may create. There is no timeframe for when any prior positive test might have occurred. Therefore, any new staff, vendor or volunteer needs to have a recent (within several days) negative test prior to accessing any facility.

Response: Thank you for your comment. All long term care facilities are required to document all test results in the

resident medical record. In addition, all test results must be reported to the Division of Public Health. Long term care facilities have been completing COVID-19 testing in accordance with the Division of Public Health guidance since June 2020. Due to the changing guidance regarding the testing of persons that previously tested positive for COVID-19, the regulations will be clarified as follows:

6.11.2.1 [9.8.2.1] remove

6.11.2.2 [9.8.2.2] Prior to their start date, all new staff, vendors and volunteers must be tested in accordance with the Delaware Division of Public Health Guidance.

Comment: 6.11.2.3 [9.8.2.3] requires all staff, vendors and volunteers be retested consistent with DPH guidelines for the duration of the public health emergency. Again, what about after the public health emergency? Facilities should be screening staff, vendors and volunteers for COVID-19 in some fashion on an ongoing basis?

Response: Thank you for your comment. The Department of Health and Social Services will address the testing of staff, vendors and volunteers after the public health emergency in a future revision.

Comment: 6.11.2.4 [9.8.2.4] requires that facilities must report all staff, vendor and volunteer testing results to DPH.

6.11.2.5 [9.8.2.5] requires that facilities follow recommendations of CDC and DPH regarding provision of care and services for residents by staff vendor or volunteer found to be positive for COVID-19. SCPD is not entirely sure what this means. Is it suggesting that facilities can allow staff and others who test positive to continue to care for residents consistent with CDC guidelines? There was some discussion early in the pandemic about allowing asymptomatic COVID positive staff to continue to work because of shortages. This section may be more to do with how long staff need to stay off work or get negative testing, although that appears to be addressed in Section 6.11.2.6 [9.8.2.6]. SCPD respectfully requests clarification on this issue.

Response: Thank you for your comment. This regulation requires skilled and intermediate care nursing facilities to follow the recommendations and guidance from the Centers for Disease Control and Prevention and the Delaware Division of Public Health, both of which are based on nationally recognized standards of practice.

Comment: 6.11.2.6 [9.8.2.6] includes provisions requiring facilities to amend communicable diseases policies and procedures regarding work exclusion and return to work protocols, staff refusals to test, staff refusals to consent to release of test results, procedures to obtain staff authorizations for obtaining test results, and plans to address staffing shortages and facility demands. SCPD recommends that this section of the regulation provides particulars or guidance about the parameters or requirements for these policies – it currently does not provide such information. For example, wouldn't it make sense to indicate that staff that refuse testing should be suspended from work until they get tested? Without having some degree of specificity and guidelines, this requirement is essentially meaningless. Can facilities each make up their own rules for when a positive employee can return to work?

Response: Thank you for your comment. Facilities must base policies and procedures on recognized standards of practice. Per regulation 6.11.2.5 [9.8.2.5], facilities must follow the recommendations of the Centers for Disease Control and Prevention and the Delaware Division of Public Health.

Comment: 12.8.3 [18.3.1] adds the requirement that facilities include plans to address staff shortages and facility demands as part of their Emergency Preparedness Plan. SCPD endorses this requirement.

SCPD strongly encourages DHCQ to implement the aforementioned recommendations. Regarding outbreaks at long-term care facilities, a Delaware Online October 30th article reports that, “(of) the state’s 704 coronavirus-related deaths, 409 (58%) were residents in such facilities.” <https://www.delawareonline.com/story/news/coronavirus-in-delaware/2020/10/30/delawares-covid-19-death-count-tops-700-latest-state-update-coronavirus-in-delaware/6089390002/>

Delaware continues to be far worse than the national average in protecting residents in long-term care facilities. An October 30th New York Times article reported that (s)ince the outbreak, the deaths of residents of long-term care facilities swelled to account for almost 40 percent of the country’s 229,600 coronavirus deaths. <https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nytimes.com%2F2020%2F10%2F30%2Fus%2Fnursing-homes-isolation-virus.html&data=04%7C01%7CKyle.Hodges%40delaware.gov%7Cfec60f17a67745e79ccf08d87daa5cee%7>

[C8c09e56951c54deeabb28b99c32a4396%7C0%7C0%7C637397517964119292%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=9ZdWGzDBMZwLa%2FuQuwMdsF2%2FGIB%2FMSahxfNqY2SskLw%3D&reserved=0](#)

Delaware, in the short-term, must implement mandatory standards to reverse this trend. In addition, it has become evident that living in congregate living facilities is literally dangerous and far more unsafe than living in the community. Therefore, as SCPD has long advocated, more funding is needed now and in the future for home and community-based services.

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

Response: Thank you for your comments.

Findings of Fact:

Non-substantive changes were made to the regulations based on the comments received and detailed in the "Summary of Evidence." The Department finds that the proposed regulations, as set forth in the attached copy with additions pursuant to 29 Delaware Code Section 10118(c), should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Assisted Living Facilities is adopted and shall become effective December 11, 2020, after publication of the final regulation in the *Delaware Register of Regulations*.

11/16/2020

Date

Molly K. Magarik, Secretary, DHSS

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

3225 Assisted Living Facilities

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 **Del.C.** §1119C)
16 **DE Admin. Code** 3230

ORDER

3230 Rest (Residential) Home Regulations

Nature of The Proceedings

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Rest Residential Homes. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code Section 1119C.

On June 1, 2020, DHSS published in the *Delaware Register of Regulations* its notice of emergency regulations pursuant to 16 *Del.C.* §1119C and 29 *Del.C.* §10119. On October 1, 2020 (Volume 24, Issue 4), DHSS published in the *Delaware Register of Regulations* its notice of both emergency and proposed regulations, pursuant to 16 *Del.C.* §1119C and 29 *Del.C.* §10119 and 29 *Del.C.* §10115, respectively. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by November 2, 2020, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Summary of Proposal

Effective December 1, 2020, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations

governing Rest Residential Homes.

Background

Rapid and widespread transmission of COVID-19 is of significant concern within congregate settings, particularly within nursing facilities, assisted living facilities, rest (residential) facilities, and intermediate care facilities for persons with intellectual disabilities.

Because asymptomatic or presymptomatic residents and staff might play an important role in transmission in facilities, additional prevention measures merit consideration, including using testing to guide the use of transmission-based precautions, isolation, and cohorting strategies. The ability to test large numbers of residents and staff may significantly decrease transmission of COVID-19 within facilities.

Statutory Authority

16 Del.C. §1119C

Purpose

The purpose of the amendment was to update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for rest residential homes.

Fiscal Impact

N/A

SUMMARY OF EVIDENCE

STATE OF DELAWARE REGULATIONS GOVERNING REST RESIDENTIAL HOMES

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Rest Residential Homes were published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (October 1, 2020 through November 2, 2020).

Public comments and the DHSS (Department) responses are as follows:

Ann C. Fisher, Chairperson Governor's Advisory Council for Exceptional Citizens

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) Emergency and Proposed regulations governing testing for COVID-19 in nursing homes, immediate care nursing facilities, assisted living facilities and rest (residential) facilities. Council understands that the emergency regulations (304, 306 and 308) extend the mandatory testing and other protocols for each type of facility for 60 days, based on the Governor's Emergency Orders. The proposed regulations (315, 317 and 320) are identical to the emergency regulations and allow the public an opportunity to provide comments. Council would like to share the following observations and will group our comments as they all pertain to each of the facility types noted.

First, section 6.11.1.1 [9.3.1.1] suggests but does not compel resident testing upon identification of another resident with symptoms consistent with COVID-19 or if staff have tested positive. The Division of Public Health (DPH) could mandate testing of residents. Shouldn't residents be tested if staff are suspected of COVID rather than waiting for positive test results before testing?

Response: Thank you for your comment. Staff with symptoms or signs of COVID-19 must be tested for COVID-19 and are expected to be restricted from the facility pending the results of COVID-19 testing. Residents who have signs or symptoms of COVID-19 should also be tested for COVID-19. While test results are pending, residents with signs or symptoms should be placed on transmission-based precautions (TBP) in accordance with Centers for Disease Control and Prevention guidance. Upon identification of a single new case of COVID-19 infection in any staff, all residents should be tested per the Centers for Disease Control and Prevention and the Division of Public Health guidance. Per 16 Delaware Code §1121, each resident has the right to refuse medication or treatment. The skilled and intermediate care nursing facility must offer COVID-19 testing and explain the consequences of not

testing; however, the facility cannot force a resident to be tested for COVID-19.

Comment: Second, section 6.11.1.2 [9.3.1.2] states that all other testing should be consistent with DPH guidance during the emergency. Council feels this should be mandatory language beyond the pandemic. Is it up to the facility to decide whether to follow DPH guidance? Even when COVID-19 is no longer at pandemic level it will still be a dangerous infectious disease, particularly for residents of these types of facilities. Therefore, it should still be a requirement to test for positive cases until the Centers for Disease Control (CDC) and state health department indicate that there is no remaining threat of transmission.

Response: Thank you for your comment. The Department of Health and Social Services will address this issue in a future revision.

Comment: Third, section 6.11.1.3 [9.3.1.3] states that all testing must be documented in the medical record and section 6.11.1.4 [9.3.1.4] states that all resident results must be reported to DPH. Likewise, section 6.11.2.1 [9.3.2.1] states that all staff, vendors and volunteers must be tested within two weeks of the effective date of the regulation. This language is confusing. Are the facilities being asked to do a new run of testing or keep going with the existing protocol?

Fourth, section 6.11.2.2 [9.3.2.2] states that all new staff, vendors and volunteers who cannot provide proof of a previous positive testing must be tested prior to their start date. There is no evidence regarding the duration of any immunity that previous infection may create. There is no timeframe for when any prior positive test might have occurred. Therefore, any new staff, vendor or volunteer needs to have a recent (within several days) negative test prior to accessing any facility.

Response: Thank you for your comment. All long term care facilities are required to document all test results in the resident medical record. In addition, all test results must be reported to the Division of Public Health. Long term care facilities have been completing COVID-19 testing in accordance with the Division of Public Health guidance since June 2020. Due to the changing guidance regarding the testing of persons that previously tested positive for COVID-19, the regulations will be clarified as follows:

6.11.2.1 [9.3.2.1] remove

6.11.2.2 [9.3.2.2] Prior to their start date, all new staff, vendors and volunteers must be tested in accordance with the Delaware Division of Public Health Guidance.

Comment: Fifth, section 6.11.2.3 [9.3.2.3] states that all staff, vendors and volunteers must be retested consistent with DPH guidelines for the duration of the public health emergency. Council queries what happens after the public health emergency? Should facilities be screening staff, vendors and volunteers for COVID-19 in some fashion on an ongoing basis until the CDC and DPH indicate there is no remaining threat of transmission?

Response: Thank you for your comment. The Department of Health and Social Services will address the testing of staff, vendors and volunteers after the public health emergency in a future revision.

Comment: Sixth, section 6.11.2.5 [9.3.2.5] is confusing. It states that facilities must follow the recommendations of CDC and DPH regarding provision of care and services for residents by staff, vendor or volunteer found to be positive for COVID-19. Is this suggesting that facilities can allow staff and others who test positive to continue to care for residents consistent with CDC guidelines? Council understands there was some discussion early in the pandemic about allowing asymptomatic COVID-19 positive staff to continue to work because of shortages. Council would not endorse this practice and asks for clarification on the meaning of this section.

Response: Thank you for your comment. This regulation requires skilled and intermediate care nursing facilities to follow the recommendations and guidance from the Centers for Disease Control and Prevention and the Delaware Division of Public Health, both of which are based on nationally recognized standards of practice.

Comment: Seventh, section 6.11.2.6 [9.3.2.6] discusses a series of provisions requiring facilities to amend communicable diseases policies and procedures regarding work exclusion and return to work protocols, staff refusals to test, staff refusals to consent to release of test results, procedures to obtain staff authorizations for obtaining test results, and plans to address staffing shortages and facility demands. Council notes that this particular regulation provides no particulars or guidance about the parameters or requirements for these policies. For example, would it not make sense to indicate that staff that refuse testing should be suspended from work until they agree and are tested? Without having some degree of specificity and guidelines, this requirement is

essentially meaningless. Can facilities each make up their own rules for when a positive employee can return to work?

Response: Thank you for your comment. Facilities must base policies and procedures on recognized standards of practice. Per regulation 6.11.2.5 [9.3.2.5], facilities must follow the recommendations of the Centers for Disease Control and Prevention and the Delaware Division of Public Health.

Comment: Eighth, section 8.3 [6.0] adds the requirement that facilities include plans to address staff shortages and facility demands as part of their Emergency Preparedness Plan. Council appreciates this requirement.

Response: Thank you for your comment.

Terri Hancharick, Chairperson, State Council for Persons with Disabilities (SCPD)

Comment: The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Health Care Quality's (DHCQ's) emergency and proposed regulations regarding COVID-19 testing at Skilled and Intermediate Care Nursing Facilities, Assisted Living Facilities and Rest (Residential) Facilities. The emergency regulations were published as 24 DE Reg. 304, 306 and 308, and the proposed regulations were published at 315, 317 and 320 in the October 1, 2020 issue of the Register of Regulations. The emergency regulations appear to renew policies for mandatory testing and other protocols for each type of facility and the proposed regulations offer an opportunity for public input. SCPD has the following observations.

6.11.1.1 [9.3.1.1] suggests, but does not compel, resident testing upon identification of another resident with symptoms consistent with COVID or if staff have tested positive. SCPD believes DHCQ could mandate testing of residents and strongly recommends such testing. In addition, shouldn't they test residents if staff are suspected of COVID and not wait for a positive test?

Response: Thank you for your comments. Staff with symptoms or signs of COVID-19 must be tested for COVID-19 and are expected to be restricted from the facility pending the results of COVID-19 testing. Residents who have signs or symptoms of COVID-19 should also be tested for COVID-19. While test results are pending, residents with signs or symptoms should be placed on transmission-based precautions (TBP) in accordance with Centers for Disease Control and Prevention guidance. Upon identification of a single new case of COVID-19 infection in any staff, all residents should be tested per the Centers for Disease Control and Prevention and the Division of Public Health guidance. Per 16 Delaware Code, §1121, each resident has the right to refuse medication or treatment. The skilled and intermediate care nursing facility must offer COVID-19 testing and explain the consequences of not testing; however, the facility cannot force a resident to be tested for COVID-19.

Comment: 6.11.1.2 [9.3.1.2] states that all other testing should be consistent with DPH guidance during the emergency. SCPD strongly recommends that this be mandatory language? Is it up to the facility to decide whether to follow DPH guidance? Shouldn't the requirement to test if there are positive cases continue even if the public health emergency is no longer in effect? It is absolutely conceivable that coronavirus will be in existence after the emergency has ended.

Response: Thank you for your comment. The testing is mandatory and Department of Health and Social Services will address the issue of the timeframe in a future revision.

Comment: 6.11.1.3 [9.3.1.3] requires that all testing be documented in the medical record.

6.11.1.4 [9.3.1.4] requires that all resident results be reported to DPH.

6.11.2.1 [9.3.2.1] requires all staff, vendors and volunteers be tested within two weeks of the effective date of the regulation. SCPD believes it makes no sense to keep this language. Are they asking for the facilities to do a new run of testing or keep going with the existing protocol?

6.11.2.2 [9.3.2.2] requires all new staff, vendors and volunteers who cannot provide proof of a previous positive testing be tested prior to their start date. There is no evidence regarding the duration of any immunity that previous infection may create. There is no timeframe for when any prior positive test might have occurred. Therefore, any new staff, vendor or volunteer needs to have a recent (within several days) negative test prior to accessing any facility.

Response: Thank you for your comment. All long term care facilities are required to document all test results in the resident medical record. In addition, all test results must be reported to the Division of Public Health. Long term care facilities have been completing COVID-19 testing in accordance with the Division of Public Health guidance since June 2020. Due to the changing guidance regarding the testing of persons that previously tested positive for

COVID-19, the regulations will be clarified as follows:

6.11.2.1 [9.3.2.1] remove

6.11.2.2 [9.3.2.2] Prior to their start date, all new staff, vendors and volunteers must be tested in accordance with the Delaware Division of Public Health Guidance.

Comment: 6.11.2.3 [9.3.2.3] requires all staff, vendors and volunteers be retested consistent with DPH guidelines for the duration of the public health emergency. Again, what about after the public health emergency? Facilities should be screening staff, vendors and volunteers for COVID-19 in some fashion on an ongoing basis?

Response: Thank you for your comment. The Department of Health and Social Services will address the testing of staff, vendors and volunteers after the public health emergency in a future revision.

Comment: 6.11.2.4 [9.3.2.4] requires that facilities must report all staff, vendor and volunteer testing results to DPH.

6.11.2.5 [9.3.2.5] requires that facilities follow recommendations of CDC and DPH regarding provision of care and services for residents by staff vendor or volunteer found to be positive for COVID-19. SCPD is not entirely sure what this means. Is it suggesting that facilities can allow staff and others who test positive to continue to care for residents consistent with CDC guidelines? There was some discussion early in the pandemic about allowing asymptomatic COVID positive staff to continue to work because of shortages. This section may be more to do with how long staff need to stay off work or get negative testing, although that appears to be addressed in Section 6.11.2.6 [9.3.2.6]. SCPD respectfully requests clarification on this issue.

Response: Thank you for your comment. This regulation requires skilled and intermediate care nursing facilities to follow the recommendations and guidance from the Centers for Disease Control and Prevention and the Delaware Division of Public Health, both of which are based on nationally recognized standards of practice.

Comment: 6.11.2.6 [9.3.2.6] includes provisions requiring facilities to amend communicable diseases policies and procedures regarding work exclusion and return to work protocols, staff refusals to test, staff refusals to consent to release of test results, procedures to obtain staff authorizations for obtaining test results, and plans to address staffing shortages and facility demands. SCPD recommends that this section of the regulation provides particulars or guidance about the parameters or requirements for these policies – it currently does not provide such information. For example, wouldn't it make sense to indicate that staff that refuse testing should be suspended from work until they get tested? Without having some degree of specificity and guidelines, this requirement is essentially meaningless. Can facilities each make up their own rules for when a positive employee can return to work?

Response: Thank you for your comment. Facilities must base policies and procedures on recognized standards of practice. Per regulation 6.11.2.5 [9.3.2.5], facilities must follow the recommendations of the Centers for Disease Control and Prevention and the Delaware Division of Public Health.

Comment: 12.8.3 [6.3] adds the requirement that facilities include plans to address staff shortages and facility demands as part of their Emergency Preparedness Plan. SCPD endorses this requirement.

SCPD strongly encourages DHCQ to implement the aforementioned recommendations. Regarding outbreaks at long-term care facilities, a Delaware Online October 30th article reports that, "(of) the state's 704 coronavirus-related deaths, 409 (58%) were residents in such facilities." <https://www.delawareonline.com/story/news/coronavirus-in-delaware/2020/10/30/delawares-covid-19-death-count-tops-700-latest-state-update-coronavirus-in-delaware/6089390002/>

Delaware continues to be far worse than the national average in protecting residents in long-term care facilities. An October 30th New York Times article reported that (s)ince the outbreak, the deaths of residents of long-term care facilities swelled to account for almost 40 percent of the country's 229,600 coronavirus deaths. <https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nytimes.com%2F2020%2F10%2F30%2Fus%2Fnursing-homes-isolation-virus.html&data=04%7C01%7CKyle.Hodges%40delaware.gov%7Cfec60f17a67745e79ccf08d87daa5cee%7C8c09e56951c54deeabb28b99c32a4396%7C0%7C0%7C637397517964119292%7CUnknown%7CTWFPbGZsb3d8eyJWljoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&data=9ZdWGzDBMZWL%2FuQuwMdsF2%2FGIB%2FMSahxfNqY2SskLw%3D&reserved=0>

Delaware, in the short-term, must implement mandatory standards to reverse this trend. In addition, it has become evident that living in congregate living facilities is literally dangerous and far more unsafe than living in the community. Therefore, as SCPD has long advocated, more funding is needed now and in the future for home and community-based services.

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

Response: Thank you for your comments.

Findings of Fact:

Non-substantive changes were made to the regulations based on the comments received and detailed in the "Summary of Evidence." The Department finds that the proposed regulations, as set forth in the attached copy with additions pursuant to 29 Delaware Code Section 10118(c), should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Rest Residential Homes is adopted and shall become effective December 11, 2020, after publication of the final regulation in the *Delaware Register of Regulations*.

11/16/2020

Date

Molly K. Magarik, Secretary, DHSS

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

3230 Rest (Residential) Home Regulations

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11004

ORDER

Application Processing and Copay for the Child Care Subsidy Program

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services ("DSS") initiated proceedings to amend the Division of Social Services Manual ("DSSM") regarding Child Care Subsidy Program specifically, to explain the application processing standards for the Purchase of Care ("POC") program, including the process for determining and assigning copayments for families who receive a child care subsidy. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2020 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after December 11, 2020 the Department/DSS proposes to amend the DSSM regarding Child Care Subsidy Program specifically, to explain the application processing standards for the POC program, including the process for determining and assigning copayments for families who receive a child care subsidy.

Statutory Authority

- 42 U.S.C. 9858
- 42 U.S.C. 618
- 45 CFR 98.20
- 45 CFR 98.21
- 45 CFR 98.45 (k)

Background

In 2014, the Child Care and Development Block Grant ("CCDBG") Act was signed into law. The CCDBG Act authorizes the Child Care and Development Fund, which is the primary federal funding source that provides eligible low-income families with child care assistance and improves the overall quality of child care. The CCDBG Act mandates new child care eligibility requirements for states. DSS is proposing to amend DSSM policies 11004.5, 11004.7, and 11004.7.1 to meet the requirements of the CCDBG Act.

DSS revised DSSM 11004.5 to update the case processing procedures for determining eligibility for child care. DSS removed the name of the obsolete eligibility system, DCIS II, and added steps that DSS case workers must complete once child care has been approved, including authorizing cases for 12 months, entering copayments, and notifying families of their eligibility determinations.

DSS revised DSSM 11004.7 to replace the policy on parent fees with a copayment policy to provide guidance on the new copayment structure that was developed for families receiving child care subsidy. Previously, families contributed to the cost of child care by paying a parent fee. Beginning in 2019, DSS transitioned from the parent fee to a copayment model. The revised policy explains how DSS determines a family's copayment and lists reasons DSS will waive a copayment.

DSS revised DSSM 11004.7.1 to replace the obsolete policy on parent fees with a new policy on determining excessive financial burden for families receiving child care subsidy. DSS considers a family to have an excessive financial burden for the POC program when the family's disposable income is below 40% of the Federal Poverty Level prior to or after certain expense deductions. The policy explains the criteria for the excessive financial burden test. DSS will waive child care copayments for families who are determined to have an excessive financial burden.

Purpose

The purpose of this proposed regulation is to explain the application processing standards for the POC program, including the process for determining and assigning copayments for families who receive a child care subsidy.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, the Department/DSS gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on August 31, 2020.

Fiscal Impact Statement

	Federal Fiscal Year 2018	Federal Fiscal Year 2019	Federal Fiscal Year 2020
General (State) funds	\$ 41,576,384.00	\$ 40,787,434.00	\$ 48,270,561.00
Federal funds	\$ 30,286,639.00	\$ 32,417,140.00	\$ 40,584,489.00

The proposed regulation does have foreseeable fiscal implications. Delaware's cost for child care has increased due to the federal mandate to eliminate the cost of care payment and switch to a copayment model. In addition, DSS now waives copayments for families that are determined to have an excessive financial burden in accordance with proposed policy, DSSM 11004.7.1.

In April 2019, DSS eliminated the excessive financial burden test when determining family copayments for POC. An overall sample size of 78% of DSS child care cases determined that eliminating the excessive financial

burden test increased the total amount for family copayments by an average of \$3,095 per month. The new copayment model and the resulting increase to copayment amounts caused a hardship on many families receiving child care subsidy. In October 2019, DSS reinstated the excessive financial burden test to decrease the financial burden on families. This change increased the State's cost by approximately \$65,597 per month.

Another contributing factor to the cost increase for child care is that POC providers received two payment increases in FY 2019. The total amount paid for POC services from July 2019 – January 2020 increased by \$6,702,002 from the same period in FY 2019.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: One commenter suggested that written notices confirming a family's eligibility for the POC program include an explanation of how DSS determined a family's copayment amount.

Agency Response: The POC approval, continuance, and change notices are prioritized to be revised to reflect budget details (including deductions) similar to Supplemental Nutrition Assistance Program ("SNAP") notices. Detailed budget information will appear on POC notices after the eligibility system is updated with the new notice format. DSSM 11004.5 (5)(A) will be revised to include an explanation of the budget and copayment information that will appear on POC notices.

Comment: One commenter suggested the regulation set out more fully how DSS will determine a family's copayment and explain the sliding fee scale.

Agency Response: The sliding fee scale is updated each October to reflect the new POC eligibility income guidelines based on the current Federal Poverty Level and the State Median Income. DSS publishes POC income guidelines and the sliding fee scale in the annual DSS Administrative Notice on Cost of Living Adjustments for Food Benefits, Cash Assistance, and Child Care. This Administrative Notice is available on the DSS website at <https://www.dhss.delaware.gov/dhss/dss/pubs.html>. DSS will also publish the sliding fee scale chart on the DSS Child Care webpage at <https://www.dhss.delaware.gov/dhss/dss/childcr.html>. DSSM 11004.7 will be revised to include the information about the DSS Administrative Notice, as well as to include redeterminations in the Note section of the policy.

Comment: One commenter recommended that DSS consider importing a family's financial data from Temporary Assistance for Needy Families, SNAP and/or Medicaid in order to streamline the application and eligibility process.

Agency Response: DSS currently uses all applicable, verified information within the eligibility system when determining eligibility for health and social service programs.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Community Legal Aid Society, INC.

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the August 2020 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the Administrative Procedure Act because the amendments are non-substantive pursuant to 29 Delaware Code Section 10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual regarding Child Care Subsidy Program specifically, to explain the application processing standards for the Purchase of Care program, including the process for determining and assigning copayments for families who receive a child care subsidy, is adopted and shall be final effective December 11, 2020.

11/12/2020

Date of Signature

Molly K. Magarik
DHSS Cabinet Secretary

POLICY – AMENDMENT

Delaware Department of Health and Social Services
 Division of Social Services
 Policy and Program Development Unit

11004.5 ~~Determination of~~ Processing Eligibility for Child Care

45 CFR 98.20; 45 CFR 98.21

~~DSS programmed the DCIS II Child Care Sub system to make eligibility decisions. As Case Managers enter the appropriate parent/caretaker information, the DCIS II Child Care Sub system will notify Case Managers whether they can proceed to authorize service. As a case is determined either eligible or ineligible, the DCIS II Child Care Sub system will send the appropriate notice to inform the parent/caretaker of the DSS child care eligibility decision. Parents/caretakers, whether eligible or not, will always receive a written decision regarding their official request for child care services.~~

The DSS eligibility system determines if families applying for the Purchase of Care (POC) program are eligible for child care subsidy based on federal and state rules.

- 1. DSS case workers will enter a family's financial and technical information into the DSS eligibility system at application, at redetermination, and when a family reports a change in circumstances.**
- 2. DSS case workers will enter child care authorization information into the DSS eligibility system once a child has been determined eligible for the POC program.**
- 3. DSS case workers will authorize eligible children for 12 months of care.**
 - A. An authorization may be set for less than 12 months if the authorization period is requested in writing by:
 - i. The parent or caretaker;
 - ii. A medical professional verifying the length of time child care is required for a special need; or
 - iii. The Delaware Division of Family Services (DFS) verifying the length of time child care is needed to prevent child abuse or neglect.
- 4. DSS case workers will enter the child care copayment amount in the Dependent Care Expense screen of the DSS eligibility system after the copayment has been assigned to each authorization.**
- 5. DSS will send notification to the family of their eligibility and authorization status for the POC program.**
 - A. DSS will send a written [eligibility] notice to the family [to confirm or deny eligibility for the POC program, that will include:
 - i. The POC eligibility approval or denial determination;**
 - ii. The family's income budget and expense deductions; and**
 - iii. The copayment calculation if the family is approved for POC.]**
 - B. DSS will send a letter of authorization for each authorized child to the family. The letter will include:
 - i. The child's name;
 - ii. The child's Master Client Index (MCI) number;
 - iii. The child care provider's name;
 - iv. The type of care (full-time, part-time, or time and a half);
 - v. The number of days of care; and

vi. The family's copayment amount.

POLICY – AMENDMENT
 Delaware Department of Health and Social Services
 Division of Social Services
 Policy and Program Development Unit

**11004.7 ~~Determination Of The~~ Determining Child Care Parent Fee and Fee-Waiving Situations Copayments
 45 CFR 98.45 (k)**

~~Under regulations, eligible families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a DSS child care parent fee. DSS, however, provides child care services to certain families at no cost. Part of the process after determining the client's financial eligibility and need for child care would be determining the parent fee and which families should have their parent fee waived.~~

Child care fees may be waived if the family meets one of the five (5) conditions below:

- ~~1. On a case by case basis, families active with and referred by the Division of Family Services (DFS) including foster care families. This requires supervisory approval.~~
- ~~2. Families in Delaware's TANF Program in Categories 11 and 12, and General Assistance (GA) families.~~
- ~~3. Caretakers in Category 31 caring for a child/ children who receive TANF or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.)~~
- ~~4. When paying the fee creates an excessive financial burden. Excessive financial burden is defined as a situation where the family's disposable income prior to the deductions or after the deductions, result in the family having income below 40% of the federal poverty level. Deductions are limited to:

 - ~~rent, mortgage, lot rent;~~
 - ~~any mandatory expenses required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);~~
 - ~~actual current monthly utility expenses (e.g., electric, gas, trash, water and sewer). Late fee's and past due amounts are not included.~~
 - ~~telephone expenses are capped at the same rate as the FS standard deduction for telephone bills;~~
 - ~~un-reimbursed medical costs (Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or the DHCP. The DHCP premiums are included in the un-reimbursed medical cost deductions. Any un-reimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.)~~~~

EXAMPLE:

~~A family of three has gross monthly income of \$1,300.00. The parent fee for this family would be 16% of the cost of care. The rent payment for this family is \$600/ month. Utility expenses are \$20 for phone and \$165 for electric.~~

Total income per month equals:	\$1,300.00
Total expenses are:	\$785.00
After deductions:	\$515.00

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~~\$515.00 is less than \$553.00, 40% of the federal poverty level for a family of 3, so this family can have the parent fee waived.~~

~~EXAMPLE:~~

~~A family of four has a gross monthly income of \$2,203.00. The parent fee for this family would be 44% of the cost of care. The rent payment for this family is \$600/month. Utility expenses are \$20 for phone and \$165 for electric.~~

Total income per month equals:	\$2,203.00
Total expenses are:	\$785.00
After deductions:	\$1,418.00

~~\$1,418.00 is more than \$666.00, 40% of the federal poverty level for a family of 4, so this family will not have the parent fee waived.~~

- ~~5. Teen parents 18 years old or younger attending high school or a high school equivalent.~~

~~All requests to waive the fee must be documented in the case file and be approved by the unit supervisor.~~

~~As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.~~

DSS determines and assigns copayments for families who receive the Purchase of Care (POC) child care subsidy.

1. DSS determines copayments for the POC program according to:

- A. The family's household size;
- B. The family's gross monthly income;
- C. The family's shelter and utility expense deductions; and
- D. A percentage of the family's gross monthly income compared to the Federal Poverty Level (FPL) [guidelines as listed in the current POC sliding fee scale that DSS publishes in the annual October Cost of Living Adjustments Administrative Notice].

2. DSS will waive the copayment if one of the following conditions applies to a family:

- A. The family has net income below 40% of the FPL and is determined to have an excessive financial burden in accordance with DSSM 11004.7.1.
- B. The family has gross income at or below 70% of the FPL.
- C. The family is active with and referred by the Delaware Division of Family Services (DFS), including foster care families.
- D. The family is participating in Delaware's Temporary Assistance for Needy Families (TANF) program.
- E. The child receives TANF and is being cared for by a caretaker who is not the child's natural or adoptive parent.
- F. The parent is age 18 or younger and is attending high school or a high school equivalent.

3. DSS may assign a copayment to a case with a caretaker if the eligible child receives income and does not meet one of the waiver conditions listed in section (2) of this policy.

4. DSS will calculate the family's assigned copayment as a monthly amount.

- A. The copayment will not increase beyond the initial copayment amount during the eligibility period if the family reports an increase in income.
- B. The copayment will decrease during the eligibility period if the family reports a decrease in income.

Note: If a family's copayment decreased during the eligibility period, and then the family reports an increase in income during the same eligibility period, the copayment may increase up to the initial copayment amount assigned at application [or redetermination].

POLICY – AMENDMENT

Delaware Department of Health and Social Services
 Division of Social Services
 Policy and Program Development Unit

11004.7.1 ~~Child Care Parent Fee Scale and Determination of Fee~~ Determining Excessive Financial Burden for Child Care

45 CFR 98.45 (k)

The assessed child care parent fee is based on family size, family income as a percentage of the poverty scale and the cost of care. The current child care fee scale used to determine the child care parent fee is located in Administrative Notices as the ~~Child Care Sliding Fee Scale Appendix III of the Cost of Living Adjustment Notice.~~

To arrive at the actual fee, look at the current Child Care Sliding Fee Scale (noted above) and use the following steps:

- A. Determine the family size as outlined in section 11003.9.3.
- B. From the family size column, determine the income range of the parent/caretaker.
- C. At the top of the income ranges are percentages from 0% to 36% all the way up to 190% to 200%. These are the percentages of the federal poverty scale as it relates to family income by family size. It means that a family's income can range between 0% to 36% all the way up to 190% to 200% of the federal poverty scale. Find the appropriate percentage column for your family.

D. Finally, based on family size and income at that appropriate percentage range, look at the percentages below (these are ranges from 1% to 80%). This is the percentage of the cost of care that this family will pay per child based on the percentage of their income as it relates to the federal poverty level.

Families with income between:

Poverty — percentage ranges — based on income	Percentage of the cost of care paid
0% and 36%	1%
36% and 45%	5%
45% and 55%	7%
55% and 65%	8%
65% and 75%	10%
75% and 85%	12%
85% and 95%	14%
95% and 100%	16%
100% and 105%	21%
105% and 115%	23%

FINAL REGULATIONS

115% and 120%	25%
120% and 125%	30%
125% and 135%	32%
135% and 145%	44%
145% and 155%	46%
155% and 160%	48%
160% and 170%	50%
170% and 180%	60%
180% and 190%	70%
190% and 200%	80%

E. Finally, based upon the type of care (i.e., home, center, etc.) a parent/caretaker selects, multiply the percentage of the cost of care by the cost for that type of care. This is the parent fee the parent/caretaker will pay.

This is a per child fee. If more than one child is in care, repeat the calculations for each child, then combine all the per child fees to arrive at the total fee.

EXAMPLE: Based upon income and family size, a parent is to pay seven percent of the cost of care for a three-year-old child in a contracted child care center. If the cost of care for a child over two in a center is \$12.40 per day, multiply \$12.40 by .07, giving the parent a fee of .87 cents per day for that child.

NOTE: Use the same rules for determining family size for the child care fee scale as done for determining family size for income. Include all of the family's children under age 18 in the family size even if not all will need child care services. In other words, the people whose needs and income are included together are counted together to comprise the definition of family size. Review Section 11003.9.3 for further guidance.

DSS programmed the DCIS II Child Care Sub-system to do the actual child care parent fee calculation.

The child care parent fee which shows in the DCIS II Child Care Sub-system is the actual amount of care that is authorized. The actual fee the parent/caretaker pays for that child is indicated on the authorization form.

DSS determines if a family has an excessive financial burden when establishing the family's copayment for the Purchase of Care (POC) program.

1. DSS considers a family to have an excessive financial burden for the POC program if the family's net income is below 40% of the Federal Poverty Level (FPL) prior to or after DSS deducts certain household expenses from the family's gross income.

A. When determining excessive financial burden, expense deductions are limited to:

- i. Rent, mortgage, and lot rent;
- ii. Any mandatory expense required by a landlord or a mortgage holder (e.g., homeowners insurance, property taxes, and school taxes);
- iii. Current monthly utility expenses (e.g., electric, gas, trash, water, and sewer), excluding late fees and past due amounts;
- iv. Telephone expenses, which are capped at the same rate as the Food Supplement Program's standard allowance; and
- v. Unreimbursed medical costs.
 - a. Before ~~considering~~ DSS can consider] medical costs as a deduction, a family not already receiving Medicaid or the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or DHCP.
 - b. The DHCP premiums are included in the unreimbursed medical cost deduction.

- c. DSS will consider any unreimbursed medical costs not covered by Medicaid or DHCP as a deduction to determine the family's income for excessive financial burden.
- B. Case workers must verify all expenses by using:
- i. The documentation of the actual billed expense;
 - ii. A receipt of payment;
 - iii. A signed lease; or
 - iv. A DSS approved form detailing the expense.
- C. DSS will apply one of the following utility allowances as a deduction to a family's gross income when applicable:
- i. The heating and cooling standard utility allowance (HCSUA);
 - ii. The limited utility allowance (non-heating/non-cooling);
 - iii. The one-utility allowance; or
 - iv. The telephone allowance.
2. DSS will deduct allowable and verified expenses from a family's gross income to determine if the family's net income falls below 40% of the FPL for excessive financial burden.
3. DSS will waive child care copayments for families who are determined to have an excessive financial burden.
-

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 9072

ORDER

Terminating Food Benefits due to Substantial Lottery or Gambling Winnings

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services ("DSS") initiated proceedings to amend the Division of Social Services Manual ("DSSM") regarding the Food Stamp Program, specifically, Terminating Food Benefits due to Substantial Lottery or Gambling Winnings. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September 2020 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2020 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after ~~November~~ December 11, 2020 the Department/DSS proposes to amend the DSSM section 9072 regarding the Food Stamp Program, specifically, Terminating Food Benefits due to Substantial Lottery or Gambling Winnings.

Statutory Authority

- 7 CFR 272.17
- 7 CFR 273.11 (r)
- 7 CFR 273.12 (a)

Background

The U.S. Department of Agriculture's Food and Nutrition Service released a final rule on April 15, 2019 on lottery and gambling winnings. The rule provides that any household that receives substantial lottery or gambling winnings must lose eligibility for Supplemental Nutrition Assistance Program ("SNAP") benefits immediately upon receipt of the winnings. It also requires that those households remain ineligible until they meet the allowable SNAP financial resource and income eligibility requirements.

DSS is proposing policy DSSM 9072 to implement the federal rule for lottery and gambling winnings in SNAP. The proposed policy defines substantial lottery or gambling winnings. The policy also provides instructions for SNAP recipients and DSS and the Division of Medicaid and Medical Assistance ("DMMA") staff on household reporting requirements, disqualification criteria, eligibility requirements for previously disqualified households, and case processing procedures for substantial lottery or gambling winnings.

Summary of Proposal*Purpose*

To explain the SNAP requirement that prohibits individuals with substantial lottery or gambling winnings from receiving food benefits.

Summary of Proposed Changes

Effective for services provided on and after ~~November~~ **December** 11, 2020 the Department/DSS proposes to amend the DSSM regarding the Food Stamp Program, specifically, Terminating Food Benefits due to Substantial Lottery or Gambling Winnings.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, the Department/DSS gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 1, 2020.

Fiscal Impact

DSS estimates that this new policy will result in a cost of \$796,010 due to required enhancements to the Department's benefit eligibility system. Changes will be made to the system's eligibility processing and client notification functions and to the online self-service benefit application (ASSIST). DSS will also add a lottery and gambling data interface to the eligibility system to comply with the federal requirements found at 7 CFR 272.17 that mandate State agencies, to the maximum extent practicable, establish agreements with gaming entities in order to identify individuals within the State with substantial winnings who are members of a SNAP household. This new data interface will allow DSS and DMMA staff to receive direct, unaltered information regarding SNAP households' substantial lottery or gambling winnings in Delaware to determine if a household meets the disqualification criteria according to DSSM 9072. This data match will also reduce the amount of verification required from households and will result in fewer case processing errors.

	Federal Fiscal Year 2021
General (State) funds	\$398,005
Federal funds	\$398,005*

*50% Federal funding is contingent upon approval by the U.S. Department of Agriculture

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2020 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual

section 9072 regarding the Food Stamp Program, specifically, Terminating Food Benefits due to Substantial Lottery or Gambling Winnings, is adopted and shall be final effective December 11, 2020.

11/10/2020

Date of Signature

Molly K. Magarik
DHSS Cabinet Secretary

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

9072 RESERVED Terminating Food Benefits due to Substantial Lottery or Gambling Winnings

7 CFR 272.17; 7 CFR 273.11 (r); 7 CFR 273.12 (a)

Food benefit households that receive substantial lottery or gambling winnings will not be eligible for the Food Supplement Program upon receipt of the winnings.

- 1. Substantial lottery or gambling winnings are a cash prize won in a single game with a gross value equal to or greater than the maximum limit for lottery and gambling winnings for the Food Supplement Program.**
 - A. Substantial lottery or gambling winnings include, but are not limited to, cash prizes from:
 - Scratch off tickets
 - Video lottery
 - Lottery drawings, such as Powerball
 - Table games, such as blackjack or roulette
 - Slot machines
 - Sports betting
 - Horse racing
 - Keno
 - Bingo
 - Internet gambling
 - B. DSS and DMMA will assess the value of lottery and gambling winnings before taxes or other withholdings are deducted.
 - C. If multiple individuals shared in the purchase of a ticket, hand, or similar bet, then DSS or DMMA will use only the portion of the winnings given to a member of the food benefit household to determine if the household's winnings are equal to or greater than the maximum limit for lottery and gambling winnings.
 - D. The maximum limit for lottery and gambling winnings applies to all food benefit households, including elderly or disabled households and categorically eligible households.
 - E. The Food and Nutrition Service (FNS) determines the maximum limit for lottery and gambling winnings each year. DSS publishes the maximum limit in the annual October Cost of Living Adjustments Administrative Notice.

Note: The maximum limit for lottery and gambling winnings is set to the same amount as the maximum financial resource limit for elderly or disabled food benefit households.

2. Food benefit households are required to report to DSS or DMMA when a household member receives substantial lottery or gambling winnings.

- A. Households that have received substantial lottery or gambling winnings must report the total winnings to DSS or DMMA within 10 days of the date the household received the winnings.
- i. This reporting requirement also applies to households that spent or gave away the winnings prior to reporting to DSS or DMMA.
 - ii. Households must report in-state and out-of-state winnings.

3. DSS and DMMA case workers must verify food benefit households' lottery and gambling winnings.

- A. DSS and DMMA will accept verification of households' lottery or gambling winnings, including, but not limited to:
- i. A receipt or notice from the Delaware Department of Finance;
 - ii. A receipt or form from the payer of the winnings;
 - iii. A copy of the household member's bank statement; or
 - iv. Information from a data match for lottery and gambling winnings.
- B. DSS and DMMA case workers will follow the procedures for questionable or unclear information per DSSM 9033 and DSSM 9085.5 when:
- i. Information or verification of a household member's lottery or gambling winnings is unclear, questionable, or missing; or
 - ii. A third party reports a household member's lottery or gambling winnings without providing acceptable verification.

Note: If DSS or DMMA receives information about the household's winnings from the lottery and gambling data match in the eligibility system, the household's food benefit case can be closed without contacting the household if the match meets the following conditions:

- The household's reported winnings are equal to or greater than the maximum limit for lottery and gambling winnings; and
- The data match information is clear and complete.

If the information received from the lottery and gambling data match is questionable, DSS and DMMA case workers will follow the procedures for unclear information per DSSM 9085.5. For example, the spelling of the household member's name on the data match is different from the spelling of the name in the case file.

4. Any food benefit household with a member who receives substantial lottery or gambling winnings will no longer be eligible for food benefits immediately upon receipt and verification of the winnings.

- A. The DSS or DMMA case worker must immediately close or deny the food benefit case for the entire household once a household member's winnings are verified.
- B. If the DSS or DMMA case worker issued a request for contact to the household and the household fails to respond or refuses to provide sufficient information or verification about the winnings, the case worker will follow the procedure to close the food benefit case per DSSM

9085.5.

- C. DSS or DMMA will send a notice of adverse action to the household prior to terminating food benefits for substantial lottery or gambling winnings.
- D. DSS or DMMA will send a notice of denial to the household if DSS or DMMA discovers during the recertification process that the household received substantial lottery or gambling winnings.
- E. The DSS or DMMA case worker will process an overpayment for the food benefit case if benefits were issued to the household following the household's receipt of winnings that exceeded the maximum limit for lottery and gambling winnings.

5. Households that were determined ineligible for food benefits because of substantial lottery or gambling winnings will remain ineligible until the household meets the resource and income eligibility requirements for the Food Supplement Program.

- A. A household can re-apply for food benefits at any time after the household's case is closed.
- B. DSS and DMMA will determine eligibility using the regular resource and income limits for the Food Supplement Program for households that re-apply for benefits after their case closed due to substantial lottery or gambling winnings.
 - i. DSS or DMMA will count any winnings kept by the household as a resource at re-application.
 - ii. The household cannot be determined categorically eligible at re-application, even if the household was previously categorically eligible per DSSM 9042. This requirement applies only the first time the household re-applies for food benefits.
- C. If at re-application the food benefit household's composition has changed since the case closed, DSS or DMMA will consider the household to be a new food benefit household and not a household that was closed due to substantial lottery or gambling winnings, regardless of who left or entered the household.
 - i. A household that has changed after case closure may be determined categorically eligible at re-application and does not have to meet the conditions in section (5)(B) of this policy.

DEPARTMENT OF HUMAN RESOURCES STATE EMPLOYEE BENEFITS COMMITTEE

Statutory Authority: 29 Delaware Code, Section 9602 (29 Del.C. §9602)
19 DE Admin. Code 2001

ORDER

2001 Group Health Care Insurance Eligibility and Enrollment Rules

Pursuant to House Bill No. 4 amended by House Amendment No. 1(149th General Assembly), the Department of Human Resources and the Division of Statewide Benefits of the Department of Human Resources was established effective July 1, 2017, having powers, duties and functions as follows:

"(1) With the exception of deferred compensation pursuant to Chapter 60A of this title and any other investment or retirement savings plan, the Director of Statewide Benefits shall be responsible for the management and administration of all currently existing and future state

employee benefits programs, including but not limited to group health, group life, flexible benefits, dental, vision, prescription, long-term care, disability, supplemental benefits and the Blood Bank."

Epilogue language referenced below from the FY20 Operating Bill - SB240, Section 25 allows the State Employee Benefits Committee to amend the Group Health Insurance Program Rules & Regulations by approving the changes and then sending them to the Registrar for publication in the Register of Regulations.

"Notwithstanding the provisions of the Administrative Procedures Act, 29 **Del.C.** Ch. 101 or any other laws to the contrary, the State Employee Benefits Committee is authorized to amend the rules for Employees Eligible to Participate in the Group Health Insurance Program and the State Disability Insurance Program by approving such amendments and causing the amendments to be published in the Register of Regulations with such amendments to be effective as of the date of such publication unless otherwise specified by the State Employee Benefits Committee."

Pursuant to the authority vested in the State Employee Benefits Committee (SEBC) by **29 Del.C. §§5210(4), 9602(b)(4)**, the SEBC hereby amends the Eligibility and Enrollment Rules for the State of Delaware Group Health Insurance Plan (19 **DE Admin. Code** 2001), as shown on the attached version of such rules. The amendments shall have an effective date of December 1, 2020.

This order is effective November 16, 2020.

**STATE OF DELAWARE
DEPARTMENT OF HUMAN RESOURCES**

By: Faith L. Rentz
Director, Statewide Benefits and Insurance Coverage Office

Date: November 16, 2020

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

[2001 Group Health Care Insurance Eligibility and Enrollment Rules](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

WASTE MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6305(a) (7 **Del.C.** §§6010(a) & 6305(a))

7 DE Admin. Code 1301

Secretary's Order No.: 2020-WH-0033

RE: Approving Final Regulations to Amend Amendments to 7 DE Admin. Code 1301 *Delaware's Regulations Governing Solid Waste - new Section 14, Plastic Carryout Bag Ban and At Store Recycling Program* and existing Section 3, *Definitions*

Date of Issuance: November 17, 2020

Effective Date of the Amendment: December 21, 2020

1301 Regulations Governing Solid Waste

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del.C.* §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1301, *Delaware's Regulations Governing Solid Waste* ("DRGSW"). More specifically, the Department proposes to: (1) create a new Section 14, *Plastic Carryout Bag Ban and At Store Recycling Program*, within the existing regulations; and (2) revise existing Section 3, *Definitions*, to formally define certain terms referred to in the proposed new Section 14.

In June 2019, the General Assembly passed House Bill 130, which amends 7 *Del.C.* §6099A by expanding the existing *At-Store Recycling Program* governing the use of plastic carryout bags. Delaware stores subject to this law will be prohibited from providing plastic carryout bags to customers at the point of sale, thereby encouraging a shift to reusable bags. Subsequently, House Bill 130 was signed into law by Governor Carney on July 29, 2019.

The Department proposes to modify the DRGSW to ensure: (1) plastic carryout bags, as defined by 7 *Del.C.* §6099A, are banned; (2) at-store collection of plastic carryout bags and film are implemented, maintained, and consistent with 7 *Del.C.* Ch. 60 Subchapter IX, Recycling and Waste Reduction; (3) that plastic bags and film enter the marketplace and are not disposed of; and (4) that stores collect and report data to support the intent of 7 *Del.C.* §6099A. The adoption of the proposed Amendments will further enable the cleanup of Delaware's communities and watersheds, reduce storm water and trash management costs to taxpayers, and promote the health and safety of watersheds, wildlife, humans, and the ecosystems food chain.

In compliance with 7 *Del.C.* §6099A, effective January 1, 2021, a store shall not provide any bags to a customer at the point of sale made from plastic not specifically designed and manufactured to be reusable and shall provide reusable plastic bags that meet the requirements as established in 7 *Del.C.* §6099A(a)(4). A store may make available for purchase or distribution at the point of sale a reusable grocery bag that meets the requirements of the aforementioned section. In addition, a store may make paper bags available for no cost or may charge any price at their discretion. A store may only continue the use of plastic carryout bags for the purposes identified in 7 *Del.C.* §6099A(e)(3).

To ensure compliance with 7 *Del.C.* Ch. 60, Subchapter IX, Recycling and Waste Reduction, the Department also proposes to reinforce the "At-Store Recycling Program" ("ASRP"). The goal of the ASRP is to connect the manufacturers who need the material (i.e. plastic carryout bags) to the marketplace that can provide the material to

be recycled. Stores that continue to distribute any plastic carryout bags, whether or not exempt, shall be required to have an ASRP. Stores that have adopted practices which eliminate the need for plastic carry out bags, as outlined in the Amendment, do not need to participate in an ASRP as of March 31, 2021.

To further necessitate ASRP compliance, the Department requires stores to annually report the measurement of plastic bags and film collected at the store's collection bin, and to maintain these records for three (3) years. Stores shall also make the records available to DNREC, upon request, to demonstrate compliance of this Amendment.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del.C.* §§6010(a) and 6305(a). The Department published its initial proposed regulation Amendments in the October 1, 2020 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on October 21, 2020. All notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

It should be noted that, subsequent to publication in the October 1, 2020 *Delaware Register of Regulations*, the Department identified a clerical error contained in the definition of "plastic carryout bag." The clerical error was corrected, as set forth in the revised proposed Amendments, and then properly vetted by the Department at the time of the virtual hearing.

There were nine (9) members of the public in attendance with one (1) public comment provided live at the virtual hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on November 5, 2020, with twenty-nine (29) written comments having been received by the Department.

Subsequent to the close of the Record with regard to public comment, and at the request of the Hearing Officer, a Technical Response Memorandum ("TRM") was provided by the Department's expert staff in the Division of Waste and Hazardous Substances. I find that the Department's TRM offers a detailed review of the *revised* proposed Amendment, identifies the concerns voiced in the public comments received in this matter, and responds to the same in a balanced manner, accurately reflecting the information contained in the Record.

Hearing Officer Theresa Newman prepared her report dated November 7, 2020 ("Report"), which expressly incorporated the Department's revised proposed Amendments into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the record developed by the Department's experts in the Division of Waste and Hazardous Substances, and established by the Hearing Officer's Report, I find that the revised proposed Amendments are well-supported and will enable the Department to: (1) reflect recent changes to Delaware law in the existing DRGSW; (2) provide further regulated guidance to stores affected by the same for compliance assistance purposes; (3) enhance the Department's cleanup of Delaware's communities and watersheds, reduce storm water and trash management costs to taxpayers; and (4) promote the health and safety of watersheds, wildlife, humans, and the ecosystems food chain. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §§6010(a) and 6305(a);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch.60, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on October 21, 2020 and during the 15 days subsequent to the hearing (through November 5, 2020), before making any final decision;

4. Promulgation of the *revised* proposed amendments to 7 *DE Admin. Code* 1301, as set forth herein, will enable the Department to reflect recent changes to Delaware law in the existing DRGSW, provide further regulated guidance to stores affected by the same for compliance assistance purposes, enhance the Department's cleanup of Delaware's communities and watersheds, reduce storm water and trash management costs to taxpayers, and promote the health and safety of watersheds, wildlife, humans, and the ecosystems food chain;
5. The Department has reviewed the *revised* proposed Amendments in light of the *Regulatory Flexibility Act*, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;
6. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as initially published in the October 1, 2020 *Delaware Register of Regulations*, and then subsequently revised, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and
8. The Department shall submit this Order approving the *revised* proposed Amendments as final regulatory to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

1301 Regulations Governing Solid Waste (Break in Continuity of Sections)

3.0 Definitions

The following words, phrases, and terms as used in these regulations have the meanings given below:

(Break in Continuity Within Section)

"Plastic carryout bag" means a plastic [carryout] bag provided by a store to a customer at the point of sale made from plastic ~~[which meets the recycled content plastic requirements, is not compostable or biodegradable,]~~ and not specifically designed and manufactured to be reusable.

***Please note that no additional changes were made to the regulation as originally proposed and published in the October 2020 issue of the *Register* at page 333 (24 DE Reg. 333). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

1301 Regulations Governing Solid Waste

FINAL REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 4100 BOARD OF HOME INSPECTORS

Statutory Authority: 24 Delaware Code, Section 4106(a)(1) and 29 Delaware Code §10113(b)(4)
(24 **Del.C.** §4106(a)(1) & 29 **Del.C.** §10113(b)(4))
24 **DE Admin. Code** 4100

FINAL ORDER ADOPTING REGULATION CHANGES

4100 Board of Home Inspectors

Pursuant to 29 *Del. C.* § 10113(b)(4) and 24 *Del. C.* § 4106(a)(1), the Delaware State Board of Home Inspectors issues this Order adopting the below amendment to the Board's Rules. Specifically, pursuant to 29 *Del. C.* § 10113(b)(4), Regulations 4.5.2, 5.1, and 16.3.2 of the Board of Home Inspectors must be changed to correct a technical error as it incorrectly refers to an entity, the National Association of Home Inspectors (NAHI), that no longer exists.

SUMMARY OF THE EVIDENCE

1. Regulation 4.5.2 now states: "A log documenting no fewer than 75 home inspections, and evidence that the applicant is a member of the American Society of Home Inspectors ("ASHI") or the National Association of Home Inspectors ("NAHI"). The Board may request copies of sample home inspection reports to verify experience."
 2. The Board makes the following change to its regulations (removals are stricken through):
"A log documenting no fewer than 75 home inspections, and evidence that the applicant is a member of the American Society of Home Inspectors ("ASHI") ~~or the National Association of Home Inspectors ("NAHI").~~ The Board may request copies of sample home inspection reports to verify experience."
 3. Regulation 5.1 now states: "To qualify for licensure, all applicants must successfully complete a course of study, consisting of at least 140 hours of classroom or online training, which has been approved by the Board, the American Society of Home Inspectors ("ASHI"), the National Association of Home Inspectors ("NAHI") or the International Association of Certified Home Inspectors ("INTERNACHI")."
 4. The Board makes the following change to its regulations (removals are stricken through):
"To qualify for licensure, all applicants must successfully complete a course of study, consisting of at least 140 hours of classroom or online training, which has been approved by the Board, the American Society of Home Inspectors ("ASHI"), ~~the National Association of Home Inspectors ("NAHI")~~ or the International Association of Certified Home Inspectors ("INTERNACHI")."
 5. Regulation 16.3.2 now states: "Courses must be approved by the Board, ASHI, NAHI, or INTERNACHI in order to qualify as CE. Board approved courses appear on the website of the Division of Professional Regulation."
 6. The Board makes the following change to its regulations (removals are stricken through):
"Courses must be approved by the Board, ASHI, ~~NAHI,~~ or INTERNACHI in order to qualify as CE. Board approved courses appear on the website of the Division of Professional Regulation."
- The effective date of this Order will be ten days from the publication of this Order in the Register of Regulations.

IT IS SO ORDERED this 15 day of September 2020 by the Delaware Board of Home Inspectors.

BY THE DELAWARE BOARD OF HOME INSPECTORS

/S/ Dennis Theoharis, Chairman

/S/ Lisa Roddis

/S/ John Kerrigan Sr.

/S/ Joyce Edwards

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

4100 Board of Home Inspectors

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

ORDER NO. 9658

8002 Rules to Establish an Excavation Damage Prevention Program

IN THE MATTER OF THE ADOPTION
OF RULES TO ESTABLISH AN
EXCAVATION DAMAGE PREVENTION
PROGRAM
(OPENED OCTOBER 22, 2019)

PSC DOCKET NO. 19-0713
(REGULATION DOCKET NO. 8002)

AND NOW, this 21st day of October 2020, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on August 29, 2018, the Governor of Delaware signed into law Senate Bill 189 (with Senate Amendment 2), thereby amending the *Underground Utility Damage Prevention and Safety Act* ("*Damage Prevention Act*"), which is codified at 26 Del. C. §§ 801-813¹; and

WHEREAS, the new law: (i) requires operators of underground utility lines to notify the Commission of any facilities damage caused by excavation resulting in damages exceeding \$3,000 (other than underground pipeline operators, who must report all excavation damage to facilities); (ii) directs the Attorney General and the Commission to review the notifications of excavation damage to determine any violations; and (iii) authorizes the Attorney General or the Commission to impose penalties appropriate to the circumstances and gravity of the violation; and

WHEREAS, on October 22, 2019, by Order No. 9471, the Commission opened this docket to promulgate regulations governing the Commission's enforcement of the *Damage Prevention Act* and directed Staff to conduct meetings with interested stakeholders to discuss the content of the regulations and to provide the Commission with proposed regulations no later than June 3, 2020; and

WHEREAS, in compliance with Order No. 9471, Staff drafted proposed regulations, met with interested stakeholders, accepted written comments until April 27, 2020, and produced a final draft of the proposed regulations -- entitled *Rules to Establish an Excavation Damage Prevention Program* ("*Proposed Regulations*") -- for consideration by the Commission; and

WHEREAS, on June 3, 2020, Staff presented the *Proposed Regulations* to the Commission and, by Order No. 9595, the Commission: (i) directed the Commission Secretary to transmit a Notice of Proposed Rulemaking ("*Notice*") regarding the *Proposed Regulations* to the Registrar of Regulations for publication in the July 1, 2020 edition of the *Delaware Register of Regulations* and to publish the Notice in the *News Journal* and the *Delaware State News* by July 1, 2020; (ii) established a deadline for written public comment of August 3, 2020; and (iii) designated a hearing examiner to conduct an evidentiary hearing on the *Proposed Regulations* (unless no material objections to the *Proposed Regulations* were received by August 3, 2020); and

WHEREAS, the Registrar of Regulations, the *News Journal*, and the *Delaware State News* each published the required Notice; and

WHEREAS, the Commission received no written public comments on the *Proposed Regulations* by the August 3, 2020 deadline; and

WHEREAS, on September 30, 2020, the Commission conducted a duly-noticed² hearing on the *Proposed Regulations* during which (1) Staff witness Matthew Hartigan, the Commission's Deputy Director, testified that the *Proposed Regulations* comply with the changes to the *Damage Prevention Act* made by Senate Bill 189 (with Senate Amendment 2) and adoption thereof would be in the public interest and (2) the Commission voted to adopt the proposed amendments to the regulations on the condition that it received no material objections to the

Proposed Regulations by the October 15, 2020 deadline for public comment,³ which deadline was included in the notice of the September 30, 2020 hearing; and

¹ Subchapter II of Chapter 8 authorizes the Commission to establish its pipeline safety compliance program, which is enforced through regulations promulgated by the Commission in 2009 and codified at 26 *Del. Admin. C.* § 8001. See PSC Regulation Docket No. 61.

² Notice was published in the September 1, 2020 edition of the *Delaware Register of Regulations* and sent to the service list via DelaFile.

³ Under 29 *Del. C.* § 10118(a), the opportunity for public written comment must be extended for a minimum of 15 days after the final public hearing on a proposed regulation.

WHEREAS, the Commission received no written public comments on the *Proposed Regulations* by the October 15, 2020 deadline;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. That, because no material objections to the *Proposed Regulations* were received by the initial August 3, 2020 deadline, the Commission hereby revokes its delegation of this matter to a hearing examiner, pursuant to Order No. 9595.

2. That, pursuant to 26 *Del. C.* § 209(a) and 29 *Del. C.* §§ 10111-10119, the Commission hereby adopts as final the proposed *Rules to Establish an Excavation Damage Prevention Program*, which are attached as Exhibit "A" and which shall be included in the Delaware Administrative Code as 26 *Del. Admin. C.* § 8002.

3. That, pursuant to 29 *Del. C.* § 10118(e), the Secretary of the Commission shall transmit a copy of this Order, including Exhibit "A," to the Registrar of Regulations for publication in the December 1, 2020 edition of the *Delaware Register of Regulations*. An exact copy of the regulations shall be published in the *Delaware Register of Regulations* as the Commission's official regulation as defined in 29 *Del. C.* § 1132.

4. That the effective date of the regulations shall be the later of December 11, 2020, or ten days after publication in the *Delaware Register of Regulations*.

5. That the Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

J. Dallas Winslow, Chairman

/s/ Kim Drexler, Commissioner

/s/ Joann Conaway, Commissioner

Manubhai C. Karia, Commissioner (Absent)

/s/ Harold Gray, Commissioner

ATTEST: Donna Nickerson, Secretary

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

8002 Rules to Establish an Excavation Damage Prevention Program

~~[(Opened October 22, 2019)]~~

***Please note that no additional changes were made to the regulation as originally proposed and published in the July 2020 issue of the *Register* at page 40 (24 DE Reg. 40). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

8002 Rules to Establish an Excavation Damage Prevention Program

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Sections 6010 (7 **Del.C.** §6010)

GENERAL NOTICE

General Permit Authorization for Discharges from Construction Activities Under the National Pollutant Discharge Elimination System and the Laws of the State of Delaware

1. TITLE OF PERMIT:

NPDES Permit Number DE 0051268 "General Permit Authorization for Discharges from Construction Activities Under the National Pollutant Discharge Elimination System and the Laws of the State of Delaware", also referenced as the Delaware Construction General Permit (Delaware CGP).

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Delaware Construction General Permit (CGP) under the National Pollutant Discharge Elimination System (NPDES) program is being converted from a permit by regulation, which currently falls under 7 **DE Admin. Code** 7201 subsections 9.2-9.2.7.2.3. to a stand-alone general permit authorizing discharges from construction. The effective date of the Delaware CGP will be concurrent with the effective date of proposed revisions to 7 **DE Admin. Code** 7201 subsections 9.2-9.2.7.2.3. This fact sheet is a brief document written in a manner to assist residents in their understanding of the permit.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

The Delaware CGP expires five years from the effective date of the permit at which time the permit must be re-authorized.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §6010
40 CFR §123.1

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The Department of Natural Resources and Environmental Control (DNREC), Division of Watershed Stewardship will conduct a virtual public hearing (Docket #2020-R-W-0012) on proposed revisions to 7 **DE Admin. Code** 7201 Regulations Governing the Control of Water Pollution, Part 2 - Special Conditions for Stormwater Discharges from Construction Activities, subsections 9.2-9.2.7.2.3.

Concurrently a virtual public hearing will be conducted for proposed NPDES Permit Number DE 0051268 "General Permit Authorization for Discharges from Construction Activities Under the National Pollutant Discharge Elimination System and the Laws of the State of Delaware", also referenced as the Delaware Construction General Permit (Delaware CGP).

The virtual public hearing will be held on **Tuesday, December 1, 2020, beginning at 6:00 PM.**

Virtual Meeting Information

A web link to the virtual meetings will be posted on the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>.

To access the audio-only portion of the virtual hearing, dial in at 408-418-9388 and enter event code 173 792 2277. If prompted for a password, please use WaterPollAmend.

The proposed regulation revisions and the proposed permit may be inspected in the *Delaware Register of Regulations* after November 1, 2020 at https://regulations.delaware.gov/register/current_issue.shtml

The proposed regulation revisions and proposed permit may also be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website: <http://www.dnrec.delaware.gov/swc/pages/sedimentstormwater.aspx>

For additional information contact Elaine Webb, 285 Beiser Boulevard, Suite 102, Dover, DE 19904; by phone at 302-739-9921; or by email at elaine.webb@delaware.gov.

For more information about the virtual hearing, visit <https://dnrec.alpha.delaware.gov/public-hearings/>

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register using the form at <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>.

Written comments may be submitted to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to DNRECHearingComments@delaware.gov, or via USPS to the below address. The Department will accept public comment through the close of business on Wednesday, December 16, 2020.

Lisa Vest, Hearing Officer
DNREC – Office of the Secretary
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Elaine Z. Webb
Elaine.webb@delaware.gov
(302) 739-9921

NPDES Construction General Permit (CGP) Fact Sheet

http://regulations.delaware.gov/register/december2020/general/NPDES_Construction_General_Permit_Fact_Sheet.pdf

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission held its quarterly public hearing on **Thursday, November 12, 2020**. In light of COVID-19 mitigation measures in effect for DRBC member states, the hearing was held remotely. Please check the Commission's website, www.drbc.gov, for details regarding the draft docket decisions that were the subjects of the public hearing.

The Commission's quarterly business meeting will be held remotely on **Wednesday, December 9, 2020**, beginning at **10:30 a.m.** Please check the Commission's website, www.drbc.gov, for details about the meeting format and how to attend.

For additional information, please visit the DRBC website at www.drbc.gov or contact Denise McHugh at denise.mchugh@drbc.gov or Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

On March 12, 2020, Governor Carney issued a declaration of a state of emergency for the state of Delaware due to a public health threat. The State of Emergency allows all public meetings of executive branch public bodies, including the SBE, to be conducted electronically, either by means of telephone conference call or video-conference call.

In accordance with the State of Emergency, the State Board of Education is currently holding meetings electronically. The meeting information can be accessed via the public meeting calendar (<https://publicmeetings.delaware.gov/Search?q=&AnyAll=Any&AgencyID=22&StartDateInclusive=2020-08-01>). Members of the public can join the meeting via the web or telephone.

Meeting materials are available on the State Board of Education's eBoard site (<https://simbli.eboardsolutions.com/index.aspx?s=190001>). (If you are having technical difficulties accessing the site, please try a different browser.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4462 Public Drinking Water Systems

Pursuant to 16 **Del.C.** §122(3)(c), Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems. On December 1, 2020, the Division of Public Health plans to publish as "proposed" revisions to the Public Drinking Water Systems regulations. The revisions include:

- EPA-required corrections for specific rule primacy;
- Fluoride requirements for systems required to provide fluoride under Delaware law;
- Definitions and a new chapter for cross-connections; and
- Minor clarifications and technical changes.

Copies of the proposed regulations are available for review in the December 1, 2020 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Thursday, December 31, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901

Email: Alanna.Mozeik@delaware.gov

Phone: (302) 744-4951

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
PUBLIC NOTICE
1214 Suitability In Annuity Transactions

Regulation 1214 requires insurers and producers to establish a system to supervise recommendations made in the marketing and sale of annuities, which standards are also consistent with the standards imposed by the Financial Industry Regulatory Authority (FINRA). The regulation is an adoption of the National Association of Insurance Commissioners (NAIC) Model Regulation #275, Suitability in Annuity Transactions Model Regulation, as amended by the NAIC from time to time (Model #275).

In 2017, the NAIC appointed its Annuity Suitability (A) Working Group to review and revise, as necessary, Model #275, to promote greater uniformity across NAIC-member jurisdictions. Renewed interest in the model was prompted, in part, by work being done at the federal level. As described on the NAIC's website https://content.naic.org/cipr_topics/topic_annuity_suitability_best_interest_standard.htm:

In April 2016, the U.S. Department of Labor (DOL) completed regulations broadening its definition of "fiduciary investment advice" under the federal Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (IRC). However, the rule was vacated by the 5th U.S. Circuit Court of Appeals in March of 2018 before it took effect.

The U.S. Securities and Exchange Commission (SEC) released a proposed rule package on April 18, 2018, updating the standard of care broker-dealers and investment advisers would be required to provide to retail investors. The NAIC submitted comments to the SEC during the exposure period to further coordinate efforts so that the respective regulatory developments can provide consistency for consumers, industry, and regulators. The final rule took effect on June 30, 2020.

In 2018, the New York State Department of Financial Services proposed a new "best interest" standard for agents and brokers licensed to sell life insurance and annuity products in the state aligning with the now vacated DOL "fiduciary rule" for retirement savings. Under the rule, product sales must prioritize customer's interest over sales commissions and agents and brokers' compensation should not be influenced by the products recommended. The rule went into full effect on February 1, 2020.

In 2019, the NAIC Annuity Suitability (A) Working Group completed updates to Model #275 which began in November 2017. The goal of the Working Group was to seek clear, enhanced standards for annuity sales so consumers understand the products they purchase, are made aware of any material conflicts of interest, and are assured those selling the products do not place their financial interests above consumers' interests.

The NAIC membership approved revisions to Model #275 in February of 2020 clarifying that all recommendations by agents and insurers must be in the "best interest" of the consumer and that agents and carriers may not place their financial interest ahead of the consumers' interest in making a recommendation. The model now requires agents and carriers to act with "reasonable diligence, care and skill" in making recommendations.

To satisfy the newly added "best interest" standard under Model #275 as amended in 2020, agents (producers) and carriers must satisfy four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation. The revisions also include enhancements to the current model's supervision system to assist agents (producers) and carriers in complying with the regulation (the "safe harbor" provisions).

It is noteworthy that states must work toward adopting the 2020 revisions within five years after adoption of the revisions by the full NAIC membership to maintain their authority to regulate the sale of fixed annuities. This is because Section 989J of the Dodd-Frank Act, known as the Harkin Amendment, applies to the revised model regulation. Section 989J confirms state authority to regulate the sale of fixed indexed annuities and exemption from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the carrier issuing the contract is domiciled:1) has adopted requirements that

"substantially meet or exceed the minimum requirements" established by the 2010 version of Model #275; and 2) "adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulation" within 5 years of the adoption by the NAIC.

The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1 - Purpose, as follows:

Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation." Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.

Accordingly, the Department is now proposing to update Regulation 1214 to incorporate the February 2020 amendments to Model #275. The authority for the proposed amendments is 18 **Del.C.** §§311, 2304, and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

As required by 18 **Del.C.** §2312, the Department has determined to hold a virtual public hearing on the proposed amendments to Regulation 1214 on Monday, December 21, 2020 at 9:00 a.m. The hearing will be facilitated through WebEx at <https://stateofdelaware.webex.com/stateofdelaware/j.php?MTID=m8ec115baff535326feed4cc487f11a32>, meeting number (access code): 173 085 6988 and meeting password: DAhnHBS28e5. Holding a virtual public meeting is specifically permitted by Paragraph 5 of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued by Governor John Carney on March 12, 2020 and extended monthly thereafter (see <https://governor.delaware.gov/health-soe/> for the complete list of modifications and extensions).

The proposed amendments appear below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 5th day of January 2021. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
1351 West North St., Ste. 101
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@delaware.gov