
Delaware Register of Regulations

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Volume 24 - Issue 7, Pages 614 - 721

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Proposed
Final

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Calendar of Events &
Hearing Notices



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 December 15, 2020.

*Cover Photo by
Dolores Michels*



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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
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.
July 1	June 15	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.

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.

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Sections 6403, 6404, and 6406 (7 **Del.C.** §§6403, 6404 & 6406)
1 **DE Admin. Code** 502

PUBLIC NOTICE**502 Statewide Solid Waste Management Plan**

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing to adopt a Statewide Solid Waste Management Plan to replace, in its entirety, the Statewide Solid Waste Management Plan last adopted on December 3, 2015.

Purpose: DSWA is required, pursuant to 7 *Del. C.* § 6403, to adopt a Statewide Solid Waste Management Plan. This Plan was initially adopted in May, 1994, and has been periodically updated and replaced. The purpose of the Statewide Solid Waste Management Plan is to establish policies and goals respecting solid waste disposal and recycling diversion, together with identification of programs necessary to implement these policies and goals. The Plan is intended to address the roles and responsibilities of DSWA in solid waste disposal and recycling diversion activities as they relate to both public bodies (State, counties, municipalities) and private enterprise. The Statewide Solid Waste Management Plan proposed for adoption will provide the framework for actions to be taken by DSWA and other stakeholders in Delaware to maximize recycling and diversion of materials from landfill disposal, and to help advance sustainable materials management practices and minimize greenhouse gas emissions in the State.

Notice of Hearing: A virtual public hearing will be held via Zoom. Join Zoom meeting as follows:

When: January 25, 2021 04:00 PM Eastern Time (US and Canada)
Topic: Hearing for Changes to the Statewide Solid Waste Management Plan

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83566671572?pwd=S1ducmywRjJZSC9zRFRTQmVreE9XZz09>

Passcode: 379487

Join by iPhone one-tap:

US: +13126266799,,83566671572#,,,,,0#,,379487# or
+19292056099,,83566671572#,,,,,0#,,379487#

Join by Telephone:

Dial: 1-301-715-8592
Webinar ID: 835 6667 1572
Passcode: 379487

The hearing is to provide an opportunity for public comment on the proposed Statewide Solid Waste Management Plan. The public record will close at the close of the hearing, unless the hearing officer extends the comment period at the close of the hearing.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, 4:30 p.m., February 9, 2021. Written comments shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Written comments may also be submitted via e-mail at MDP@DSWA.com.

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

<http://dswa.com/news/reports/> and
502 Statewide Solid Waste Management Plan

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

[http://regulations.delaware.gov/register/january2021/proposed/502 DSWA Repeal.pdf](http://regulations.delaware.gov/register/january2021/proposed/502%20DSWA%20Repeal.pdf)

A copy of the proposed replacement of the regulation, *Statewide Solid Waste Management Plan, May 2020*, is available at:

[http://regulations.delaware.gov/register/january2021/proposed/502 Statewide Solid Waste Management Plan.pdf](http://regulations.delaware.gov/register/january2021/proposed/502%20Statewide%20Solid%20Waste%20Management%20Plan.pdf)

DEPARTMENT OF AGRICULTURE HARNES RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)
3 DE Admin. Code 501

PUBLIC NOTICE

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission (DHRC) pursuant to 3 Del. C. §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments for clarity by adding a definition.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on December 1, 2020, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On December 8, 2020, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to the initial 30-day comment period from January 1 to 31, 2021 and notice in the

Register of Regulations, the DHRC plans to finalize the regulations on February 9, 2021 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB January 31, 2021. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

***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/january2021/proposed/24 DE Reg 625RFA 01-01-21.pdf>

501 Harness Racing Rules and Regulations

1.0 Definitions

(Break in Continuity Within Section)

"Delaware Trainer" means an individual holding a valid DHRC trainer license and is a Delaware resident as defined in DHRC Rule 6.6.5 and 6.6.6.

(Break in Continuity of Sections)

6.0 Types of Races

(Break in Continuity Within Section)

6.6 Delaware Owned or Bred Races

(Break in Continuity Within Section)

6.6.5 The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned or bred races, Delaware Owned Preferred races, and Delaware Trained Preferred races. In determining whether a person is a Delaware ~~Resident~~ resident, the term "resident" shall mean the place where an individual has his or her permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. The term "residence" shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.

6.6.6 The Commission or its designee may review and subpoena any information which is deemed relevant to determine a person's residence, including but not limited to, the following:

(Break in Continuity Within Section)

6.6.6.11 None of these factors when considered alone shall be dispositive, except that a person must have resided in the State of Delaware in the preceding calendar year for a minimum of one hundred and eighty three (183) days. Consideration of all of these factors together, as well as a person's expressed intention, shall be considered in arriving at a determination. The burden shall be on the applicant to prove Delaware residency and eligibility for Delaware-owned or bred races, Delaware Owned Preferred races, and Delaware Trained Preferred races. The Commission may promulgate by regulation any other relevant requirements necessary to ensure that the licensee is a Delaware resident. In the event of disputes about a person's eligibility to enter a Delaware-owned or bred race, Delaware Owned Preferred races, and Delaware Trained Preferred races, the Commission shall resolve all disputes and that decision shall be final.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

501 Harness Racing Rules and Regulations

PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code, Section 101(2) and (3) (3 Del.C. §101(2) & (3))

PUBLIC NOTICE

805 Rules and Regulations for Delaware Domestic Hemp Production Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 3 of the Delaware Code, Chapter 1, Sections 101(2) & (3), Delaware Department of Agriculture, Plant Industries Section is proposing regulations governing the Delaware Domestic Hemp Production Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Plant Industries Section, 2320 South DuPont Highway, Camden DE 19901, by email to dda_hempprogram@delaware.gov by 4:30 p.m. on January 31, 2021. Please identify in the subject line: Regulations Governing Delaware Domestic Hemp Production Program.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Section staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Department of Agriculture, Plant Industries Section is proposing regulations governing Delaware Domestic Hemp Production Program.

Statutory Authority

3 Del.C. §101(2) & (3)

Background

The Delaware Department of Agriculture has been charged by the Delaware legislature pursuant to 3 Del.C. § 101(2) & (3) with the power to devise and execute measures necessary for the development of the agricultural interests of the State and to make and adopt rules for the government of the Department of Agriculture. The Department is developing proposed regulations to establish appropriate procedures, permitting process, and governing measures for the hemp agricultural program within the State of Delaware.

Summary of Proposal

Summary of Proposed Changes

The Plant Industries Section plans to publish the "proposed" amendments to the regulations governing Delaware Domestic Hemp Production Program and hold them out for public comment per Delaware law. The amendments clearly define the procedures, permitting process, and governing measures for individuals looking to participate in the Delaware Domestic Hemp Production Program as a producer, processor, or handler.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Department of Agriculture, Plant Industries Section 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 must be received by 4:30 p.m. on January 31, 2021.

Fiscal Impact

Not applicable

*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/january2021/proposed/24 DE Reg 627RFA 01-01-21.pdf>

805 Rules and Regulations for Delaware Domestic Hemp Production Program

1.0 Authority

These regulations are promulgated pursuant to the authority of 3 Del.C. §101(2) & (3). All moneys collected by the Department pursuant to the Program shall be used for the enforcement and administration of the Program. The Department may sample and or test any hemp or hemp products to verify compliance with this chapter.

2.0 Purpose

- 2.1 The passage of the federal Agriculture Improvement Act of 2018 and legalization of *Cannabis sativa* L. offers an economic opportunity for the State of Delaware and its producers, processors, handlers, and consumers. The purpose of these regulations is to establish appropriate standards, definitions, and requirements for the agricultural production of hemp in the State of Delaware.
- 2.2 To establish a Hemp Production Program in the State of Delaware, the following regulations define how the Department will comply with USDA requirements as indicated in 7 CFR Part 990 Domestic Hemp Program, as the regulatory entity of hemp production in the State of Delaware. This administrative regulation establishes procedures and requirements for licensing persons who wish to grow or cultivate hemp as a participant in the Delaware Hemp Production Program.

3.0 Definitions

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

"Acceptable hemp THC level" means post decarboxylated delta-9 tetrahydrocannabinol concentration equal to or less than 0.3% on a dry weight basis, as reported by a USDA-approved laboratory. The designated laboratory will also report the measurement of uncertainty (MU). 0.3% must fall within the reported MU.

"Applicant" means an individual, or an individual authorized to sign for a business entity, who applies for a license or registration.

"Authorized representative" means an individual designated by a licensed producer to act as a point of contact on behalf of the licensed producer. This individual must be indicated on the Delaware Domestic Hemp Production Program application.

"Cannabis" means any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined or that has been determined to be above the acceptable hemp THC level.

"Composite sample" means a collection of cuttings from an individual lot.

"Corrective action plan" means a plan set forth by the Department for a licensed producer to correct a negligent violation of, or non-compliance with, the State of Delaware hemp production plan. This term is defined in accordance with the Agriculture Improvement Act of 2018, which mandates certain non-compliance actions to be addressed through corrective action plans.

"Criminal History Report" means a report detailing an individual's conviction status related to a controlled substance within the past 10 years at the state or federal level. The report must be dated within 120 days prior to the date of application submission and is required to be renewed every three years. A Criminal History Report is required for all key participants.

"Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly or with criminal negligence.

"Cuttings" means flowering material of cannabis plant material collected for a sample.

"Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC. The decarboxylated value may also be calculated using a conversion formula that sums delta-9-

THC and THC-acid. The Department will consider the THC concentration level after this process, which is the post decarboxylated level.

"Delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).

"Department" means the Delaware Department of Agriculture.

"Destruction methods" means the use of farm equipment to mechanically manipulate the soil or the plant to render a cannabis crop non-retrievable within an indoor or outdoor growing site. The Department will not regulate the removal of male plants.

"Dry weight basis" means a method of determining the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

"Farm service agency" or "FSA" means an agency of the U.S. Department of Agriculture that provides services to farm operations that will assist in information collection on land being used for hemp production.

"Flower material" means the complete inflorescence of the cannabis plant.

"Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

"Growing site" -

"Indoor Growing Site" means an enclosed building with the same tax identification number, excluding any outdoor growing site, that can be secured and locked, in which cannabis plants are grown. Registration of a site must include a map, which contains a geospatial location of the site where hemp will be grown.

"Outdoor Growing Site" means a field location with the same tax identification number, excluding any indoor growing site, where cannabis seeds or plants are planted in the ground. Registration of a site must include a map, which contains a geospatial location of the site where hemp will be grown.

"Handler" means an individual, other than a producer or processor, transporting or storing hemp or hemp plant parts prior to the delivery of such plant or plant part for processing.

"Hemp" means all parts and varieties of the plant *Cannabis sativa* L. and any part of such plant cultivated or possessed by a license holder or registration holder, whether growing or not, with a post decarboxylated delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

"Homogenous" or "homogeneity" means a like plant variety in an individual lot.

"Key participants" means person or persons who have a direct or indirect financial interest in the entity producing or processing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including CEO, COO, and CFO. This does not include other management positions like farm, field, or shift managers.

"Laboratory" means a USDA-approved laboratory used by the Department to conduct regulatory testing for THC concentration levels in cannabis.

"License holder" means an individual or business entity authorized by the Department to grow, transport, or store hemp plants or plant parts.

"Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. Lot also refers to the batch or contiguous, homogenous whole of a product being sold to a single buyer at a single time. Lot is defined by the producer in terms of farm location, planting date, and variety and is to be reported as such to the FSA.

"Measurement of uncertainty" or "MU", means the parameter associated with the results of a measurements that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement, if a sample measure of 0.3% THC falls within the MU range then the sample meets acceptable hemp THC levels.

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"Negligent" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with these regulations. Licensed producers that are found operating negligently will be required to perform a Corrective Action Plan.

"On-site" means a registered growing site as indicated on an Annual Growing Site Registration or Growing Site Modification form.

"Processor" means an individual or business entity that conducts processes that convert hemp in any way, to include drying down and packaging.

"Processor facility" means an enclosed building that can be secured and locked in which hemp is processed. Registration of a facility must include a map, which contains a geospatial location of the site where hemp will be grown.

"Producer" means an individual, who is 18 years of age or older, or business entity possessing a Producer License issued by the Department under the authority of this chapter to grow, cultivate, harvest, store, or transport hemp or hemp products. Including individuals growing transplants, seedlings, or clones. Once licensed the term "licensed producer" shall be used.

"Production" means to grow or cultivate hemp plants for market.

"Program" means the Delaware Domestic Hemp Production Program.

"Sample" means a composite sample collected by the Department.

"Sampling agent" means an individual employed by the Department to collect, label, and submit cannabis samples to a designated testing laboratory.

"USDA" means the United States Department of Agriculture.

4.0 **Application, License and Registration**

4.1 The Department intends to approve or deny applications for producers, handlers, and processors within 30 days of submission. The Department will issue a license number or registration number upon approval. Licenses or registrations issued by the Department are intended to validate growing sites, processing facilities, or storage facilities within the State of Delaware. Any changes to an applicant's contact information must be submitted to the Department within ten days of the change. The Department will deem persons who materially falsify any information in their application ineligible to participate in the Delaware Domestic Hemp Production Program. Any records of the Department that could provide the name or location of a growing site or producer are excluded from the public record under 29 Del.C. §10002(l) (1), (2), and (17)a. The Department may report information regarding licensees to law enforcement.

4.2 Producers:

4.2.1 New applications and renewals, using the Delaware Domestic Hemp Production Program Application, must be submitted between November 1st and February 1st of the given year. Licenses will be valid until December 31st of the year that is three years after the license is issued, unless otherwise revoked.

4.2.2 An Annual Growing Site Registration must be completed annually and submitted to the Department no later than February 1st.

4.2.3 A Growing Site Modification form is required to be completed and submitted to the Department if a licensed producer intends to alter the location or size of a growing site as indicated on the Annual Growing Site Registration.

4.2.4 The Department requires a licensed producer to oversee individuals conducting, but not limited to, the following actions related to their hemp crop acreage: cleaning seed, in-field consulting, custom planting, weed removal, custom harvesting, and storing.

4.2.5 The Department requires that a licensed producer notifies landowners of the intention to use their land as a hemp growing site, if the licensed producer is not the owner of the land where hemp will be grown.

- 4.2.6 The Department allows any licensed producer to designate one individual as an authorized representative. Licensed producers shall ensure that a Criminal History Report is completed by an authorized representative and submitted to the Department.
- 4.3 Processors are required by the Department to complete a Processor Application, Annual Processor Facility Registration and Criminal History Report. New applications and renewals must be submitted by October 31st. Processor Registration Certificates will be valid until December 31st of the year that is three years after the certificate is issued, unless otherwise revoked. Processor facility registrations must be submitted annually no later than October 31st. It is the expectation of the Department that all materials associated with processing and final products are within acceptable hemp THC levels.
- 4.4 Handlers. The Department requires that individuals intending to transport, or store hemp or hemp plant parts complete a Handler Application and Criminal History Report. New applications and renewals must be submitted annually. Licenses will be valid until December 31st of the year that the license is issued, unless otherwise revoked.
- 4.5 Criminal History Report. All applications and license renewals must be accompanied by completed State and Federal Criminal History Reports. If the application is for a business entity, a completed Criminal History Report must be provided for each key participant and authorized representative. Approved applications are subject to revocation pending results of the State and Federal Criminal History Reports.
- 4.6 Individuals shall submit applications to the Department via a physical collection point identified by the Department, or via email. Any questions related to applications must be submitted via email at DDA_HempProgram@delaware.gov. The Department will mail all licenses and registrations via USPS. The Department will maintain a copy of each license and registration for record.
- 4.7 The Department will determine the status of licenses based on the following:
- 4.7.1 Active: A licensed producer that is in good standing with this Program.
- 4.7.2 Suspended: A licensed producer that has engaged in conduct violating this Program.
- 4.7.2.1 A licensed producer whose license has been suspended shall not produce, handle or process hemp during the period of suspension.
- 4.7.2.2 The Department may require that a licensed producer whose license has been suspended complete a Corrective Action Plan to fully restore the license.
- 4.7.3 Revoked: A licensed producer that negligently violates this Program 3 times within a period of 5 years shall have the license revoked and be ineligible to produce, handle or process hemp for a period of 5 years beginning on the date of the third violation. The Department may immediately revoke licenses if:
- 4.7.3.1 A licensed producer pleads guilty to or is convicted of any felony related to a controlled substance.
- 4.7.3.2 A licensed producer makes a materially false statement with regard to this Program to the Department with a culpable mental state greater than negligence.
- 4.7.3.3 A licensed producer is found to be growing, handling or processing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or has negligently violated this Program 3 times within a period of 5 years.
- 4.8 A Delaware institution of higher education that plans to produce and study hemp in the state, is required to complete the appropriate application and obtain a license from the Department.
- 4.8.1 The Department shall charge an institution of higher education sample collection and testing fees. The Department shall conduct regulatory samples and charge an institution of higher education fees associated with a producer, handler, or processor license, should the institution of higher education choose to participate in the Program for purposes other than research.
- 4.8.2 In accordance with the Delaware Domestic Hemp Production Program, a Delaware institution of higher education will not be determined noncompliant if the Delaware institution of higher education grows cannabis that exceeds Acceptable Hemp THC Level, as long as the cannabis crop is grown for research purposes and does not enter the stream of commerce. A Delaware

PROPOSED REGULATIONS

institution of higher education is required to dispose of the cannabis crop that exceeds Acceptable Hemp THC Level within a reasonable timeframe of the conclusion of research.

5.0 Fees and Renewal

5.1 Producer:

- 5.1.1 Application and Renewal \$300 every three years;
- 5.1.2 Annual Growing Site Registration \$500 per site annually; and
- 5.1.3 Growing Site Modification \$500 per site.

5.2 Processor:

- 5.2.1 Application and Renewal \$300 every three years;
- 5.2.2 Processor Facility Registration \$1000 per facility annually; and
- 5.2.3 Facility Modification \$1000 per facility.

5.3 The following have a fee of \$350 each per sample:

- 5.3.1 Pre-harvest Sample Collection;
- 5.3.2 Post-harvest Sample Collection; and
- 5.3.3 Resample Collection, and Testing.

5.4 Handler Application \$100 annually.

6.0 Sampling, Testing Requirements and Inspections

6.1 Sampling:

- 6.1.1 Sampling of hemp plants as required by the USDA, will be conducted by a sampling agent designated by the Department. Sampling agents will follow USDA and Department protocol for entering hemp growing sites and collecting the minimum number of plant specimens necessary to represent a homogenous composition of the lot that is to be sampled. The sampling agent will conduct one pre-harvest sample for each lot per licensed producer.
- 6.1.2 The Department requires that a licensed producer submit fees associated with sampling and testing, and if applicable resampling and retesting, at a total of \$350 per sample collected. Fees are to be collected by the Department prior to sampling.
- 6.1.3 If a licensed producer fails to complete harvest within 15 days of sample collection, the Department will collect a second pre-harvest sample of the lot to be submitted for testing.
- 6.1.4 A licensed producer or an authorized representative can request that the sampling process be conducted during a time that they are present at the growing site, however, sampling agents shall be provided complete and unrestricted access during business hours to cannabis plants, whether growing or harvested, and land, buildings, and other structures used for the cultivation, handling, and storage of all cannabis plants, and locations listed in the producer license.
- 6.1.5 Within 30-15 days prior to the anticipated harvest of cannabis plants, a licensed producer or an authorized representative of the licensed producer, as documented on the Delaware Domestic Hemp Production Program Application, shall notify the Department of the anticipated date of harvest via phone or email.
- 6.1.6 Within 15 days prior to the date of harvest, as indicated by the licensed producer or authorized representative of the licensed producer, as documented in the Delaware Domestic Hemp Production Program Application, a sampling agent shall collect representative samples from cannabis plants to submit for testing of THC concentration levels.
- 6.1.7 The sampling agent will not collect samples on lots where cannabis plants have not matured to flowering stage, as the USDA requires that samples consist of flower material.
- 6.1.8 A licensed producer or any other individual shall not harvest cannabis plants prior to samples being collected by the Department. A licensed producer or other individual may harvest lots that have been sampled by the Department but shall not remove harvested material from a growing site or comingle harvested lots without written authorization from the Department.

- 6.1.9 The growing site must be surveilled by the sampling agent. The sampling agent shall:
- 6.1.9.1 Verify the GPS coordinates of the growing site and lot as compared with the GPS coordinates submitted by the licensee to FSA;
 - 6.1.9.2 Estimate the average height, appearance, approximate density, condition of the hemp plants, and degree of maturity of the flowering material, meaning inflorescences; and
 - 6.1.9.3 Visually estimate the homogeneity of the lot to be sampled to establish that the lot is of like variety.
- 6.1.10 Cuttings from each individual lot, as identified by a licensed producer, and submitted by the producer to the FSA as per the requirements of the USDA, shall be organized as composite samples. Lots are to be defined by the producer. Producers must utilize guidelines from the Department for identifying lots, identification must be based on farm location, planting date, and variety. Producers are responsible for reporting lot identification to the FSA.
- 6.1.10.1 For purposes of determining the number of individual plants to meet sampling protocol as determined by the USDA sampling protocol document, the size of each individual lot shall be considered by the Department and sampling agent. For sampling purposes, samples from separate lots must remain separated and are not to be comingled.
 - 6.1.10.2 For lots of less than four acres, including indoor growing sites, the sampling agent will collect a minimum of five cuttings to form one composite sample. For lots greater than four and fewer than ten acres, including indoor growing sites, the sampling agent will collect a minimum of one cutting per acre to form a composite sample.
 - 6.1.10.3 For lots larger than 10 acres, including indoor growing sites, the number of plants that will be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999, in accordance with USDA.
 - 6.1.10.4 A licensed producer may contact the Department to request that a second sample be collected for retesting if it is believed the original THC concentration level test results were in error.
- 6.1.11 When collecting samples from each lot, the sampling agent must:
- 6.1.11.1 Always walk through the lot following a sawtooth pattern, beginning at one point of the lot and walking towards another point located on the opposite side of the lot.
 - 6.1.11.2 Walk access roads, drainage ditches, or other accessible paths that allow penetration into the lot (stand), in cases where the lot (stand) is determined too dense and walking through is deemed impossible.
 - 6.1.11.3 Cut at least "n" flower material at random distances in the lot, while walking a sawtooth pattern.
 - 6.1.11.4 Avoid collecting too many cuttings from the borders of the field or indoor growing site, high spots or low spots in the lot, and male plants.
 - 6.1.11.5 Make the cut of a cannabis plant just underneath the flower material. Each composite sample will contain cuttings of flower material from the uppermost areas of the plant consistent with a ratio of two-fifths of n. The remainder of the composite sample will be collected from the upper one-third of the plant. The sample size must be of adequate volume, as determined by the Department, to accommodate laboratory tests.
 - 6.1.11.6 Utilize one paper sample bag, per lot, for collecting cuttings.
 - 6.1.11.7 Seal each bag with a laboratory sticker and record the sample identification information and date on the bag.
- 6.1.12 The Department will label samples for submission to the laboratory using the following information:
- 6.1.12.1 Producer license number;
 - 6.1.12.2 Date of sample (month, day, year); and
 - 6.1.12.3 Lot identification as outlined by the Department and reported to FSA.

6.2 Testing:

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- 6.2.1 The Department will contract with a USDA approved laboratory to perform THC tests and require that test results be shared with the licensed producer, the Department, and the USDA.
- 6.2.2 A cannabis sample collected and submitted by the Department for testing is required in order to regulate that hemp plants produced in the state of Delaware contain acceptable THC levels. Test results are intended to measure the THC concentration levels of composite cannabis samples collected from individual lots.
- 6.2.3 The laboratory used for testing regulatory samples of cannabis, collected and submitted by the Department, is a USDA approved laboratory and meets testing protocol and compliance standards as required by USDA. (7 CFR Part 990 Domestic Hemp Production Program).
- 6.2.4 The Department will review the measurement of uncertainty to make final determinations regarding acceptable THC levels. (7 CFR Part 990.3a(3) iii (F)).
- 6.2.5 The Department does not guarantee that regulatory sampling and testing conducted by the Department will be in compliance with other State regulatory authorities.
- 6.3 Inspections:
- 6.3.1 The Department will conduct annual inspections of, at a minimum, a random selection of license holders and registration holders to verify that hemp is not produced or processed in violation of this Program. The Department shall have access, during reasonable business hours, to any premises where hemp plants may be held.
- 6.3.2 The Department requires that the following records be made available to the Department during reasonable business hours:
- 6.3.2.1 Acquisition of hemp plants.
- 6.3.2.2 Production and handling of hemp plants.
- 6.3.2.3 Storage of hemp plants.
- 6.3.2.4 Disposal of hemp plants. A producer that disposes of hemp plants is required to notify the Department within ten days of disposal or destruction, using the Disposal Certificate form.
- 6.3.3 If the Department finds that pesticides are being sprayed, the licensed producer is subject to inspections by pesticide inspectors under the authority of Delaware Pesticide Laws (3 **Del.C.** Ch. 12).
- 6.3.4 If the Department finds that hemp plants or hemp nursery stock are being sold, the licensed producer is subject to inspection by nursery inspectors under the authority of Delaware Nursery Laws (3 **Del.C.** Ch. 13).

7.0 **Information Sharing and Record Keeping**

- 7.1 Reporting to USDA (as authorized under 7 CFR Part 990 Domestic Hemp Program)
- 7.1.1 The Department will submit an annual report to the USDA by December 15th of each year using the State and Tribal Hemp Annual Report form (State and Tribal Hemp Annual Report AMS-25).
- 7.1.2 The Department will submit the following monthly reports to the USDA, AMS:
- 7.1.2.1 State Hemp Producer Report (State and Tribal Hemp Producer Report, AMS-23);
- 7.1.2.2 State Hemp Disposal Report using the disposal form (State and Tribal Hemp Disposal Report AMS-24); and
- 7.1.2.3 State Hemp Test Result Report (Laboratory Test Results Report (AMS-22)).
- 7.1.3 The Department will share information with the USDA on the first day of each month via monthly reports. The Department will gather information related to lots directly from a state of Delaware FSA contact. If the first of the month falls on a weekend or holiday, the Department will submit the report to the USDA on the first business day following the due date.
- 7.1.4 The Department will submit THC concentration level test results to licensed producers once received from the laboratory. The Department will review test results to make a determination if hemp produced by a licensed producer meets the acceptable hemp TCH concentration level.
- 7.2 Producer Report

- 7.2.1 The Department requires that all licensed producers report their hemp crop acreage to the FSA using their state of Delaware license number. Licensed producers shall learn information about how to report using the following link: <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/2019/crop-acreage-reporting-19.pdf>
- 7.2.2 The Department will require all licensed producers to submit the following information to the Department via email, no later than December 1st of each year:
- 7.2.2.1 Total acreage planted;
 - 7.2.2.2 Total acreage harvested;
 - 7.2.2.3 Total acreage disposed; and
 - 7.2.2.4 Plant storage records.
- 7.2.3 The Department will maintain records for a minimum of three years as required by the USDA.
- 7.2.4 The Department will incorporate information submitted by licensed producers in an Annual Report to be submitted to the USDA.

8.0 **Violations**

- 8.1 Destruction. The Department requires the on-site destruction of lots located on outdoor or indoor growing sites that have been determined to have higher than acceptable hemp THC levels. The Department will instruct the licensed producer on acceptable destruction protocol and coordinate with the licensed producer to ensure that lots are destroyed in a manner that renders the lot non-retrievable and unfit to enter the stream of commerce. The Department will require that destruction take place within 72 hours after the Department notifies the licensed producer that destruction is required.
- 8.1.1 It is the responsibility of a licensed producer to destroy lots by using destruction methods that render the lot non-retrievable and unfit to enter the stream of commerce.
 - 8.1.2 If the Department determines that a lot has higher than acceptable hemp THC levels, the lot must not be further handled, processed, or enter the stream of commerce.
 - 8.1.3 The Department requires that a licensed producer notify the Department if the licensed producer destroys a lot by his or her own determination and independent of a requirement set by the Department.
- 8.2 Disposal. The Department will require the disposal of a lot that has been determined to have higher than acceptable levels of THC, where on-site destruction is not feasible. The Department will require that disposal take place within 72 hours of notification and shall be the sole responsibility and at the expense of the licensed producer. The Department will coordinate with the licensed producer to ensure that lots are disposed of in a manner that renders the lot non-retrievable and unfit to enter the stream of commerce.
- 8.3 Harvesting. The Department prohibits any comingling of harvested lots of cannabis plants with other lots or other material without prior written permission from the Department.
- 8.4 Negligent or Culpable Violations.
- 8.4.1 A hemp producer shall be subject to enforcement for negligently:
 - 8.4.1.1 Producing cannabis exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph if they make reasonable efforts to grow hemp and the hemp does not have a post decarboxylated delta-9 tetrahydrocannabinol concentration of more than 0.5% on a dry weight basis. The Department does require the destruction or disposal of cannabis that exceeds the acceptable hemp THC level.
 - 8.4.1.2 Producing hemp without a license. A new applicant must submit a Delaware Domestic Hemp Production Program Application to the Department no later than February 1st. A licensed producer must submit for renewal prior to license expiration. Licenses are not automatically renewed. Applications for renewal shall be subject to the same terms, information collection requirements, and approval criteria, as required in the initial application.

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- 8.4.1.3 Failing to provide annually, an accurate description of land where hemp is produced using the Annual Growing Site Registration form.
- 8.4.1.4 Failing to have locked entrances on an indoor growing facility.
- 8.4.1.5 Failing to adequately display signage, at each entrance to an indoor or outdoor growing site, to indicate a hemp growing site.
- 8.4.2 Corrective action for negligent violations. For each negligent violation, the Department will issue a Notice of Violation and require a Corrective Action Plan for the licensed producer. The Department shall conduct an inspection to determine if the corrective action plan has been implemented. The licensed producer shall comply with the corrective action plan to cure the negligent violation. Corrective Action Plans will be in place for a minimum of two (2) years from the date of their approval. Corrective Action Plans will, at a minimum, include:
 - 8.4.2.1 A reasonable date by which the licensed producer shall correct the negligent violation;
 - 8.4.2.2 A requirement that the license holder or registration holder shall periodically report to the Department, as applicable, on compliance with the Corrective Action Plan for a period of not less than the next two years from the date of the negligent violation;
 - 8.4.2.3 A description of quality control measures, staff training, and quantifiable action measures taken by the Producer. Producers should document this using the Correction Action Plan template; and
 - 8.4.2.4 If a subsequent violation occurs while a Corrective Action Plan is in place, a new plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures as defined by the Department.
- 8.4.3 Negligent violations and criminal enforcement. A licensed producer that negligently violates this part shall not, as a result of that violation be subject to any criminal enforcement action by any federal, state, or local government.
- 8.4.4 Negligent violations and license revocation. A producer that negligently violates the license 3 times in a 5-year period shall have their license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.
- 8.4.5 Culpable mental state greater than negligence. If the Department determines that a license holder has violated the terms of the license or of this part with a culpable mental state greater than negligence:
 - 8.4.5.1 The Department shall immediately report the license holder to:
 - 8.4.5.1.1 The U.S. Attorney General; and
 - 8.4.5.1.2 The chief law enforcement officer of the State, as applicable, where the production is located; and subsections 8.4.1 and 8.4.2 of this regulation shall not apply to culpable violations.
 - 8.4.5.2 The Department shall immediately revoke the license. Licenses will be revoked for a period no less than 5 years.
- 8.5 Licensed producers intending to sell hemp plants or hemp nursery stock must comply with the Delaware Nursery Laws (3 Del.C. Ch. 13).
- 8.6 Licensed producers intending to apply pesticides must comply with the Delaware Pesticide Laws (3 Del.C. Ch. 12).
- 8.7 Licenses or registrations may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated or encumbered.
- 8.8 In accordance with the provisions of 3 Del.C. §1108 and 3 Del.C. §1110, it shall be unlawful to violate or fail to comply with any provisions of these regulations and the person charged with a violation of these regulations shall be assessed a civil penalty, in accordance with 3 Del.C. §1110.
- 8.8.1 Any unlicensed person producing, processing, or handling hemp shall be assessed a penalty of not more than \$500 per offense. Required to complete application process immediately and all associate fees.

- 8.8.2 Any license holder or registration holder that interferes or refuses to cooperate with inspection or sampling procedures conducted by the Department shall be assessed a penalty of not more than \$500, and not more than \$1,000 for each subsequent offense.
- 8.8.3 Any licensed producer that fails to submit timely reports to the Department shall be assessed a penalty of not more than \$100 and not more than \$200 for each subsequent offense.
- 8.8.4 Any license holder or registration holder that fails to respond to the Department's communications within a reasonable amount of time.
- 8.8.5 No assessment shall be levied until after the party has been notified by certified mail and has been provided an opportunity for a hearing.
- 8.9 Revocation of a license or registration. Any license or registration issued by the Department may be canceled orally or in writing by the Department whenever the Department determines that the holder of the license or registration has not complied with a provision of these regulations or requirements in Sections 6.0 and 7.0. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow.
- 8.10 Processors and processor registrations shall be subject to the stipulations in Section 8.0 where applicable.
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DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) and 29 Delaware Code 7528 (14 Del.C. §122(a) & 29 Del.C. §7528)
14 DE Admin. Code 401

PUBLIC NOTICE

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

401 Major Capital Improvement Program

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122(a) and 29 Del.C. §7528, the Secretary of Education intends to amend 14 DE Admin. Code 401 Major Capital Improvement Program. This amendment is needed to comply with a court order that directs the Department of Education to amend 14 DE Admin. Code 401 Major Capital Improvement Program to require school districts to provide an Equity Statement in connection with a request for Issuance of a Certificate of Necessity. It is also being amended to make grammatical changes per the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 3, 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 the improvement of 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 all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment 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? There is no cost to the State to implementing this regulation. School districts will be required to review their enrollment, demographic, and free and reduced meal figures to provide an appropriate Equity Statement. The Department cannot project the costs of this review but does not anticipate material costs to implementing 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/january2021/proposed/24 DE Reg 637RFA 01-01-21.pdf>

401 Major Capital Improvement Program

1.0 Purpose and Definitions

- 1.1 The Major Capital Improvement Program consists of one or more construction projects having a cost of \$750,000 or more.
 - 1.1.1 The Secretary of Education may annually review the current cost per square foot for construction and make necessary adjustments as required.
 - 1.1.2 Multiple projects may be considered together to form a single Major Capital Improvement Program project. The consolidation of Major Capital Improvement Program projects should be for one location.
 - 1.1.3 All Major Capital Improvement Program projects shall use standard bid and contract documents as developed by the Office of Management and Budget, Division of Facilities Management.
 - 1.1.3.1 Local school districts may enhance the standard bid and contract documents with additional contractual or project specific requirements as long as the enhancements do not diminish and are not in conflict with the provisions of the standard documents.
 - 1.1.3.2 The Department of Education, in consultation with the Office of Management and Budget, Division of Facilities Management shall approve any modifications or changes to the provisions of the standard bid and contract documents before a local school district may use or enhance the modified documents.

1.2 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context

clearly indicates otherwise:

“**Certificate of Necessity**” means a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project. The Certificate of Necessity authorizes the local school district to hold a referendum for the Major Capital Improvement Program identified, if required.

“**Certificate of Occupancy**” means a document issued by a local code enforcement official or office attesting that a Facility meets building codes and is fit for human occupancy.

“**Change Orders**” means documents that change the construction contract and are negotiated between the owner and contractor to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.

“**Completion of Construction**” means the local school district, with the concurrence of the architect, accepts the facility as complete, meaning that all punch list items are resolved, release of liens has been received, and funds held in retainage have been released.

“**Design Development Plans**” means documents that denote mechanical functions, placement of windows and doors, pedestrian traffic circulation both interior and exterior, utilities, service areas and structure. Design Development Plans are at a 40% to 60% completion stage.

“**Educational Specifications**” means documents which explain how the educational spaces relate to the educational programs as well as the requirements of an educational Facility to house and implement the educational philosophy and institutional program.

“**Facility**” means a long-lived capital asset including, but not limited to, school buildings; athletic buildings; athletic fields and appurtenances; playgrounds; maintenance, operations and storage structures; office buildings and all other buildings and capital assets associated with the operation and management of a local school district or school system.

“**Final Construction Plans**” means documents that show the complete Facility design including mechanical, electrical, water, sewer, site plans, storm water conveyance and structural systems, complete bid documents and specifications.

“**Schematic Design Plans**” means documents that present a proposed Facility in its earliest stages denoting the approximate size and relationship of areas to each other. Detailed utilities or mechanical functions are not typically shown at this stage.

“**Signed and Sealed Plans**” means design documents that have the architect's or engineer's professional seal and signature affixed.

2.0 Certificates of Necessity

- 2.1 Local school districts shall submit local school board approved projects to the Department of Education by August 31 of each fiscal year to be considered for a Certificate of Necessity and capital funding in the following fiscal year.
- 2.2 Local school district submissions for a Certificate of Necessity shall provide an equity statement that identifies the demographic information (e.g. race, Low Income, English Learner) of the students who are expected to attend the new school, use a new facility, or benefit from an approved Major Capital Project and how the Major Capital Project impacts equitable distributions of new and renovated buildings throughout the school district.
- ~~2-22.3~~ The Certificate of Necessity shall be quoted in the advertisement for the referendum.
- ~~2-32.4~~ Projects proposing the construction of a new Facility or for an addition to an existing Facility shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new Facility or for an addition to an existing Facility shall not be transferred to projects in a separate Certificate of Necessity.
- ~~2-42.5~~ Additions and renovations to existing Facilities that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when such a multiple project Certificate of Necessity is issued, it shall identify each Facility in the program and describe the work to be done at that Facility including the state and local share of the total cost for that work. Funds may be transferred between projects issued under the same Certificate of Necessity in accordance with Section 8.0 of this regulation.

- ~~2.52.6~~ The Department of Education will complete and forward the Certificate of Necessity to the local school district superintendent for that superintendent's signature.
- ~~2.62.7~~ A copy of the final Certificate of Necessity will be returned to the local school district within ten (10) working days following final approval by the Department of Education.

3.0 Procedures for Approval of a Site for School Construction

- 3.1 The local school board shall forward all prospective sites to the Office of State Planning Coordination for consideration and comment through the Planning Land Use Service (PLUS) review process.
- 3.2 Local school districts shall notify the Department of Education in writing to schedule a site review when they propose to purchase a site for school purposes; when they propose to use a currently owned site for school purposes; or when they propose to obtain a site through donation, gift or condemnation. Depending on the outcome of the PLUS review process, the Department of Education may conduct a site review.
- 3.3 The acquisition of lands for school construction shall comply with 29 **Del.C.** §7525.

4.0 Approval of Educational Specifications, Schematic Design Plans, Design Development Plans, and Construction Drawings

- 4.1 Educational Specifications shall be approved by the local school board and forwarded to the Department of Education for informational purposes. The Department of Education may provide comments on Educational Specifications at its discretion.
- 4.2 All Schematic Design Plans, Design Development Plans and Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one (1) set of each, including a signed and sealed Final Construction Drawings and specifications.
- 4.3 The local school district must involve all applicable state, local and municipal regulatory agencies in reviewing Final Construction Drawings before the start of construction. Copies of all applicable state, local and municipal agency approvals shall be maintained in the local school district construction files. Required state agency approvals are noted in the *State of Delaware School Construction Technical Assistance Manual*, which is available on the Department of Education's website.
- 4.4 Major ~~Capital~~ Capital Improvement Program projects that do not include structural changes or wall modifications such as, but not limited to, window replacement, HVAC, electrical or plumbing infrastructure upgrades do not require submission of construction specifications or plans to the Department of Education.

5.0 Notification, Start and Completion of Construction, and Certificate of Occupancy

- 5.1 The local school district shall submit to the Department of Education and the Office of Management and Budget a construction schedule, showing start dates, intermediate ~~stages~~ stages, and final completion dates.
- 5.2 The local school district shall notify the Department of Education, Office of Management and Budget and Insurance Coverage Office at the completion of construction.
- 5.3 The local school district shall record capital assets in accordance with the *State of Delaware Budget and Accounting Manual*.
- 5.4 The local school district shall notify the Department of Education, Division of Accounting, State Auditor, and Office of Management and Budget upon approval of occupancy.
- 5.5 Local school districts shall submit to the Department of Education a copy of the electronic files in a format approved by the Department of Education. Electronic files shall be submitted no later than thirty (30) calendar days after the completion of any major renovation, addition to an existing Facility, new school or replacement school.

6.0 Purchase Orders

All purchase orders for Major Capital Improvement Program projects shall be approved by the Department of Education and Office of Management and Budget before submission to the Division of Accounting.

7.0 Change Orders

7.1 All Change Orders must be agreed upon by the architect, local school district and contractor, and shall be forwarded to the Department of Education.

7.1.1 Submission of a Change Order must include the following documents:

7.1.1.1 A completed purchase order as applicable and following the local school board approved change order approval and authorization process and procedure;

7.1.1.2 Local school board of education minutes identifying and approving the changes;

7.1.1.3 American Institute of Architects (AIA) document G701-Change Order Form; and

7.1.1.4 Correspondence which gives a breakdown in materials, mark-up, and other expenses.

8.0 Percentage of Funds Transferable Between Projects within a Certificate of Necessity

8.1 Local school districts may request the transfer of funds between projects during the bidding and construction process in writing to the Department of Education. Acceptability of the transfer of funds will meet the following criteria:

8.1.1 No project may have any portion of its funding moved to another project without the approval of the Secretary of the Department of Education, the Director of the Office of Management and Budget and the Controller General.

8.1.2 No project may have any funding added to its initial funding without the approval of the Secretary of the Department of Education, the Director of the Office of Management and Budget and the Controller General.

8.1.3 No transfer of funds shall be executed between projects authorized through and by separate Certificates of Necessity.

9.0 Educational Technology

All school facilities being constructed or renovated under the Major Capital Improvement Program shall include wiring for technology that meets the current Department of Technology and Information Wiring Standards, and is appropriate to the grade level and educational requirements of the Facility type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds when no other technology funds are available.

10.0 Playground Construction

All playgrounds constructed or renovated pursuant to a Major Capital Improvement Program project shall comply with the most current editions of the American Society of Testing Materials (ASTM) Designation F-1487 and the Consumer Products Safety Commission (CPSC) Publication Number 325.

11.0 Administration of the New School

An administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The state portion of salary and benefits may be paid from Major Capital Improvement Program funding.

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b) and 1210 (14 **Del.C.** §§1203, 1205(b) & 1210)
14 **DE Admin. Code** 1510

PUBLIC NOTICE

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

1510 Issuance of Initial License

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1210, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education, developed amendments to 14 **DE Admin. Code** 1510 Issuance of Initial License. The regulation concerns the requirements for an Initial License in accordance with 14 **Del.C.** §1210. The proposed amendments include revising the title of the regulation; clarifying that the regulation applies to both the issuance and retention of an Initial License in Section 1.0; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing an Initial License in Section 3.0; specifying the requirements for an applicant to obtain an Initial License in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the requirements for applicants whose Delaware Initial License expired in Section 6.0; specifying application requirements in Section 7.0; adding Section 8.0, which concerns the validity of an Initial License; specifying the requirements for extensions for exigent circumstances and leaves of absence in Sections 9.0 and 10.0, respectively; revising Section 11.0, which concerns requests for the Secretary of Education to review applications for an Initial License; adding Section 12.0, which specifies the requirements for retaining an Initial License; adding Section 13.0, which concerns disciplinary actions; specifying the requirements for educators who intend to apply for a Continuing License in Section 15.0; revising Section 16.0, which concerns recognizing past Initial Licenses that were issued by the Department; and adding Section 17.0, which specifies that the effective date of the regulation would be July 1, 2021.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 2, 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 requirements in Sections 4.0, 5.0, and 6.0 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 requirements in Sections 4.0, 5.0, and 6.0 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 license 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 license 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 an Initial License but whose effectiveness is documented by the district or school. Proposed Section 11.0 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 7.0 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:**

(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/january2021/proposed/24 DE Reg 642RFA 01-01-21.pdf>

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

1510 Issuance of Initial License

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1581

PUBLIC NOTICE

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

1581 School Reading Specialist

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, developed amendments to 14 **DE Admin. Code** 1581 School Reading Specialist. The regulation concerns the requirements for a School Reading Specialist 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 Reading Specialist Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Reading Specialist

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 Reading Specialist 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. The proposed amendments to the regulation were originally published in the *Register of Regulations* on November 1, 2020. The Board received written submittals concerning the proposed amendments. To allow additional time for written submittals to be submitted to the Board and an opportunity for a public hearing, the Board is republishing the proposed amendments that were originally published on November 1, 2020. The Board is not proposing any additional amendments at this time.

The Board will hold a public hearing concerning the proposed amendments to this regulation on Thursday, February 4, 2021 at 5:00 p.m. The public hearing will be held virtually during the Board's regular meeting. The public hearing will not be held at a physical location. Information on how to attend the meeting during which the public hearing will be held will be posted on the Statewide Public Meeting Calendar at publicmeetings.delaware.gov and on the Board's website at education.delaware.gov/educators/psb.

In addition, persons wishing to present their views regarding this matter in writing may do so by the close of business on or before March 1, 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. Persons who timely submitted written comments concerning the proposed amendments that were originally published on November 1, 2020 are not required to resubmit their written comments.

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 requirements for reciprocity 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 Reading Specialist Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 9.0 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/january2021/proposed/24 DE Reg 643RFA 01-01-21.pdf>

1581 School Reading Specialist

1.0 Content

- 1.1 This regulation shall apply to the ~~requirements for a~~ issuance of a School Reading Specialist Standard Certificate, Certificate pursuant to 14 Del.C. §1220(a), ~~for School Reading Specialist. This certification~~ The School Reading Specialist Standard Certificate is required for all ~~School~~ Reading Specialists 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:~~

"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.

"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.

"Reading Specialist" means an educator whose responsibility is to improve reading achievement in their assigned school or district position. A Reading Specialist ~~provides~~ may provide one-on-one or small group, diagnostic teaching of reading. Responsibilities may include coaching and leading school reading programs. Reading Specialists' assignments may include Title I reading teachers, reading resource teachers and educators who work with teachers in reading and communication skills, including, but not limited to literacy coaches and coordinators, and individuals employed as building or district coordinators of reading or in Reading Cadre positions. Reading Specialists may also serve as a

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resource in reading and writing for educational support personnel, administrators, teachers, and the community, provide professional development based on historical and current literature and research, work collaboratively with other professionals to build and implement reading programs for individuals and groups of students, and serve as advocates for students who struggle with reading.

“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 Reading Specialist Standard Certificate as a School Reading Specialist 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; and, 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 Reading Specialist 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 Reading Specialist 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 degree or its equivalent from a regionally accredited college or university in Reading 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 Completion of either a Bachelor’s degree plus (30) graduate level credit hours or a Master’s degree, from a regionally accredited college or university in any content area; and

~~4.1.1.2.1 The successful completion of twenty-four (24) graduate-level credit hours in the following content areas:~~

- ~~4.1.1.2.1.1 Assessment and Instruction in Writing (3 credits);~~
- ~~4.1.1.2.1.2 Assessment and Instruction in Reading (6 credits);~~
- ~~4.1.1.2.1.3 Practicum in Reading to include application of strategies in assessment, instruction and parent involvement (6 credits);~~
- ~~4.1.1.2.1.4 Literacy in the Content Areas (3 credits);~~
- ~~4.1.1.2.1.5 Teaching English as a Second Language (3 credits); and either~~
- ~~4.1.1.2.1.6 Literacy Acquisition (3 credits); or~~
- ~~4.1.1.2.1.7 Coaching Adult Learners (3 credits).~~

4.2 Experience requirements:

4.2.1 An educator must have a minimum of three (3) years of teaching experience.

4.1 An applicant for a School Reading Specialist Standard Certificate shall have satisfied the requirements in subsections 4.1.1 through 4.1.3.

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

4.1.1.1 Earned a master's degree or its equivalent from a Regionally Accredited college or university in reading or literacy from a program that is aligned to the International Literacy Association (ILA) Standards for a Reading/Literacy Specialist or a state-approved educator preparation program where the state approval body employed the ILA Standards for a Reading/Literacy Specialist; or

4.1.1.2 Earned a bachelor's degree and completed 30 graduate-level credit hours or earned a master's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 24 graduate-level credit hours that are guided by current ILA standards for a Reading/Literacy Specialist in the following areas:

4.1.1.2.1 Assessment and instruction in writing (three credits);

4.1.1.2.2 Assessment and instruction in reading (six credits);

4.1.1.2.3 Practicum in reading to include application of strategies in assessment, instruction, and parent involvement (six credits);

4.1.1.2.4 Literacy in the content areas (three credits);

4.1.1.2.5 Teaching English as a Second Language (three credits); and

4.1.1.2.6 Either literacy acquisition (three credits) or coaching adult learners (three credits).

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 164 on the Praxis Subject Assessment – Reading Specialist (ETS Test Code # 5301); or

4.1.2.2 A Passing Score of 165 on the Praxis Subject Assessment – Reading Specialist (ETS Test Code #5302).

4.1.3 The applicant shall have completed a minimum of three years of teaching experience, including meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance, with satisfactory annual summative evaluations on the State's current evaluation system or the equivalent thereof on a state-approved alternative 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 Reciprocity

If an applicant is already licensed or certified as a Reading Specialist in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have earned a master's degree or its equivalent from a Regionally Accredited college or university in reading or literacy from a program that is aligned to the International Literacy Association (ILA) Standards for a Reading/Literacy Specialist or a state-approved educator preparation program where the state approval body employed the ILA Standards for

a Reading/Literacy Specialist in order for the Department to issue a School Reading Specialist Standard Certificate.

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 Reading Specialist 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 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; 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 Reading Specialist 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 Reading Specialist 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 Additional documentation as required by the Department.

7.0 Validity of a Standard Certificate

- 7.1 A School Reading Specialist 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 Reading Specialist Standard Certificate is not subject to renewal.

8.0 Disciplinary Action

- 8.1 An Educator's School Reading Specialist 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 Reading Specialist 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.
- 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 Reading Specialist 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 Reading Specialist 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 Reading Specialist 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 Reading Specialist.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1582

PUBLIC NOTICE

Educational Impact Analysis Pursuant To 14 Del.C. Section 122(d)

1582 School Nurse

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** 1582 School Nurse. The regulation concerns the requirements for a School Nurse Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include amending the definition of "Supervised Clinical Nursing Experience" in Section 2.0; adding the multi-state compact registered nurse license; and amending Section 10.0, which concerns requests for the Secretary of Education to review standard certificate applications.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 2, 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 Nurse 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/january2021/proposed/24 DE Reg 649RFA 01-01-21.pdf>

1582 School Nurse

1.0 Content

This regulation shall apply to the issuance of a ~~Standard Certificate, School Nurse Standard Certificate~~ pursuant to 14 **Del.C.** ~~§1220(a), for an Educator. §1220(a).~~ This ~~Certification~~ The School Nurse Standard Certificate is required for all school nurses providing services to children in Delaware public schools.

2.0 Definitions

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

"Certification" ~~means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.~~

"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.

"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.

"Supervised Clinical Nursing Experience" means that the ~~Educator~~ applicant has worked as a licensed Registered Nurse in a clinical setting providing care to patients and that ~~educator~~ the applicant was supervised and evaluated by a licensed Registered Nurse supervisor or other healthcare provider. For the purpose of this regulation, other healthcare provider means a licensed physician, advanced practice registered nurse, ~~nurse practitioner~~, or physician assistant.

"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 Nurse Standard Certificate to an applicant who:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or a Professional Status Certificate issued by the Department prior to August 31, 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a school nurse 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 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 ~~Certification~~ a School Nurse 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 ~~alleged~~ allegations include but are not limited to ~~conduct involves~~ allegations of 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 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 The Department may issue a School Nurse Standard Certificate to an applicant who has satisfied the requirements in subsections 4.1.1 through 4.1.4.
- 4.1.1 The applicant shall hold a bachelor's degree in nursing (BSN) from a Regionally Accredited college or university.
- 4.1.2 The applicant shall hold a an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing ~~that is in good standing~~ or an active, unencumbered multi-state compact registered nurse license.
- 4.1.3 The applicant shall hold valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use.
- 4.1.4 The applicant shall have completed ~~3~~ three years of Supervised Clinical Nursing Experience as a registered nurse consisting of a minimum of 500 hours per year for a total of 1,500 hours during the ~~3-year~~ three-year period. This requirement shall not be met in a school setting.

5.0 Reciprocity

- 5.1 If an applicant is already licensed or certified as a school nurse 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 School Nurse Standard Certificate:
- 5.1.1 The applicant shall hold a Valid and Current License or Certificate as a school nurse.
- 5.1.2 The applicant shall hold a bachelor's degree in nursing (BSN) from a Regionally Accredited college or university.
- 5.1.3 The applicant shall hold a an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing ~~that is in good standing~~ or an active, unencumbered multi-state compact registered nurse license.
- 5.1.4 The applicant shall hold valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use.

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 School Nurse 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 registered nurse issued by the Delaware Board of Nursing~~ holds an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing or an active, unencumbered multi-state compact registered nurse license; and
- 6.2.3 Documentation that the applicant holds a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
- 6.2.4 If applicable, the Department-approved form verifying the applicant's completion of the clinical experience as provided in subsection 4.1.4; and
- 6.2.5 Additional documentation as required by the Department.
- 6.3 For applicants who are applying for the School Nurse 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 registered nurse issued by the Delaware Board of Nursing~~ holds an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing or an active, unencumbered multi-state compact registered nurse license; and
 - 6.3.3 Documentation that the applicant holds a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
 - 6.3.4 Additional documentation as required by the Department.
- 6.4 For applicants who are applying for the School Nurse 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 registered nurse issued by the Delaware Board of Nursing~~ holds an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing or an active, unencumbered multi-state compact registered nurse license; and
 - 6.4.4 Documentation that the applicant holds a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
 - 6.4.5 Additional documentation as required by the Department.

7.0 Validity of a Standard Certificate

- 7.1 A School Nurse 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 Nurse Standard Certificate is not subject to renewal.

8.0 Requirements Related to the Retention of a School Nurse Certificate

- 8.1 In order to retain a School Nurse Standard Certificate, the Educator shall:
 - 8.1.1 Complete a training program approved by the Department within two school years of the date the School Nurse Standard Certificate is issued; and
 - 8.1.2 Hold a an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing ~~that is in good standing~~ or an active, unencumbered multi-state compact registered nurse license; and
 - 8.1.3 Hold a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
 - 8.1.4 Annually affirm and document to the Department that the Educator satisfies the requirements in subsections 8.1.2 and 8.1.3.
- 8.2 If an Educator fails to meet any of the requirements related to retaining a School Nurse Standard Certificate, the Educator shall immediately notify the Department in writing.
- 8.3 The requirements set forth in subsections 8.1.2, 8.1.3, and 8.1.4 apply to all Educators regardless of the date the School Nurse Standard Certificate was issued to them.

9.0 Disciplinary Action

- 9.1 An Educator's School Nurse Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses,

PROPOSED REGULATIONS

Certificates, and Permits or for the Educator's failure to comply with the requirements related to the retention of a School Nurse Standard Certificate as provided in Section 8.0.

- 9.2 An Educator's School Nurse 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 Nurse 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 Nurse 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 Nurse Standard Certificate that was issued prior to the effective date of this regulation. An ~~educator~~ Educator holding such a Standard Certificate ~~issued by the Department before the effective date of this regulation~~ shall be considered certified to practice as a school nurse.

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

DRIVER SERVICES

Statutory Authority: 21 Delaware Code, Section 302; 18 Delaware Code, Section 2503; 29 Delaware Code, Sections 101 and 8404)
(21 **Del.C.** §302; 18 **Del.C.** §2503; and 29 **Del.C.** §§101 & 8404)
2 **DE Admin. Code** 2224

PUBLIC NOTICE

2224 Defensive Driving Course, Providers, and Instructors

Pursuant to the authority provided by 21 **Del.C.** §302 18 **Del.C.** §2503, 29 **Del.C.** §101, and 29 **Del.C.** §8404, the Delaware Division of Motor Vehicles (DMV), adopted the Defensive Driving Course, Providers, and Instructors.

The Division of Motor Vehicles seeks to adopt general revisions to its existing regulation, the Defensive Driving Course, Providers, and Instructors, to address recent legislation, current safety concerns, and allow the provider to present the course in different formats. These collective changes are administrative in nature and serve in part to clarify the intent of the Division as enacted through this regulation.

Public Comment Period

The DMV will take written comments on these proposed general revisions to Regulation 2224 of Title 2, Delaware Administrative Code, from January 1, 2021 through January 31, 2021. The public may submit their comments to:

Christie Thomas, Executive Secretary, Division of Motor Vehicles
(dmv-defensivedriving@delaware.gov) or in writing to her attention,
Delaware Department of Transportation (DelDOT)
Division of Motor Vehicles
PO BOX 698
Dover, DE 19903

***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/january2021/proposed/24 DE Reg 654RFA 01-01-21.pdf>

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

[2224 Defensive Driving Course, Providers, and Instructors](#)

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 AGRICULTURE
DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code, Sections 1008 and 1011 (3 **Del.C.** §§1008 & 1011)
3 **DE Admin. Code** 402

ORDER

402 State Forest Regulations

This Order relates to the proposed regulation amendments ("Amendments") to 3 DE Admin. Code 402: State Forests. Specifically, the State Forest Service proposes to amend its State Forest Regulations adopted in accordance with Title 3, Sections 1008 and 1011. The purpose of the proposed regulations is to amend Sections 7.0 Camping Rules and Regulations, 8.0 Hunting Rules and Regulations, and 9.0 Forest Use Permits to reflect current practices and aid law enforcement agencies with enforceable regulations. Existing regulations are outdated and are not applicable to all areas that are owned and operated by the State Forest Service, which has made it difficult for staff to adequately enforce regulations. The State Forest Service has recently undergone an overhaul for handling camping on Delaware Forest Service grounds. Now, the State Forest Service will charge a minimal fee for camping, which will allow for better maintenance of campgrounds for continued use for visitors to the state forest campsites.

The proposed regulations were published in the November 1, 2020 edition of the *Delaware Register of Regulations*. Copies were also on file in the office of the State Forest Service, Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE and were available for inspection during regular office hours. Copies were also published online at the *Delaware Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Summary of the Evidence and Information Submitted

The Department received no written comments and further, no public hearing was held.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the State Forest Service with comments in writing and by testimony on the proposed amendments, or submit written suggestions, data, briefs or other materials to the proposed regulations. There were no public comments provided to the State Forest Service.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code and pursuant to Title 3 of the Delaware Code, Section 1008 and 1011 (3 **Del.C.** §1008 & 1011), the Department has the statutory authority to promulgate rules and regulations.

Having received no public comments, the Department finds no reason to amend the regulations as proposed.

Decision and Effective Date

The Department hereby adopts the changes to regulations as proposed, to be effective 10 days following publication of this Order in the *Delaware Register of Regulations*. The new regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 16th day of December 2020.

Michael T. Scuse, Delaware Secretary of Agriculture

402 State Forest Regulations

1.0 Authority

These regulations are promulgated pursuant to the delegation of authority to the Department of Agriculture by the General Assembly found in 3 **Del.C.** Sections 1008 and 1011.

2.0 Purpose

The State Forests of Delaware are open to members of the public for their enjoyment. Most legal forms of non-motorized recreation are permitted. The following regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all.

3.0 Construction

- 3.1 No regulation herein shall be interpreted or construed in such a manner as to prevent or delay authorized personnel of the Department or other state, county, or municipal agencies from completing official duties or emergency response.
- 3.2 In special circumstances, events, or emergencies, the Secretary or Forestry Administrator may, when it is deemed to be in the public interest, waive a specific regulation or fee.
- 3.3 Failure to enforce a specific regulation at a particular instance or instances shall not affect the validity of any other regulation or affect the validity of such regulation at any other time.

4.0 Definitions

- 4.1 **"Department"** is the Delaware Department of Agriculture
- ~~4.2~~ **"DFS"** is the Delaware Forest Service
- ~~4.3~~ **"DNREC"** is the Delaware Department of Natural Resources and Environmental Control
- 4.4 **"Secretary"** is the Secretary of the Delaware Department of Agriculture
- ~~4.5~~ **"State Business Hours"** are 8:00 a.m. to 4:30 p.m. on Monday through Friday, except for state holidays.

5.0 General Rules and Regulations

- 5.1 In order to promote the safety and welfare of State Forest visitors and protect and manage property in the State Forests, the Secretary and Forestry Administrator shall have the authority to develop reasonable policies for State Forests that are not in conflict with 3 **Del.C.** Ch. 10 and these regulations. These policies must be approved by the Secretary and posted in a conspicuous location in the State

- Forest prior to their becoming effective. Copies of all policies shall also be maintained in the State Forest office.
- 5.2 Violation of any State Forest policy shall be grounds for eviction from the State Forest and the denial, revocation, or suspension of any permit issued or privilege granted by the Department.
- 5.3 The Department shall have the authority to enforce safety rules ~~and/or~~ and policies developed in accordance with subsection 5.1 of these Regulations for the protection of visitors and property.
- 5.4 State Forests are open to lawful non-motorized recreational uses that do not violate any of the rules and regulations contained herein.
- 5.5 Unless otherwise indicated, State Forest access roads are closed to vehicular travel. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands of the DFS except on established roads or as otherwise authorized by the Forest Administrator. Where vehicular traffic is permitted, the speed limit is twenty (20) miles per hour unless otherwise posted. Vehicular traffic on tax ditch rights of way is prohibited except for maintenance by authorized personnel and for law enforcement purposes. Non-pedestrian traffic (horseback riding and mountain biking) is restricted to access roads and trails unless otherwise noted. None registered vehicles and all-terrain vehicles are prohibited in all areas except those used by DFS employees or law enforcement in the application of their lawful duties. It shall be unlawful for any person to drive or operate any motorized vehicle upon any lands administered by the DFS, unless said vehicle is licensed for use upon public highways and roadways or the driver or operator of said vehicle has been issued a permit from the DFS.
- 5.6 Boundaries of State Forests are clearly marked with metal signs and yellow paint. Visitors crossing onto private property are subject to trespass laws governed by **Delaware Code**.
- 5.7 No living trees, shrubs, or other vegetation may be cut, felled, uprooted, removed, or otherwise injured or destroyed, unless written permission has first been obtained from the forest officer in charge.
- 5.8 No living animals shall be harassed, injured, destroyed, or collected and removed from State Forest lands unless written permission has first been obtained from the forest officer in charge. The only exception is lawful hunting as specified in the Division of Fish and Wildlife adopted regulations outlined in the annual **Hunting and Trapping Guide**.
- 5.9 Fires are prohibited for any purpose on State Forest lands other than in designated areas unless written permission is obtained in advance from the forest officer in charge. All fires must be under the direct supervision of a competent adult. It shall be unlawful to leave any fires that have not been thoroughly extinguished.
- 5.10 The dumping or depositing of rubbish, trash, paint, household items, or other debris, or any other materials and activities that could result in the depositing of such materials, such as paintball and geo-caching, are also prohibited.
- 5.11 The placement of advertisement signs on State Forest property is prohibited.
- 5.12 It shall be unlawful to litter on State Forest lands.
- 5.13 Writing upon, mutilating, carving, and otherwise defacing trees, buildings, structures, signs, and official notices is prohibited.
- 5.14 With the exception of animals permitted under lawful hunting regulations, all animals must be under the continuous control of the owner(s) unless otherwise authorized in writing by the Forestry Administrator. All dogs must be leashed, unless covered by the exception above. State Forest visitors are responsible for the conduct and any damages, either personal or property, caused by their animals.
- 5.15 It shall be unlawful to train dogs on DFS property unless prior permission is authorized by the State Forest office.
- 5.16 Entry to State Forest lands is prohibited from sunset to sunrise, except for lawful hunting, permitted camping, permitted Redden Lodge use, or as otherwise permitted in writing by the DFS.
- 5.17 Fishing on State Forest lands is limited to catch and release only. A state fishing license is required to fish on State Forest lands.
- 5.18 Visitors shall park in designated areas only and within those designated areas. It shall be unlawful for any person to park any vehicle on lands administered by the DFS in such a manner as to obstruct the

use of State Forest access roads, gates, or trails. Any vehicle parked in such a manner shall be subject to removal and the owner of said vehicle shall pay for all costs involved in such removal.

5.19 Alcoholic beverages are prohibited on State Forest lands except within the Redden Lodge, if and only if, authorized in writing by the DFS.

5.20 The use of drones (“Unmanned Aerial Vehicle” or “UAV”, or “Remotely Piloted Aerial System” or “RPAS”) is prohibited on State Forest lands unless authorized in writing by the DFS.

6.0 Redden State Forest Lodge

It shall be unlawful to make use of the Lodge facility in any manner other than outlined in the Redden state Forest Lodge Lease Agreement.

7.0 Camping Rules and Regulations

7.1 ~~Camping is free of charge, year round, but permitted, and restricted to map-designated campsites only. A forest use permit is required for all camping on State Forest lands. Permits are available at State Forest offices during state business hours or from information boxes located at each State Forest office. Completed permits must be submitted during office hours to ensure campsite availability. There is a \$25.00 per night charge for all campsite registration. Camping permits and registration can be found at agriculture.delaware.gov and by contacting the State Forest offices.~~

7.2 ~~Campsites are on a first-come, first-served basis and reservations are required. Reservations are required prior to the arrival date.~~

7.3 ~~Campsites are of a primitive type, and are to be used ONLY for tent, van or pickup campers. Travel tent camping. Van, pickup campers, travel trailers and /or self-propelled motor homes are excluded due to access and parking limitations, unless otherwise noted by a State Forest employee.~~

7.4 ~~There are a limited number of campsites, each is large enough to accommodate large families that are equipped with tables, fire pits, and charcoal grills. These are equipped with tables, fire pits, charcoal grills and a trash barrel. Firewood can be purchased for a \$5.00 fee onsite and no outside firewood is permitted. Campsites are limited to a maximum number of ten (10) people per site, with a maximum stay of three nights per week. six (6) people per site, with two (2) vehicles per site, overflow parking is provided nearby the parking areas. Camper(s) A camper or campers must remove their trash upon vacating their campsite. campsite and drop it off at the designated dumpster located on the camping map. Failure to adhere to these regulations will result in the camper’s removal and loss of security deposit.~~

7.5 ~~Camping is at your own risk. State Forests are a public use area and there is no after-hours, nighttime or weekend security. Law enforcement is provided by the Delaware State Police and DNREC the Department of Natural Resources Police should the need arise.~~

7.6 ~~State forests Forests~~ are “multiple-use facilities”, which means other activities will continue while you camp. These activities include: hunting, picnicking, hiking, nature study, horseback riding, firewood cutting (by permit only), and timber harvesting. The DFS reserves the right to limit or deny permits during times of conflicting use.

7.7 ~~Firewood for camp use is available at the campsites for purchase onsite; please refer to the camping map for its location.~~ If more firewood is needed, it may be gathered locally from dead and downed trees. Standing trees or shrubs shall not be cut. Using firewood located at outside of the designated area of the office complex is prohibited. Campfires shall be contained within established fire rings only.

7.8 ~~Campsites are to be left clean and all fires are to be extinguished before departing from the area.~~

8.0 Hunting Rules and Regulations

8.1 ~~State Forests are year-round multiple use areas. Hunters share the use of State Forest lands with other public users such as hikers, campers, horseback riders, firewood cutters, and loggers.~~

8.2 ~~No special permits are required to hunt on State Forest lands, except as specified in the DNREC, Division of Fish and Wildlife Hunting and Trapping Guide or if the hunting tract is designated for a lottery permit only. Properly licensed hunters may hunt during any open season except on areas~~

- otherwise designated, such as those marked with Wildlife Sanctuary, NO HUNTING, or Safety Zone signs or areas that are outlined within the **Hunting and Trapping Guide** that state the area will be closed.
- 8.3 No permanent deer stands, platforms, ladders, or blinds may be constructed. No screw-in tree steps, spikes, screws, or nails are allowed.
- 8.4 Deer drives by any person or persons are not permitted on any State Forest land at any time.
- 8.5 Small game hunting is closed on State Forest lands during firearm deer seasons.
- 8.6 The DFS reserves the right to close specific State Forest tracts to hunting during specific hunting seasons. It shall be unlawful for any person to hunt on lands administered by the DFS, except as permitted by the Forestry Administrator in writing and specified on current State Forest area maps distributed by the DFS.
- 8.7 Trapping rights may be leased for State Forest lands. No other trapping is permitted on State Forest lands.
- 8.8 Target shooting is prohibited. Firearms are allowed for legal hunting and are otherwise prohibited within designated safe areas on State Forest lands, except as set forth below.
- 8.8.1 Designated areas shall include State Forest ~~Offices~~ offices, education centers, and shall be identified by appropriate signage.
- 8.8.2 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Department, including designated areas.
- 8.8.3 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Department, including designated areas.
- 8.8.4 Firearms may be carried within areas administered by the Department, outside of designated areas, by any person not prohibited by 11 **Del.C.** §1448.
- 8.8.5 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Department, in order to protect public safety and preserve the peace.
- 8.9 ~~Waterfowl hunting is not permitted on State Forest land or waters.~~ Waterfowl hunting is permitted within designated areas only on State Forest land and/or waters. DFS reserves the right to open and close specific State Forest tracts for waterfowl hunting. It shall be unlawful for any person to hunt on lands administered by the DFS, except as permitted by the Forestry Administrator in writing and specified on current State Forest area waterfowl maps distributed annually by the DFS.
- 8.10 Squirrel hunting is not allowed with a rifle or muzzleloading rifle. Squirrel hunting with a shotgun is permitted.
- 8.11 The following hunting restrictions apply to those tracts of State Forest lands as specified in the DNREC, Division of Fish and Wildlife **Hunting and Trapping Guide**. Maps delineating these areas are available at State Forest offices.
- 8.11.1 ~~All deer hunting is limited to numbered stands.~~ Deer Hunting is allowed on all State Forest tracts unless otherwise noted on State Forest maps, within the **Hunting and Trapping Guide** and on signs posted on State Forest property.
- 8.11.2 ~~For shotgun season stands will be chosen in a pre-season lottery. To apply for a stand during the shotgun season fill out the application in the Delaware Hunting and Trapping Guide. For leftover stands there will be a daily lottery held at the local State Forest office, 1 and 1/2 hours before legal hunting time.~~ For shotgun season tracts that have deer stands available to hunt, a daily lottery shall be held at the discretion of the State Forest office. Lottery times will be 1 and ½ hours before legal shooting times. Please refer to the **Hunting and Trapping Guide** and State Forest guidance for lottery dates and times.
- 8.11.3 ~~For Muzzleloader season there will be a daily lottery held at the local State Forest office, 1 and 1/2 hours before legal hunting time.~~ For muzzleloader season tracts that have deer stands available to hunt, a daily lottery shall be held at the discretion of the State Forest office. Lottery times will be 1 and ½ hours before legal shooting times. Please refer to the **Hunting and Trapping Guide** and State Forest guidance for lottery dates and times.

- 8.11.4 All hunters on these tracts, during shotgun and muzzleloader season, must only hunt from their designated stand, as walk around hunting is not permitted.
- 8.11.5 During Archery season bowhunters must be within 50 yards of their designated stand.
- 8.11.6 Stands will be available during Archery season on a first-come, first-served basis.
- 8.11.7 No more than one hunter may hunt from a stand at any one time.

9.0 Forest Use Permits

- 9.1 Forest use permits on State Forests are issued on a first-come, first-served basis and are required for camping, firewood cutting, lodge rental (Redden State Forest), organized special events, and pavilion reservation. ~~Facility users are required to submit a completed Forest Use Permit during state business hours. Facilities are to be reserved in advance. Facility users (camping/lodge-pavilion rentals) are required to book their reservations in advance. Reservations links can be found at agriculture.delaware.gov.~~
- 9.2 Firewood permits are required to harvest firewood on State Forest lands and are issued at the discretion of the State Forest staff. When available, these permits are issued on a first-come, first-served basis. There is a fee of \$100 for firewood permits, which allows the holder to cut for three days within areas designated and posted by State Forest staff. No trees are to be felled; only downed wood may be cut. Wood is not for resale.

10.0 Department Enforcement Regulations

- 10.1 The violation of, or the refusal to obey, any law, these regulations, State Forest policies or the terms or conditions of any permit issued or privilege granted by the Department shall be grounds for the suspension or revocation of any permit issued or privilege granted by the Department, the removal or eviction from State Forest lands and/or the denial of future entry to, or the denial of future permits or privileges within State Forests. Any and all applicable permit fees shall be forfeited to, and retained by, the Department. Any such suspension, revocation, removal, eviction or the denial of entry, permit or privilege shall not preclude the prosecution of any person for violation of any law or these regulations.
- 10.2 Whoever violates any of the foregoing regulations shall be deemed to have committed an unclassified misdemeanor and shall be fined not less than \$25 nor more than \$250 and be required to pay all applicable court costs. For each subsequent violation, within three years of a previous conviction, the violator shall be fined not less than \$50 nor more than \$500 and be required to pay all applicable court costs. In addition to fines and court costs, State Forest Service may request the court to order restitution in an amount determined by it for the destruction or removal of property to those convicted of violating these regulations.
- 10.3 Justices of the Peace throughout the State shall have jurisdiction over alleged violations of these State Forest Regulations; however, any violator shall, upon arrest, be taken to the nearest available Justice of the Peace in the county where such violation is alleged to have occurred, or in lieu thereof, be provided with an assessment form for the voluntary payment of fines.
- 10.4 Notwithstanding the immediate preceding subsection, a duly authorized peace officer making an arrest for a violation of these regulations may issue a summons requiring the violator to appear in person at a subsequent date at the Justice of the Peace Court nearest to the place of arrest and during the regularly scheduled hours of the Court.

FINAL REGULATIONS

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)
3 DE Admin. Code 501

ORDER

501 Harness Racing Rules and Regulations

Pursuant to 29 Del. C. § 10118 and 3 Del. C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on October 13, 2020, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 6.6.5 and 6.6.6 in the November 1, 2020 *Register of Regulations*. In accordance with 29 Del.C. §10115, the notice described 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 stated that persons may present their views in writing, and the place to which and the final date by which such views may be submitted.
2. The Commission held the public comment period open until close of business on December 1, 2020. The Commission received a total of 10 written comments, however 7 of the written comments were duplicates of the same form letter.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing on the proposed amendments to the Commission's Rules in the notice of Proposed Regulations published in the November 1, 2020 *Register of Regulations*.
4. The Commission did receive all written suggestions, compilations of data, briefs or other written materials submitted to it by any person. A total of 10 written comments were received, however 7 of the written comments were duplicates of the same form letter. The Commission found that many of the written comments were based upon a misunderstanding of the commenter as to the provisions of the proposed regulation.
5. The Commission found that the written comment from the Delaware Standardbred Owners' Association in support of the proposed regulation to be compelling.
6. After considering the rule changes as proposed and the written comments received, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to provide the State's licensed harness racetracks and harness racing participants additional opportunities to agree to terms for harness racing in Delaware.
7. The effective date of this Order will be ten (10) days from publication of this Order in the *Register of Regulations* on January 1, 2021.

IT IS SO ORDERED this 8th day of December 2020.

Beverly H. Steele, Chairman
Patt Wagner, Vice-Chairman
George P. Staats, Commissioner

Jack Berberian, Commissioner (Absent)
Stephanie Liguori, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the**

November 2020 issue of the *Register* at page 443 (24 DE Reg. 443). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 121(a)(1) and 3110 (14 **Del.C.** §§121(a)(1) & 3110)

REGULATORY IMPLEMENTING ORDER

508 Multi-Tiered System of Support (MTSS)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§121(a)(1) and 3110, and the Individuals with Disabilities Education Act (2004), as amended, 20 U.S.C. §1400 *et seq.*, the Secretary of Education seeks the consent of the State Board of Education to establish a new regulation 14 **DE Admin. Code** 508 Multi-Tiered System of Support. This new regulation guides local education agencies (LEAs) regarding scientific, evidence-based interventions that are required to identify needed supportive services for all students, including special education services available under the Individuals with Disabilities Education Act. Therefore, this new regulation is closely aligned with process and procedure language in 14 **DE Admin. Code** 925.

LEAs in Delaware may also know this framework as the Positive Behavior Intervention Supports (PBIS), Positive Behavior Supports (PBS) or Response to Intervention (RTI).

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 1, 2020, in the form hereto attached as *Exhibit "A"*. Comments were received from Autism Delaware, a curriculum leaders group, school psychologists, local education agency representatives including a school principal and a Director of Behavioral Health, the Delaware Association of School Psychologists, parent Karen Mackie and a charter school representative.

Comments received which were pertinent to the proposed new regulation related to how the regulation would be implemented. Specifically, those who commented were interested in the ways in which multi-tiered supports would be provided to students, including evidence-based interventions, the screening process, timeframe for reviewing effectiveness of interventions, parental-involvement, determining interventions for English Learners, clarification of tiers, progress monitoring, and further clarification regarding the problem solving team and documentation.

Response: The Department wishes to clarify the intent of Regulation 508. Currently, regulations addressing multi-tiered system of support (MTSS) are contained within **DE Admin. Code** 925. **DE Admin. Code** 925's stated purpose is to address children with disabilities. MTSS regulations address general education core academic and non-academic instruction for every student, including those with disabilities. By removing regulations addressing MTSS from **DE Admin. Code** 925, the Department hopes to reduce the confusion that arose by having a general education regulation contained within a special education regulation. The regulation itself is not intended to address implementation of practice. An implementation support guide will be available on the Department's website upon the effective date of the regulation.

Additionally, the Department of Education noted that a clarification was made to Tier 2 interventions by renumbering and clarifying subsections 6.1.2.1.2 through 6.1.2.1.3. Also, the effective date of the regulation has been removed as this will be dependent upon the effective date of the amended regulation found in **DE Admin. Code** 925.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to establish 14 **DE Admin. Code** 508 Multi-Tiered System of Support in order to guide local education agencies (LEAs) regarding scientific, evidence-based interventions that are

required to identify needed supportive services for all students, including special education services available under the Individuals with Disabilities Education Act. Therefore, this new regulation is closely aligned with process and procedure language in 14 **DE Admin. Code** 925. LEAs in Delaware may also know this framework as the Positive Behavior Intervention Supports (PBIS), Positive Behavior Supports (PBS) or Response to Intervention (RTI).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to establish 14 **DE Admin. Code** 508 Multi-Tiered System of Support. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 508 Multi-Tiered System of Support attached hereto as *Exhibit "B"* is hereby established. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 508 Multi-Tiered System of Support hereby established 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** 508 Multi-Tiered System of Support established hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 508 Multi-Tiered System of Support 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 November 19, 2020. The effective date of this Order shall be July 1, 2021.

IT IS SO ORDERED the 19th day of November 2020.

Department of Education

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

Approved this 19th day of November 2020

State Board of Education

/s/ Whitney Townsend Sweeney, President

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

/s/ Candice Fifer

/s/ Vincent Lofink

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

/s/ Provey Powell, Jr.

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

508 Multi-Tiered System of Support (MTSS)

1.0 Purpose

Each local education agency shall implement procedures to determine when a student requires scientific, evidence-based interventions within a Multi-Tiered System of Support (MTSS) for: 1) Written Expression, 2) Reading, 3) Oral Expression, 4) Listening Comprehension, 5) Mathematics, 6) Behavior, and 7) Social-Emotional Skills.

2.0 Definitions

The following words and terms are applicable unless a specific regulation, statute or the context in which they are used clearly indicates otherwise:

“Department” means the Delaware Department of Education.

“Evidence-based” means strategies, activities, or approaches which have been shown through scientific research and evaluation to be effective at preventing or delaying a negative outcome.

“Local Education Agency” or “LEA” means a reorganized traditional school district, vocational-technical school district, or Charter School, legally constituted and established under Delaware law for either administrative control or direction of public elementary or secondary schools.

“Multi-Tiered System of Support” or “MTSS” means a framework that is designed to meet the needs of the whole child through an integrated multi-level prevention system that optimizes team-based leadership and data-driven decision making to meet the academic and non-academic needs of all students. High quality core academic instruction and non-academic practices are provided as universal supports to all children. Evidence-based intervention and supports are matched to student needs and informed by ongoing progress monitoring and additional formative assessments.

“Parent” means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Caregiver's School Authorization executed in compliance with 14 Del.C. §202 is on file; an individual who is otherwise legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 14 DE Admin. Code 926.19.0.

3.0 Instructional Resources

LEAs shall evaluate and select instructional resources for Tier 1, and interventions for Tier 2 and Tier 3, for academic, behavioral and social-emotional skills which are of high quality, evidence-based and aligned with the State's appropriate content standards.

4.0 Assessment

Screening, diagnostic assessment and progress monitoring processes shall be used as part of MTSS procedures. Any tools used shall be norm-referenced, criterion-referenced, or curriculum-based as appropriate.

5.0 Problem Solving Team

- 5.1 LEAs will have a school-based problem-solving team at each of their schools consisting of three to five core members and shall include at least one of the student's classroom teachers. [Additional members may be added as needed.]
- 5.2 The team shall review student data to identify individual student needs and make evidence-based decisions.
- 5.3 Using the student data, the problem-solving team will design an intervention plan as outlined in Section 7.0, which shall ~~[include, but is not limited to, include]~~ specific baseline data, learning targets, type and frequency of ~~[intervention and data collection]~~ intervention, data collection, and anything else the problem-solving team considers necessary].
- 5.4 The team shall collect progress monitoring data at regular intervals. Data collection must include documentation of fidelity of implementation, consisting of differentiated, evidence-based instruction, pacing and appropriateness of instructional groupings.
- 5.5 The team shall hold meetings after the six to eight-week intervention cycle to monitor progress toward identified targets, the fidelity of implementation and determine the next steps. [Teams may meet earlier, as needed.]
- 5.6 LEAs shall have a process for providing parents with the MTSS intervention plan and data collected as part of the MTSS framework as described in Section 7.0.

6.0 MTSS Framework and Procedures

- 6.1 The MTSS framework and procedures shall include the tiers, types and duration of services and interventions described in subsections 6.1.1 and 6.1.3.3.
- 6.1.1 Tier 1 - Core classroom instruction which is aligned to Delaware adopted state standards and practices, shall be designed and delivered with fidelity to all students. Tier 1 core classroom instruction should be high quality, evidence-based and differentiated within flexible groupings and responsive to all students' needs. A multiple-gating procedure shall be implemented as follows:
- 6.1.1.1 The first stage is a universal screening, which shall be conducted within the first four weeks of the school year or within four weeks of the student's entry into school. Universal screening will take place at least two more times during the school year at spaced intervals. For students who are identified through universal screening as needing additional supports, a second stage of screening is conducted within the next two weeks to specify the areas of need.
- 6.1.1.2 The second stage involves additional data analysis to confirm that there are specific areas of need for Tier 2 supports.
- 6.1.1.3 If twenty percent (20%) of students in a classroom are not meeting benchmark on any instructional screening, a school-based team, which may be an existing team, including a building level administrator, shall meet to consider the need for additional classroom, instructional and systems level supports and strategies.
- 6.1.1.4 Based on the results of the multiple-gating procedure, a problem-solving team shall design intervention plans for students who require Tier 2 support as described in subsection 6.1.2.
- 6.1.2 Tier 2 - Interventions shall be designed to be delivered in the student's primary, scheduled education setting, by the student's teacher or teachers, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention.
- 6.1.2.1 After **[no more than]** six to eight school weeks of Tier 2 ~~intervention~~ **intervention,** six to eight school weeks of Tier 2 intervention the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments, as described in Section 4.0, are required, and whether changes to Tier 2 academic or non-academic methods are required; or the student should be provided Tier 3 intervention.
- 6.1.2.1.1 If a student has made significant progress and is now on a trajectory to meet end-of-year benchmarks, a student may continue in Tier 2 intervention or be excused from Tier 2 intervention.
- [6.1.2.1.2 After no more than six to eight school weeks of Tier 2 intervention, the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments are required, changes to Tier 2 academic or non-academic methods are required.]**
- ~~6.1.2.1.2~~ **6.1.2.1.3** If a student has made no progress toward benchmarks, or has made progress but is not on a trajectory to meet end-of-year benchmarks, a student may continue in Tier 2 intervention with increased intensity (e.g. smaller group, increased time of academic or non-academic intervention) or receive Tier 3 interventions.
- 6.1.3 Tier 3 - Interventions shall be designed to be delivered in the student's primary (scheduled) education setting, by the student's teacher or teachers, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention.
- 6.1.3.1 After **[no more than]** six to eight school weeks of Tier 3 ~~intervention~~ **intervention,** six to eight school weeks of Tier 3 intervention the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments are required, changes to Tier 3 academic or non-academic methods are required; or the student should be referred for an initial evaluation for special education.
- 6.1.3.2 If a student has made significant progress towards established targets, a student may continue in Tier 3 intervention with a new target or be provided Tier 2 intervention.

6.1.3.3 If a student has made no progress towards established targets, or has made progress, but is not on a trajectory to meet established targets, a student may continue in Tier 3 intervention with increased intensity (e.g. smaller group, increased time of academic or non-academic intervention) or be referred for an initial evaluation for special education services as outlined in Regulation 925.

7.0 Program Effectiveness

~~[7.1] LEA shall provide a description of the methods used to implement and evaluate the effectiveness of the program upon the request of the Department.~~

~~[7.2 This regulation will go into effect August 1, 2020.]~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 Del.C. §122(b)(2))
14 DE Admin. Code 729

REGULATORY IMPLEMENTING ORDER

729 School Custodians

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(b)(2), the Secretary of Education intends to amend 14 DE Admin. Code 729 School Custodians. This amendment is needed to align the regulation with common practice around operations and training opportunities for custodial staff throughout the state. Additionally, the regulation is being updated to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on November 1, 2020, in the form hereto attached as *Exhibit "A"*. No comments were received for the proposed amended regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 729 School Custodians in order to align the regulation with common practice around operations and training opportunities for custodial staff throughout the state. Additionally, the regulation is being updated to comply 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 729 School Custodians. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 729 School Custodians attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 729 School Custodians 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 729 School Custodians amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 729 School Custodians 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 December 14, 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*.

FINAL REGULATIONS

IT IS SO ORDERED the 14th day of December 2020.

Department of Education

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

Approved this 14th day of December 2020

Exhibit B

729 School Custodians

1.0 Definitions

“Central Heating Plant” means all the component parts and systems used to heat, air condition and ventilate a school facility to include traditional mechanical systems and computer building automation systems.

“Certificate of Occupancy” means the certificate issued by code enforcement agencies certifying that a building meets all building and safety codes required by the jurisdiction of that agency.

“Chief Custodian” means a Custodian who has completed the ~~420-class~~ 120-class hour Chief Custodian training as prescribed by the Department of ~~Education~~ in subsection 5.1.1 ~~below~~. ~~Employees who have earned the Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Employees who have earned the Chief Custodian certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for chief custodial positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).~~

“Classroom” means an area or space within a school building that is used for student instruction.

“Classroom Equivalent” means areas or spaces in school buildings that are used for student instruction not classified as a classroom, such as as, but not limited ~~to~~ to, computer labs and centers, libraries, media centers, multiple intelligence rooms and areas, athletic training rooms.

“Custodial Unit” means a formula used to determine the number of custodial positions earned by an educational ~~facility~~ facility.

“Custodian” means a school district employee who is paid in accordance with 14 ~~Del.C. §1311(a)~~. ~~The school district employee shall be entitled to an additional pay stipend pursuant to 14 Del.C. §1311(b) upon completion of the 60 hour Custodian certificate training as prescribed in subsection 5.1.3 below.~~

“Department” means the Delaware Department of Education.

“Firefighter and Custodian-Firefighter” means a Custodian who has completed the ~~90-class~~ 90-class hour Firefighter and Custodian-Firefighter certificate training as prescribed by the Department of ~~Education~~ in subsection 5.1.2 ~~below~~. This training ~~includes~~ includes, but is not limited ~~to~~ to, the operation of boilers and central heating plant systems. ~~Employees who have earned the Firefighter and Custodian-Firefighter certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Employees with the Firefighter and Custodian-Firefighter certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for Custodian Fireman positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).~~

“Maintenance Mechanic” means an employee filling a custodial position with specialized technical skill in a particular trade or trades as determined by the school district in accordance with subsection 4.3 ~~below~~ and paid in accordance with the pay scale identified in 14 ~~Del.C. §1311(a)~~.

“~~Skilled Crafts Person~~ Craftsperson” means an employee filling a custodial position with specialized technical certification ~~and/or~~ or licensure in a particular trade or trades as determined by the school district in accordance with subsection 4.4 ~~below~~ and paid in accordance with the pay scale identified in 14 ~~Del.C. §1311(a)~~.

2.0 Experience

Custodians may be allowed one (1) ~~year's~~ year of experience for each creditable year of experience in similar employment as determined by the district.

3.0 Allocation of Custodial Units

- 3.1 The custodial units allocated to a district may be assigned to various locations at the discretion of the local school board and the chief school officer.
- 3.2 Districts and charter schools are allocated one (1) full-time custodial position for each twelve (12) custodial units or for a major fraction thereof. The number of units in each school is determined in the following way:
 - 3.2.1 One (1) unit for each classroom or classroom equivalent.
 - 3.2.2 One (1) unit for a small auditorium (less than 150 students).
 - 3.2.3 Two (2) units for a large auditorium (more than 150 students).
 - 3.2.4 One (1) unit for a cafeteria having a seating capacity up to 150. One (1) unit for each 150 capacity or major fraction thereof.
 - 3.2.5 One (1) unit for a gymnasium.
 - 3.2.6 One (1) unit for a combined auditorium and gymnasium (less than 150 students).
 - 3.2.7 Two (2) units for a combined auditorium and gymnasium (more than 150 students).
 - 3.2.8 One (1) unit for two locker rooms.
 - 3.2.9 Seven (7) units for a swimming pool.
 - 3.2.10 Units for a central heating plant are determined ~~from the following table~~ as follows:

No. of Classrooms or equivalent	No. of Units
1 to 6	1/2
7 to 9	3/4
10 to 15	1
16 to 20	1 1/2
21 to 25	2
26 to 30	2 1/2
31 to 35	3
36 to 40	3 1/2
41 to 45	4
46 to 50	4 1/2
51 to 55	5
56 to 60	5 1/2
61 or more	

- 3.2.11 One-half (1/2) unit for each developed acre of the school plant site, not to exceed 48 acres or 24 units on a given site. If two schools are located on the same site of 100 acres or more, the second school shall receive credit for half of the acres for that site.
- 3.3 Part-time custodians equivalent to one (1) or more full-time custodians may be employed with the provision that proper records will be maintained at the school district for review.
- 3.4 A full custodial staff for a new school building may be employed two (2) months prior to the pupil occupancy of the building.
 - 3.4.1 In order to ~~maintain, heat~~ maintain building climate and secure new school buildings completed with a certificate of occupancy date further in advance of student occupancy than the two (2) months identified in subsection 3.4 ~~above~~, the district is eligible to earn the custodial units provided

for site maintenance and central heating plant as of the certificate of occupancy date, until eligible to employ the full custodial staff in accordance with subsection 3.4.

- 3.5 The termination date for custodial units in closed buildings ~~closed~~ shall be six (6) weeks from the last day classes are held in the building.
- 3.6 Buildings which are closed and retained under the control of the school district shall lose all custodial units except units provided for site maintenance and heating.
- 3.7 When the school district signs a lease or in any way loses direct control of the building, through transfer, sale or legislation, the custodial units for site maintenance and heating shall terminate on the effective date of the lease, transfer, sale or legislation.
- 3.8 It is the school district's responsibility to notify the Department of ~~Education~~ when the function of a building is changed. When the notification is received, a re-evaluation of the custodial units will be completed by the Department of ~~Education~~. The Department will notify the district by letter of the results of the re-evaluation.
- 3.9 The Department of ~~Education~~ shall calculate and approve all custodial unit allocation requests submitted by the local school districts and charter schools.

4.0 Classification

- 4.1 ~~Custodian-Fireman~~ Custodian-Firefighter
 - 4.1.1 When there is only one (1) custodian in a district, the custodian may be classified as a ~~custodian fireman~~ Custodian-Firefighter.
 - 4.1.2 There shall be only one (1) ~~custodian fireman~~ Custodian-Firefighter employed in each building.
- 4.2 Chief Custodian
 - 4.2.1 A custodian may be classified as a Chief Custodian when at least two (2) other full time custodians or the equivalent are employed in the school building or other district facility. There shall only be one (1) Chief Custodian per building.
- 4.3 Maintenance ~~Mechanic~~: Mechanic. Each school district may classify up to ten (10) percent of the total number of custodial personnel as maintenance mechanics. Qualifications shall be as defined by the employing school district.
- 4.4 Skilled Craftsperson
 - 4.4.1 Each school district may classify an incumbent in one (1) or more of its Maintenance Mechanic positions as a Skilled Craftsperson for purposes of this section if the incumbent:
 - 4.4.1.1 Has received a certificate as a union journeyman or equivalent in any of the following fields: Boiler Maker, Carpenter, Electrician, HVAC Mechanic, Mill Wright, Heavy Machinery Operator, Pipe Fitter, Plumber, Roofer, or Sheet Metal Worker; or
 - 4.4.1.2 Possesses a current state license in any of the fields listed in subsection 4.4.1.1 ~~above~~; or
 - 4.4.1.3 Is an Automobile Mechanic who possesses two (2) or more National Institute for Automotive Service Excellence (ASE) Certifications in the Automotive, Truck or School Bus categories; or
 - 4.4.1.4 Is a Boiler Maker who possesses either an AWS or ASME Welding Certification; or
 - 4.4.1.5 Is a Computer Technician who possesses an A Plus Certification from CompTIA (Computing Technology Industry Association); or
 - 4.4.1.6 Is an HVAC Mechanic who possesses two (2) or more certifications from manufacturers of digital control systems in use by the district, or possesses a certification from a manufacturer of centrifugal chillers used within the district; or
 - 4.4.1.7 Possesses two (2) or more Hazardous Material Certifications from the State of Delaware, OSHA, or the United States Environmental Protection Agency; or
 - 4.4.1.8 Is a Pipe Fitter who possesses an AWS or ASME Welding Certification; or
 - 4.4.1.9 Is a Roofer who possesses Training Certifications from two (2) or more manufacturers of Roofing Systems in use by the District; or

4.4.1.10 Is a Burner Mechanic who possesses a certification from a manufacturer of oil or gas burners used within the District.

4.5 Building and Grounds Supervisor: Each district with ninety five (95) or more custodial units may employ a school buildings and grounds supervisor according to the salary schedule. This position is included in the total number of custodial personnel allowed.

5.0 Certificates Granted by the Department of Education for Additional Hours of Special Training

5.1 The Department of Education shall specify the special training needed in order for an individual to receive a ~~certificate(s)~~ certificate for the additional pay stipends as outlined in 14 Del.C. §1311(b). The following hourly requirements shall be met in order for the Department of Education to grant the custodial certificates listed in subsections 5.1.1 through 5.1.3. The certificate guarantees additional pay as specified in 14 Del.C. ~~§1311(b)~~ §1311(b), but only the local school district can change a custodian's classification for purposes of 14 Del.C. §1311(a).

5.1.1 Chief Custodian Certificate (~~120 class hours~~) 120-class hours). Employees who have earned the Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Employees who have earned the Chief Custodian certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for chief custodial positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).

5.1.2 Firefighter and Custodian-Firefighter Certificate (~~90 class hours~~) 90-class hours). Employees who have earned the Firefighter and Custodian-Firefighter certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Employees with the Firefighter and Custodian-Firefighter certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for Custodian-Firefighter positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).

5.1.3 Custodian Certificate (60 on-the-job ~~hours~~) hours). Employees who have earned the Custodian Certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b).

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 922

REGULATORY IMPLEMENTING ORDER

922 Children with Disabilities Subpart A, Purposes and Definitions

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 922 Children with Disabilities Subpart A, Purposes and Definitions. This regulation is being amended to remove definitions for the educational classifications of Autism, Deaf-Blindness, Developmental Delay, Emotional Disability, Hearing Impairment, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech or Language Impairment, Traumatic Brain Injury and Visual Impairment because the classifications are more appropriately addressed through their eligibility criteria found in 14 DE Admin. Code 925. It is also being amended to add definitions for Adverse Effect on Educational Performance and Multi-Tiered System of Support, and to remove the definition of Highly Qualified Special Education Teachers. The definition of Adverse Effect on Educational Performance is being added for further clarity. The definition of Multi-Tiered System of Support is being added as it is part of the eligibility criteria for several of the disability categories. The definition of Highly Qualified Special Education Teachers is being removed as it is not required under the Every Student Succeeds Act of 2015.

This regulation was originally published on February 1, 2020, with several comments being received. Due to the comments received and the substantive changes that were required to the regulation, the Department

republished the regulation in the July 1, 2020 *Delaware Register of Regulations*. In addition, notice was published in *The News Journal* and the *Delaware State News* on July 1, 2020, in the form hereto attached as *Exhibit "A"*. The Department also held virtual public hearings on the proposed regulation changes on July 23, 2020, July 30, 2020 and August 13, 2020. The regulation will be effective July 1, 2021 and should be implemented for the 2021-2022 school year.

Public comments pertinent to the proposed regulation suggest:

(1) The definitions of each eligibility classification be included in Regulation 922, as well as in Regulation 925, for purposes of quick identification.

Response: The Department believes that is unnecessary and confusing to include each eligibility classification in both Regulation 922 and Regulation 925.

(2) Regulation 922 be implemented in the 2021-2022 school year to allow time for school psychologists and staff time to become familiar with the new regulations and implement them effectively.

Response: The Department agrees with this comment and notes Regulations 922 and 925 will take effect for the 2021-2022 school year to allow time for effective implementation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions in order to remove definitions for the educational classifications of Autism, Deaf-Blindness, Developmental Delay, Emotional Disability, Hearing Impairment, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech or Language Impairment, Traumatic Brain Injury and Visual Impairment because the classifications are more appropriately addressed through their eligibility criteria found within 14 **DE Admin. Code** 925. It is also being amended to add definitions for Adverse Effect on Educational Performance and Multi-Tiered System of Support, and to remove the definition of Highly Qualified Special Education Teachers. The definition of Adverse Effect on Educational Performance is being added for further clarity. The definition of Multi-Tiered System of Support is being added as it is part of the eligibility criteria for several of the disability categories. The definition of Highly Qualified Special Education Teachers is being removed as it is not required under the Every Student Succeeds Act of 2015.

This regulation was originally published on February 1, 2020, with several comments being received. Due to the comments received and the substantive changes that were required to the regulation, the Department republished the regulation in the July 1, 2020 *Delaware Register of Regulations*. In addition, notice was published in *The News Journal* and the *Delaware State News* on July 1, 2020, in the form hereto attached as *Exhibit "A"*. The Department also held virtual public hearings on the proposed regulation changes on July 23, 2020, July 30, 2020 and August 13, 2020. This regulation will be effective July 1, 2021 and implemented for the 2021-2022 school year.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions 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** 922 Children with Disabilities Subpart A, Purposes and Definitions amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions 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 November 19, 2020. The effective date of this Order shall be July 1, 2021.

IT IS SO ORDERED the 19th day of November 2020.

Department of Education

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

Approved this 19th day of November 2020

State Board of Education

/s/ Whitney Townsend Sweeney, President	/s/ Candice Fifer
/s/ Wali W. Rushdan, II, Vice President	/s/ Vincent Lofink
/s/ Audrey J. Noble, Ph.D.	/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 11 (24 DE Reg. 11). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

922 Children with Disabilities Subpart A, Purposes and Definitions

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) and (e) (14 Del.C. §122(a) & (e))
14 DE Admin. Code 925

REGULATORY IMPLEMENTING ORDER

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(a), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended to revise general eligibility determination criteria and eligibility determination criteria relative to subsections 6.6 Autism, 6.7 Developmental Delay, 6.8 Deaf-Blind, 6.9 Emotional Disability, 6.10 Hearing Impairment, 6.11 Specific Learning Disability, 6.12 Intellectual Disability, 6.13 Orthopedic Impairment, 6.14 Other Health Impairment, 6.15 Speech or Language Impairment, 6.16 Traumatic Brain Injury, and 6.17 Visual Impairment Including Blindness. This regulation is also being amended to make technical changes.

This regulation was originally published on February 1, 2020, with several comments being received. Due to the comments received and the substantive changes that were required to the regulation, the Department republished the regulation in the July 1, 2020 *Delaware Register of Regulations* on July 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on July 1, 2020, in the form hereto attached as *Exhibit "A"*. The Department also held virtual public hearings to receive comments on the proposed regulation changes on July 23, 2020, July 30, 2020 and August 13, 2020. The regulation will be effective July 1, 2021 and should be implemented for the 2021-2022 school year.

Public comments pertinent to the proposed regulation suggest:

(1) The definitions of each eligibility classification be included in Regulation 922, as well as in Regulation 925, for purposes of quick identification.

Response: The Department believes that it is unnecessary to include a definition of each eligibility classification in both Regulation 922 and Regulation 925.

(2) Internal citations should be included which reference where definitions such as "IEP Team," can be found in the Delaware Administrative Code.

Response: The Registrar of Regulations prefers that internal citations be avoided whenever possible in order to streamline regulation documents.

(3) The Department's regulation allows for over-identification of Autism and the possibility of ruling out students with emotional issues. This is due to the addition of the phrase "by history" and the symptoms count required under these regulations is less than what is required in the DSM-5.

Response: The Department notes that the proposed criteria, which were developed by a stakeholder group, are consistent with the DSM-5. In addition, the criteria under subsections 6.6.1.1 and 6.6.1.2, that include the term "or by history," are one part of the requirement for this educational classification. The impairments also must result in adverse effects to educational performance and to qualify for an IEP, a student would need, as specified in subsection 6.6.1.3 "significant impairment in important areas of functioning." Note that this subsection does not specify "or by history" as this is the current requirement.

(4) The communication piece has been removed from the regulation so that people that are non-verbal would therefore qualify under Speech/Language as well as Autism classifications.

Response: In previous regulations, impairment in communication or behavior was required, but now social communication and social interaction deficits are considered together, and at least one behavioral deficit is required. Both the previous and current criteria are modeled after the DSM-IV and DSM-5. It is the IEP team's decision as to what category best captures the child's impairments and needs.

(5) Currently, the DSM for restrictive and repetitive behaviors includes two factors, however the proposed regulation only requires one factor to be necessary.

Response: Stakeholder feedback regarding students meeting the behavioral criteria associated with Autism as described in the DSM-5 showed concern that this would be more restrictive than the federal definition. Additionally, there was concern that the requirement for two behaviors is more restrictive than the current requirement for either a behavioral or communication feature. Requiring one behavioral feature was a compromise endorsed by the stakeholders. The criteria stated in subsection 6.6.1.2 allows for restricted patterns of behavior to be present currently or by history, so that children may qualify for services under this classification without current behavioral manifestations as long as other current impairments are significant and pervasive, and lead to adverse effects on education performance.

(6) By requiring only one feature in social communication and one restrictive repetitive pattern, this may result in over-identification and difficulty in differential diagnosis between Autism and Emotional Disability.

Response: The Department understands that the proposed language was confusing. Our intent was not to specify a count of social interaction/communication and behavioral deficits, but rather to indicate that one of these characteristics must result in an adverse effect on educational performance. The social interaction/communication criteria described in the DSM-5 is more restrictive than the federal definition and the current eligibility criteria. The Department altered subsection 6.6.1 to clarify the Department's intention.

(7) The Department remove the reference that allows a functional visual evaluation to be completed by a teacher.

Response: The Department notes that this allowance for a functional vision evaluation by a teacher of the visually impaired was recommended by the Hearing Impairment/Deaf Blind stakeholder group, which used language taken verbatim from the recommendations of the Deaf Education Task Force.

(8) Language allowing documentation to be provided by "other qualified professionals when applicable" should remain in the regulation.

Response: The language in the documentation section includes the term "such as" to introduce the professionals listed. This term is used interchangeably with "include, which is defined in Regulation 922 as a non-exhaustive list.

(9) Subsections 6.8.1.1.1 and 6.8.1.1.2 include the words "of more than" when referring to permanent conductive, sensorineural or mixed or fluctuating "hearing loss that is 20 dB HL or greater." It is also suggested that the words "that is" be removed to allow for more clarity around the applicable hearing impairment.

Response: The current wording of these subsections is identical to what was recommended by the Hearing Impairment/Deaf Blind stakeholder group and aligns with the final report recommendation of the Deaf Education Task Force. For clarification, the Department will amend 6.8.1.1.1 to read "hearing loss of 20 dB HL or greater" to indicate a loss including 20 dB HL or greater. Similar language in 6.10.1.1.1 was amended in the same way as well. Also, 6.8.1.1.2, as well as similar language in 6.10.1.1.2, was amended to say "hearing loss greater than 20 dB HL" to indicated a loss greater than 20 dB HL.

(10) The Department consider including a team member from the statewide program for the Deaf-Blind as a required member of the IEP team for the purposes of eligibility determination.

Response: When appropriate, a representative from the statewide program for Deaf-Blind may participate, but should not be required for every student considered under this classification.

(11) The Department is allowing the use of the Discrepancy Model when allowing for the inclusion of intellectual ability in the definition of patterns of strengths and weaknesses.

Response: The Department notes that subsection 6.11.1.4 states that "public agencies shall not use discrepancy between achievement and intellectual ability to determine eligibility for special education and related services under the Specific Learning Disability classification."

(12) The use of the term "insufficient progress" is too broad and is open to various interpretation.

Response: The Department notes that while RTI is explained in the current Regulation 925, it has been replaced with the multi-tiered system of support, which is a regular education initiative that is described in the newly created Regulation 508 Multi-Tiered System of Support (MTSS). For more guidance on determining insufficient programs, please see Regulation 508.

(13) The three "Adaptive Behavior" domains - conceptual, social and practical - should not align to just one test (currently known as the ABAS test - Adaptive Behavior Assessment System).

Response: The Department will address this comment through technical assistance. In an effort to streamline criteria, specific examples of each of the three domains were not included in the regulation. Conceptual, social and practical adaptive and social adaptive skills are part of the accepted definition of Intellectual Disability by the DSM-5 and the AAIDD (American Academy of Intellectual and Developmental Disabilities).

(14) The proposed language in subsection 6.15.1.3 extends the definition of expressive language impairment to those who use non-speech modes of communication. Because of this, the reference to the "speaker's ability to communicate" would be more appropriately written as "the child's ability to communicate," in order to not exclude those who cannot rely on speech for expressive purposes.

Response: The Department notes this change was proposed to eliminate redundancy in subsection 6.15.1 that states, "the impairment adversely affects the child's educational performance." Due to a technical error, this change was made in subsections 6.15.1.2.1, 6.15.1.2.2, 6.15.1.2.4, but omitted in subsection 6.15.1.2.3. This non-substantive change will be made in this regulation.

(15) Both Moderate and Severe Intellectual Disability classifications requires "Performance on an individually administered test of intelligence," which could pose limitations for students who are not able to be tested using individual standardized intellectual assessments. If they are unable to be tested, then they would potentially be unable to be classified under an Intellectual Disability.

Response: Language in subsections 4.3.1.2 and 4.3.3 outlines that "assessments are provided and administered....in the form most likely to yield accurate information on what the child knows" and "each public agency shall ensure that assessments are selected and administered so as best to ensure....the assessment results accurately reflect the child's aptitude or achievement level..." The IEP team must determine the most appropriate assessment tool for each student. If a tool is unable to be administered, this is information that the team may use.

(16) The exclusionary factors in the classifications of Autism, Emotional Disability and Other Impairments contradict each other. In addition, the additional criteria for eligibility seems to create a hierarchy for primary and secondary disability classifications.

Response: The Department acknowledges that there is overlap in characteristics across classifications. "Additional Criteria" was developed through stakeholder feedback to provide teams with guidance in considering all of the relevant classifications, including both primary and secondary, for which a child is eligible. Regardless of the primary and secondary classifications, IEP teams are charged with developing IEPs that meet the needs of each student.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. In order to revise eligibility determination criteria relative to subsections 6.6 Autism, 6.7 Developmental Delay, 6.8 Deaf-Blind, 6.9 Emotional Disability, 6.10 Hearing Impairment, 6.11 Specific Learning Disability, 6.12 Intellectual Disability, 6.13 Orthopedic Impairment, 6.14 Other Health Impairment, 6.15 Speech or Language Impairment, 6.16 Traumatic Brain Injury, and 6.17 Visual Impairment Including Blindness. This regulation is also being amended to make technical changes. Additionally, this regulation was originally published on February 1, 2020, with several comments being received.

Due to the comments received and the substantive changes that were required to the regulation, the Department republished the regulation in the July 1, 2020 *Delaware Register of Regulations* on July 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on July 1, 2020, in the form hereto attached as *Exhibit "A"*. The Department also held virtual public hearings to receive comments on the proposed regulation changes on July 23, 2020, July 30, 2020 and August 13, 2020. The regulation will be effective July 1, 2021 and should be implemented for the 2021-2022 school year.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs 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** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs 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 November 19, 2020. The effective date of this Order shall be July 1, 2021.

IT IS SO ORDERED the 19th day of November 2020.

Department of Education

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

Approved this 19th day of November 2020

State Board of Education

/s/ Whitney Townsend Sweeney, President	/s/ Candice Fifer
/s/ Wali W. Rushdan, II, Vice President	/s/ Vincent Lofink
/s/ Audrey J. Noble, Ph.D.	/s/ Provey Powell, Jr.

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

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

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(e) and 3001A-3005A
(14 Del.C. §§122(e) & 3001A-3005A)
14 DE Admin. Code 934

REGULATORY IMPLEMENTING ORDER

934 Regulations for Family and Large Family Child Care Homes

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(e) and 14 Del.C. §§3001A-3005A, the Secretary of Education intends to amend 14 DE Admin. Code 934 Regulations for Family and Large Family Child Care Homes. This amended regulation includes the following changes:

- Clarification that only one license will be issued per address;
- Changing the title of OCCL's administrator to director;
- Changing the word entered to documented regarding attendance sheets;
- Removing a previously posted error that allowed a family child care home to designate a family provider, when the licensee must be the provider;
- Restoring the qualifications of a licensee for a large family child care home; and
- Allowing for only one license per address.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on November 1, 2020, in the form hereto attached as *Exhibit "A"*. Comments received which were pertinent to the proposed amendments suggested the following:

- (1) Further clarification needed regarding the requirement for a family child care provider to be the licensee.

Response: The Department appreciates this comment. However, clarification regarding the requirement for a family child care provider to be the licensee is already included in the definition of regulated service, "A licensee provides this service for less than 24 hours per day and children attend without a parent/guardian. A licensee receives payment for services provided." The definitions of family child care home, family child care license, and family provider support this idea by stating a, "family child care home means a private home in which a licensee lives and provides licensed child care;" "family child care license means a document issued by OCCL allowing a person or entity to operate a family home after demonstrating compliance with these regulations and other applicable codes, regulations, and laws;" and "family provider means the person responsible for the total program including providing child care and managing the administrative aspects of a family child care home." The license requirements state, "A family home licensee must live in and provide care in his or her private residence." Lastly, the additional provisions for family child care homes state, "A licensee shall be present and providing child care at all times except during the limited use of a substitute." Therefore, the regulation will remain as written.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 934 Regulations for Family and Large Family Child Care Homes to make the following changes:

- Clarification that only one license will be issued per address;
- Changing the title of OCCL's administrator to director;
- Changing the word entered to documented regarding attendance sheets;
- Removing a previously posted error that allowed a family child care home to designate a family provider, when the licensee must be the provider;
- Restoring the qualifications of a licensee for a large family child care home; and
- Allowing for only one license per address.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 934

Regulations for Family and Large Family Child Care Homes. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes 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** 934 Regulations for Family and Large Family Child Care Homes amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes 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 December 14, 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 14th day of December 2020.

Department of Education

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

Approved this 14th day of December 2020

*Please note that no changes were made to the regulation as originally proposed and published in the November 2020 issue of the *Register* at page 453 (24 DE Reg. 453). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

934 Regulations for Family and Large Family Child Care Homes

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1520

REGULATORY IMPLEMENTING ORDER

1520 Early Childhood Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1520 Early Childhood Teacher. The regulation concerns the requirements for an Early Childhood Teacher 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 an Early Childhood Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining an Early Childhood Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of an Early Childhood Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, 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 one written submittal concerning the proposed amendments. Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), commented that GACEC supports the proposed amendments. GACEC further commented that the Professional Standards Board does not prescribe specific professional development for educators and it is possible that an educator with an Early Childhood Teacher Standard Certificate will not actually participate in any professional development related to the certificate. As such, GACEC recommended that the Department consider whether including requirements for renewal of the certificate is warranted. In addition, GACEC commented that "educators within this category should be some of Delaware's most capable educators" and recommended that proposed Section 8.0 be removed.

II. FINDINGS OF FACTS

On November 5, 2020, the Professional Standards Board considered GACEC's written submittal.

The Professional Standards Board found that proposed subsection 6.2, which provides that the Early Childhood Teacher 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 also found that its Professional Development and Associated Compensation Committee is currently working to address linking professional development to an educator's work. In addition, the Professional Standards Board found that proposed Section 8.0, Secretary of Education Review, is based on statute (14 **Del.C.** §1224) and is available for all certificates.

The Professional Standards Board determined that further changes in response to the written submittal were not necessary and voted to propose 14 **DE Admin. Code** 1520 Early Childhood Teacher, 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** 1520 Early Childhood Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1520 Early Childhood Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1520 Early Childhood Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1520 Early Childhood Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1520 Early Childhood Teacher 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 19th day of November, 2020.

Department of Education

FINAL REGULATIONS

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

Approved this 19th day of November, 2020.

State Board of Education

/s/ Whitney Sweeney, President

/s/ Vincent Lofink

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

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

/s/ Candice Fifer

/s/ Provey Powell, Jr.

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

Exhibit A

1520 Early Childhood Teacher

1.0 Content

- 4.4 This regulation shall apply to the issuance of a an Early Childhood Teacher Standard Certificate, pursuant pursuant to 14 Del.C. §1220(a), for Early Childhood Teacher. This certification is valid for birth to grade two (2); however, certification as an Elementary Teacher may also be used in K to grade 2. The Early Childhood Teacher Standard Certificate is required for Birth to Grade 2 in Delaware public schools. Notwithstanding the foregoing requirement, the Elementary Teacher Standard Certificate (14 DE Admin. Code 1521) may be used for grades K to 2 in lieu of the Early Childhood Teacher Standard Certificate.
- 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 ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- "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 Professional Standards Board, 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 an Early Childhood Teacher Standard Certificate as an Early Childhood Teacher 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 and presents proof of a Valid and Current License or Certificate as an early childhood teacher.
 - ~~3.1.3 Has satisfied the additional requirements in this regulation.~~
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for an Early Childhood Teacher 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 have also met the following:
- 4.1.1 achieved on the Praxis Subject Assessment – Education of Young Children (ETS Test # 5024) a Passing Score of 160.
 - 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
 - 4.1.1 The applicant shall have:
 - 4.1.1.1 Obtained and currently maintain an Early Childhood Generalist certificate from the National Board for Professional Teaching Standards; or
 - 4.1.1.2 Earned a bachelor’s degree from a Regionally Accredited college or university with a Major or Its Equivalent in early childhood education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
 - 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach early childhood education as provided in 14 Del.C. §§1260 – 1266; or

4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in early childhood education.

4.1.2 The applicant shall have achieved a Passing Score of 160 on the Praxis Subject Assessment – Education of Young Children (ETS Test Code # 5024).

4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a Passing Score on an examination as provided in subsection 4.1.2.

5.0 Application Requirements

5.1 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.

5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for an Early Childhood Teacher Standard Certificate:

5.2.1 Evidence of obtaining and maintaining an Early Childhood Generalist certificate from the National Board for Professional Teaching Standards, if applicable; and

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

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

5.2.2.2 Sealed paper transcripts may be submitted.

5.2.2.3 The Department will not accept copies of transcripts; and

5.2.3 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and

5.2.4 Additional documentation as required by the Department.

5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for an Early Childhood Teacher Standard Certificate:

5.3.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and

5.3.2 Additional documentation as required by the Department.

5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate as an early childhood teacher, the following documentation is required in the application for an Early Childhood Teacher Standard Certificate:

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

5.4.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

6.1 An Early Childhood Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

6.2 An Early Childhood Teacher Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

7.1 An Educator's Early Childhood Teacher 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.

7.2 An Educator's Early Childhood Teacher 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.

7.3 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.

8.0 Secretary of Education Review

- 8.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for an Early Childhood Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for an Early Childhood Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.
- 8.1.1 For school districts, requests shall be approved by the superintendent of the school district.
- 8.1.2 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.

9.0 Past Certificate Recognized

The Department shall recognize an Early Childhood Teacher 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 teach early childhood education.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1531

REGULATORY IMPLEMENTING ORDER

1531 Middle Level English Language Arts Teacher

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** 1531 Middle Level English Language Arts Teacher. The regulation concerns the requirements for a Middle Level English Language Arts Teacher 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 Middle Level English Language Arts Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Middle Level English Language Arts Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Middle Level English Language Arts Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2020. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On October 8, 2020, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher, 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** 1531 Middle Level English Language Arts Teacher.

FINAL REGULATIONS

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher 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 19th day of November, 2020.

Department of Education

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

Approved this 19th day of November, 2020.

State Board of Education

/s/ Whitney Sweeney, President

/s/ Vincent Lofink

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

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

/s/ Candice Fifer

/s/ Provey Powell, Jr.

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

Exhibit A

1531 Middle Level English Language Arts Teacher

1.0 Content

- 4.4 This regulation shall apply to the issuance of a Middle Level English Language Arts Teacher Standard Certificate, Certificate pursuant to 14 **Del.C.** §1220(a), ~~for Middle Level English Language Arts Teacher. This certification~~ Certification is required for grades 6, 7 and 8 in a Middle Level middle level Delaware public school. Notwithstanding the above requirement, the Secondary English Language Arts Teacher ~~Certification~~ Standard Certificate may be used for grades 6, 7 and 8 in a Middle Level middle level school in lieu of ~~this certification~~ the Middle Level English Language Arts Teacher Standard Certificate.
- 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 ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise~~:

"Certification" means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.

"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 ~~Professional Standards Board,~~ 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 Middle Level English Language Arts Teacher Standard Certificate as a ~~Middle Level English Language Arts Teacher~~ 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 and presents proof of a Valid and Current License or Certificate as a middle level English language arts teacher.

3.1.3 ~~Has satisfied the additional requirements in this regulation.~~

3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Middle Level English Language Arts Teacher 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 have also met the following:
- 4.1.1 achieved on the *Praxis* Subject Assessment – Middle School English Language Arts (ETS Test # 5047) a Passing Score of 164.
- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have:
- 4.1.1.1 Obtained and currently maintain an English Language Arts certificate from the National Board for Professional Teaching Standards; or
- 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a Major or Its Equivalent in middle level English language arts education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach middle level English language arts as provided in 14 **Del.C.** §§1260 - 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in middle level English language arts education.
- 4.1.2 The applicant shall have achieved a Passing Score of 164 on the *Praxis* Subject Assessment - Middle School English Language Arts (ETS Test Code # 5047).
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a Passing Score on the *Praxis* Subject Assessment as provided in subsection 4.1.2.

5.0 Application Requirements

- 5.1 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.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Middle Level English Language Arts Teacher Standard Certificate:
- 5.2.1 Evidence of obtaining and maintaining an English Language Arts certificate from the National Board for Professional Teaching Standards, if applicable; and
- 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
- 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
- 5.2.2.2 Sealed paper transcripts may be submitted.
- 5.2.2.3 The Department will not accept copies of transcripts; and
- 5.2.3 Official score on the *Praxis* Subject Assessment as provided in subsection 4.1.2; and
- 5.2.4 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Middle Level English Language Arts Teacher Standard Certificate:
- 5.3.1 Official score on the *Praxis* Subject Assessment as provided in subsection 4.2; and
- 5.3.2 Additional documentation as required by the Department.

5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate as a middle level English language arts teacher, the following documentation is required in the application for a Middle Level English Language Arts Teacher Standard Certificate:

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

5.4.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

6.1 A Middle Level English Language Arts Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

6.2 A Middle Level English Language Arts Teacher Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

7.1 An Educator's Middle Level English Language Arts Teacher 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.

7.2 An Educator's Middle Level English Language Arts Teacher 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.

7.3 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.

8.0 Secretary of Education Review

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 Middle Level English Language Arts Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Middle Level English Language Arts Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

9.0 Past Certificate Recognized

The Department shall recognize a Middle Level English Language Arts Teacher 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 teach middle level English language arts.

PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1540

REGULATORY IMPLEMENTING ORDER

1540 Secondary English Language Arts Teacher

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 1540 Secondary English Language Arts Teacher. The regulation concerns the requirements for a Secondary English Language Arts Teacher 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 Secondary English Language Arts Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Secondary English Language Arts Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Secondary English Language Arts Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2020. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On October 8, 2020, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher, 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** 1540 Secondary English Language Arts Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher 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 19th day of November, 2020.

Department of Education

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

Approved this 19th day of November, 2020.

State Board of Education

/s/ Whitney Sweeney, President

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

/s/ Candice Fifer

/s/ Vincent Lofink

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

/s/ Provey Powell, Jr.

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

1540 Secondary English Language Arts Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Secondary English Language Arts Teacher Standard Certificate, Certificate pursuant to 14 ~~Del.C.~~ §1220(a), ~~for Secondary English Language Arts Teacher.~~ This ~~certification~~ Certification is required for grades 9 to 12 and is valid in a ~~Middle Level school, grades 6 to 8~~ and may be used in lieu of the ~~Middle Level English Language Arts Teacher certification in grades 6 to 8~~ in Delaware public schools. The Secondary English Language Arts Teacher Standard Certificate may be used for grades 6, 7 and 8 in a middle level school in lieu of the ~~Middle Level English Language Arts Teacher Standard Certificate.~~
- 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 ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise:~~
- "Certification" means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.
- "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 ~~Professional Standards Board, 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 Secondary English Language Arts Teacher Standard Certificate as a ~~Secondary English Language Arts Teacher~~ 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 and presents proof of a Valid and Current License or Certificate as a secondary English language arts teacher.
- 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Secondary English Language Arts Teacher 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 have also met the following:
- 4.1.1 ~~achieved on the Praxis Subject Assessment – English Language Arts: Content Knowledge (ETS Test # 5038) a Passing Score of 167.~~
- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have:
- 4.1.1.1 Obtained and currently maintain an English Language Arts certificate from the National Board for Professional Teaching Standards; or
- 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a Major or Its Equivalent in secondary English language arts education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach secondary English language arts as provided in 14 Del.C. §§1260 - 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in secondary English language arts education.
- 4.1.2 The applicant shall have achieved a Passing Score of 167 on the Praxis Subject Assessment - English Language Arts: Content Knowledge (ETS Test Code # 5038).
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a Passing Score on the Praxis Subject Assessment as provided in subsection 4.1.2.

5.0 **Application Requirements**

- 5.1 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.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Secondary English Language Arts Teacher Standard Certificate:
- 5.2.1 Evidence of obtaining and maintaining an English Language Arts certificate from the National Board for Professional Teaching Standards, if applicable; and
- 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
- 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
- 5.2.2.2 Sealed paper transcripts may be submitted.
- 5.2.2.3 The Department will not accept copies of transcripts; and
- 5.2.3 Official score on the *Praxis* Subject Assessment as provided in subsection 4.1.2; and
- 5.2.4 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Secondary English Language Arts Teacher Standard Certificate:
- 5.3.1 Official score on the *Praxis* Subject Assessment as provided in subsection 4.2; and
- 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate as a secondary English language arts teacher, the following documentation is required in the application for a Secondary English Language Arts Teacher Standard Certificate:
- 5.4.1 An official copy of the Valid and Current License or Certificate; and
- 5.4.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

- 6.1 A Secondary English Language Arts Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Secondary English Language Arts Teacher Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

- 7.1 An Educator's Secondary English Language Arts Teacher 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.
- 7.2 An Educator's Secondary English Language Arts Teacher 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.
- 7.3 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.

8.0 Secretary of Education Review

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 Secondary English Language Arts Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Secondary English Language Arts Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

9.0 Past Certificate Recognized

The Department shall recognize a Secondary English Language Arts Teacher 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 teach secondary English language arts.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 16 Delaware Code, Section 122(3)p. (16 Del.C. §122(3)p.)
16 DE Admin. Code 4404

ORDER**4404 Free Standing Emergency Centers****Nature of The Proceedings**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Free Standing Emergency Departments. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code, Chapter 101 and authority as prescribed by 16 Del. C. §122 (3)(p).

On April 1, 2020 (Volume 23, Issue 10), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 Del. C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 1, 2020, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations. On May 1, 2020 (Volume 23, Issue 11), DHSS published in the *Delaware Register of Regulations* its notice of extended comment period, pursuant to 29 Del. C. §10118(a). It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 29, 2020.

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 January 1, 2021, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Free Standing Emergency Departments.

Background

Free standing emergency departments must meet the same standards as a hospital emergency department. Recent legislative changes clarified the scope of practice required of a free standing emergency department. This clarification provides a level of protection for the public that seek services in a free standing emergency department.

Statutory Authority

16 Del. C. §122(3)(p)

Purpose

The purpose of the amendment was to update the requirements to be consistent with nationally recognized standards of practice and to ensure patients receive safe and quality care in a free standing emergency department.

Fiscal Impact

N/A

SUMMARY OF EVIDENCE

STATE OF DELAWARE REGULATIONS GOVERNING FREE STANDING EMERGENCY DEPARTMENTS

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Free Standing Emergency Departments were published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (April 1, 2020 through May 29, 2020).

Public comments and DHSS' 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) proposed regulations governing Free Standing Emergency Departments. Council endorses the proposed regulation; however we would like to share one observation.

The proposed regulation by the Department of Health and Social Services (DHSS), Division of Health Care Quality (DHCQ), abrogates the existing one (4404) and re-numbers it 3340. The proposed regulation changes the name of the facility from Free Standing Emergency Center to Free Standing Emergency Department (FSED). DHSS originally published proposed regulations for FSEDs in the July 1 2019 issue of the Delaware Register of Regulations. The regulations are being republished as the Department made significant substantive changes to the previous proposed regulations.

One of the comments on the earlier regulation was that it did not specifically mention the Americans with Disabilities Act of 1990 (ADA) or Section 504 of the Rehabilitation Act of 1973 (Section 504). The ADA requires access to medical care services and the facilities where the services are provided. Private FSEDs are covered by Title III of the ADA. Section 504 covers any FSED that received federal financial assistance (including Medicare and Medicaid reimbursements). Earlier commentary stated that it would be better if the regulation specifically mentioned that the FSED must comply with the ADA and Section 504, so that its application to persons with disabilities would be readily apparent (and not by inference).

Section 4.23 of the proposed regulation now requires FSEDs to comply with the ADA and incorporates the act into the regulation. Likewise, section 4.24 requires FSEDs to comply with Section 504 and incorporates the act into the regulation.

Other recommendations were similarly accepted and changes have been made to the current proposed regulations. This regulation is a major effort to protect the citizens of Delaware and ensure they receive proper care from Free Standing Emergency Departments. The regulation is comprehensive and applies equally to all patients, including those with disabilities. The regulation specifically incorporates the ADA and Section 504. The regulation also requires a disability inclusive written disaster preparedness plan. Council appreciates the attempt by DHSS to ensure the quality of care and to regulate the provision of services patients receive from FSEDs. However, there is one area that would benefit from a change. Council would suggest that language be added to the fire safety section to more adequately address the needs of individuals with disabilities.

Response: Thank you for your comments. Per Section 15.0, the free standing emergency department must maintain a disability inclusive disaster preparedness plan to manage potential medical and non-medical emergencies, which includes fires. We will take your suggestion under advisement for future updates should this point need clarification in the future.

J. Todd Webb, Chairperson, State Council for Persons with Disabilities (SCPD)

Comment: The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services' (DHSS) Division of Health Care Quality's (DHCQ's) proposed regulation which abrogates the

existing one (4404) and re-numbers it 3340. The proposed regulation changes the name of the facility from Free Standing Emergency Center to Free Standing Emergency Department (FSED). DHSS originally published proposed regulations for FSED's in the July 1st, 2019 issue of the Delaware Register of Regulations. The regulations are being republished as the Department made significant substantive changes to the previous proposed regulations. The proposed regulation was published as 23 DE Reg. 817 in the April 1, 2020 issue of the Register of Regulations. SCPD has the following observations and recommendations.

SCPD reviewed the July 2019 proposed regulation and, one of the criticisms of the regulation was that it did not specifically mention the Americans with Disabilities Act of 1990 (ADA) or Section 504 of the Rehabilitation Act of 1973 (Section 504). The ADA requires access to medical care services and the facilities where the services are provided. Private FSED's are covered by Title III of the ADA. Section 504 covers any FSED that received federal financial assistance (including Medicare and Medicaid reimbursements). SCPD stated that it would be better if the regulation specifically mentioned that the FSED must comply with the ADA and Section 504 so that its application to persons with disabilities would be readily apparent (and not by inference).

Section 4.23 of the proposed regulation now requires FSED's to comply with the ADA and incorporates the act into the regulation. Likewise, section 4.24 requires FSED's to comply with Section 504 and incorporates the act into the regulation. SCPD appreciates and supports the revision.

Another criticism of the July 2019 regulation was that, although it mandated preparation of a written disaster preparedness plan for dealing with medical and non-medical emergencies, there was no specific language setting forth any requirements for dealing with patients with disabilities during an emergency. Section 15.2 of the proposed regulation now requires FSED's to "maintain a disability inclusive written disaster preparedness plan for natural and other disasters specific to the facility." SCPD appreciates and supports the revision.

A third criticism of the July 2019 regulation was that, although it required FSED's to comply with the rules and regulations of the Fire Prevention Commission and be inspected annually by the fire marshal, there was no specific language dealing with how patients with disabilities would be evacuated. Further, the regulation did not require that employees receive training in procedures to be followed for patients with disabilities. SCPD recommended that it would be better if the regulation had requirements that specified an evacuation route for patients with disabilities, including the width of any route and removal of any obstructions. Unfortunately, this issue was not addressed in the proposed regulation.

The proposed regulation adds a host of new definitions, including abuse, medication diversion, adverse incident, and emergency care. However, if a FSED is owned and operated by a hospital and is accredited by an organization approved by the Centers for Medicare and Medicaid Services, it is exempt from licensure and this regulation.

The regulation establishes a comprehensive licensing procedure, which includes an initial license (3.3.1), a provisional license (3.3.2), and an annual license (3.3.3). The regulation vests the Department of Health and Social Services with the authority to impose disciplinary action, including immediately suspending a license where there is an "immediate jeopardy or imminent danger to the public health, welfare and safety requiring emergency action." (3.5).

The regulation also sets up a comprehensive scheme of authority and responsibility. Every FSED must have a governing body that is responsible for the management, control, and operation of the facility. (5.0). There must be a director who is a full-time physician board certified in emergency medicine. He or she is responsible for the day to day operation and management of the FSED. (6.1.1; 6.1.2). The director is responsible for providing quality medical care. (6.1.3).

There must be a clinical director appointed by the director who is a registered nurse with substantial education, experience, and competence in emergency nursing. (6.2.1; 6.2.3.1). He or she must be a competent manager, administrator, and supervisor since the person provides general supervision and direction of the services offered by the FSED. (6.2.3.2; 6.2.3.3).

There are requirements for physicians (6.7) and nurses (6.8). There must be at least one (1) physician and one (1) registered nurse with training "in advanced cardiac life support and pediatric advanced life support in the FSED at all times." (6.9).

The regulation requires FSED's to have an infection prevention and control program based upon nationally recognized guidelines and standards such as the Centers for Disease Control and Prevention. (8.1).

The FSED must be properly built, equipped, and maintained to protect the health and safety of patients and employees. (10.1). A facility must have an adequate supply of linen that is processed in accordance with national standards for healthcare laundry. (10.2.1; 10.2.8). An FSED must have housekeeping services to ensure a clean, sanitary, and safe environment. (10.3.1). Waste must be properly stored and disposed of to prevent the transmission of disease (10.4.3), and the regulation adopts and incorporates, as requirements for FSED's, the provisions of the Department of Natural Resources and Environmental Control Regulation Governing Solid Waste. (10.4.4).

FSED's have to collect, maintain, and store patient medical records (while protecting confidentiality), and must be able to retrieve, authenticate, and distribute a patient's medical records. Records can be kept in hard copy, electronically, or a combination of both. (11.0).

Drugs, controlled substances, and biologicals must be properly stored, accessible only to authorized employees, and prepared and dispensed "according to acceptable standards of practice." (12.1; 12.4). FSED's must comply with all state and federal laws, regulations and guidelines pertaining to pharmaceutical services (12.2), and must be registered under state and federal controlled substance acts. (12.3).

An FSED must provide a patient or patient's representative with verbal and written notice of the patient's rights (14.1) and also post the patient's rights in the waiting room. (14.2). The notice must include the contact information of DHSS to which patients may report complaints. (14.2). The patient's rights are broad and include treatment with respect and dignity; safety; privacy; care free from abuse, neglect, and exploitation; provision of appropriate information concerning the diagnosis, treatment and prognosis to the patient, patient's designee, or legally authorized person; participation in decisions involving care and treatment except "when the patient's participation is contradicted for medical reasons;" and the ability to complain about treatment and care that is or is not provided. (14.0 et. seq.) Information shall also be provided to patients and employees about patient conduct and responsibilities; services that the FSED provides; the fees and payment policies for the available services; and ways to express complaints and suggestions to the FSED. (14.4 et. seq.).

This regulation is a major effort to protect the state's citizens and ensure they receive proper care from Free Standing Emergency Departments. The regulation is comprehensive and applies equally to all patients, including those with disabilities. The regulation specifically incorporates the ADA and Section 504. The regulation also requires a disability inclusive written disaster preparedness plan. That being said, SCPD still recommends that language be added to the fire safety section to more adequately address the needs of individuals with disabilities. This is a laudable attempt by DHSS/DHCQ to ensure the quality of care and to regulate the provision of services patients receive from FSED's.

SCPD endorses the proposed regulation.

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

Response: Thank you for your comments. Per Section 15.0, the free standing emergency department must maintain a disability inclusive disaster preparedness plan to manage potential medical and non-medical emergencies, which includes fires. We will take your suggestion under advisement for future updates should this point need clarification in the future.

Findings of Fact:

There were no changes made to the regulations based on the comments received and detailed in the "Summary of

Evidence." DHSS finds that the proposed regulations, as set forth in the attached copy, 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 Free Standing Emergency Departments is adopted and shall become effective January 11, 2021, after publication of the final regulation in the *Delaware Register of Regulations*.

12/11/2020

Date

Molly K. Magarik, Secretary, DHSS

44043340 Free Standing Emergency Centers Departments
(Break in Continuity of Sections)

11.0 Medical Records

(Break in Continuity Within Section)

11.8 Each time the patient visits the FSED the medical record shall contain sufficient accurate information. This information must include, but is not limited to:

(Break in Continuity Within Section)

11.8.15 Conclusion at the termination of evaluation ~~and/or~~ or treatment, including final disposition, the patient's condition on discharge or transfer, and any instructions given to the patient or family for follow-up care.

***Please note that no additional changes were made to the regulation as originally proposed and published in the April 2020 issue of the *Register* at page 817 (23 DE Reg. 817). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

4404 Free Standing Emergency Centers

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
 16 DE Admin. Code 11004 & 11006

ORDER

POC – Changing Providers And Charging Fees

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 Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to Purchase of Care ("POC") families. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del. C. § 10114 and its authority as prescribed by 31 Del. C. § 512.

The Department published its notice of proposed regulation changes pursuant to 29 Del. C. § 10115 in the October 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 2, 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 January 11, 2021 the Department/DSS proposes to amend Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to POC families.

Statutory Authority

- 42 U.S.C. 9858
- 45 CFR 98.30
- 45 CFR 98.45

Background

DSS is revising the eligibility requirements for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant Act, which mandated new eligibility requirements for child care assistance. DSS has changed the formatting of the regulations so that the policy is easier for DSS staff, stakeholders, and the public to understand.

DSS amended DSSM 11004.9.3 Changing Child Care Providers to clarify parental rights and when it is appropriate to change or add a child care provider to a family's POC case. DSS added a section to the policy to provide procedures for DSS eligibility staff.

DSS amended DSSM 11006.4.2 Charging Fees to Purchase of Care Families to provide guidance to child care providers regarding the fees they may charge POC families. The policy explains that a fee policy must be developed, presented, and explained to families. DSS also added a section regarding the Purchase of Care Plus program, with procedures and documentation that must be available.

Purpose

The purpose is to update policy related to changing child care providers and charging fees to POC families.

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, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for 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 November 2, 2020.

Fiscal Impact Statement

DSS amended these regulations to provide clear and accurate directions on parental choice and fees for the Child Care Subsidy Program. These regulations are currently in place and there are no new financial responsibilities associated with the amendments.

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 October 2020 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to Purchase of Care families, is adopted and shall be final effective January 11, 2021.

12/17/2020

Date of Signature

Molly K. Magarik, Secretary, DHSS

POLICY – AMENDMENT

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

11004.9.3 Changing ~~Provider~~ Child Care Providers45 CFR 98.30

~~DSS designed the CCMIS so that there would not be two "active" authorizations for one child at the same time. However, there is one exception: when a parent/caretaker wishes to change providers. In this instance, enter the change of provider and the CCMIS will (1) change the old authorization to close it effective the end of the current month, and (2) create a new authorization effective the date of the change in provider. Both authorizations will remain in effect until the first expires. This will allow DSS to pay both providers.~~

~~However, because DSS requires that providers be given at least five days notice of this change, there may be instances when the original authorization will remain in effect until the last day of the next month. Since the Change Authorization will be mailed to the provider, do not send a separate notice. Ensure that parent/caretakers pay any fees they may owe the old child care provider.~~

Parents and caretakers who receive child care subsidy for their children have parental choice in selecting child care providers. DSS case workers will follow the procedures in this policy when a parent or caretaker requests to change or add a child care provider.

1. Parents and caretakers have parental choice to change and add child care providers during their eligibility period for the Purchase of Care program.

- A. A parent or caretaker who wants to change child care providers must give a five-day notice to their current child care provider prior to withdrawing the child from the child care site.
- B. A parent or caretaker may add an alternate child care provider in the event the primary child care provider is unable to care for the child.
 - i. The alternate child care provider cannot receive payments for absent days.
- C. A parent or caretaker may use two child care providers if care is needed during different hours or at different locations.
 - i. DSS will authorize each provider only for the days and hours that the child attends each child care site.
 - ii. Examples:
 - a. A parent is employed and works day and evening hours. The parent may use one provider during the day and a second provider during the evening.
 - b. A parent is employed and works two days at one location and three days at another location. The parent may use one provider near one location and a second provider near the other location.

2. DSS will remove and add child care provider authorizations in a family's Purchase of Care case when the parent or caretaker requests to change providers.

- A. DSS case workers will end the authorization in the eligibility system for the child care site that the child will no longer attend effective the last day of the month the authorization will end.

B. DSS case workers will add the authorization in the eligibility system for the new child care site effective the first day the child will attend the site.

3. DSS will add an additional child care provider authorization to a family's Purchase of Care case when the parent or caretaker requests an alternate provider or two providers.

A. DSS case workers will confirm a parent's or caretaker's need when a parent or caretaker requests two child care providers.

B. DSS case workers will add the authorization in the eligibility system for the new child care site effective the first day the child will attend the site.

POLICY – AMENDMENT

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

11006.4.2 Fee Paying Clients Charging Fees to Purchase of Care Families

45 CFR 98.45

~~The client fee is based on the DSS scale according to the client's income. The provider is responsible for collecting fees from their private and DSS fee-paying clients. The provider must develop a fee collection policy that states the fees collected prior to or after delivery of service and the frequency of collection, such as weekly, biweekly, or monthly. The provider's fee collection policy should be discussed with the parent/caretaker upon initial enrollment at the facility and should be reviewed periodically.~~

~~The provider must ensure that enrollment procedures include how the provider informs parent/caretakers of the availability of purchase of care slots for non-fee paying clients.~~

Purchase of Care (POC) providers may charge certain fees to families receiving the POC child care subsidy.

1. POC providers can charge families receiving POC only for the following fees:

A. The parent copayment that DSS determines based on the family's household size and income.

B. Purchase of Care Plus (POC+) fees that are determined by subtracting the State's daily payment rate from the provider's private daily payment rate. Families in the POC+ program must pay the difference between the two rates.

C. Late pick-up fees charged when a child is picked-up after the family's authorized hours for care.

D. Field trip fees charged for a child to participate in an activity.

i. The provider must present the activity, the date of the activity, and the cost of the activity to the family prior to the field trip.

ii. The provider must allow the family to choose if the child will participate in the field trip.

iii. If the child does not participate in the field trip, the provider cannot charge the family for the field trip date if child care services are not available to the child because the provider's site is closed during the activity.

E. Returned check fees charged when the family's payment cannot be collected.

- 2. Fees not listed in section (1) must be approved by DSS before the provider can charge the family.**
- 3. A family that receives POC is responsible for paying their parent copayment (if applicable) and the fees listed in section (1) when the fee is charged by the POC provider.**
 - A. A family must continue to pay their parent copayment during instances when their POC provider is closed, unless DSS waives the family's copayment for an approved reason.
 - i. A family will pay their copayment when their provider is closed due to:
 - Vacation;
 - Illness;
 - Training; or
 - A provider holiday that replaces a DSS approved holiday.
- 4. POC providers are responsible for collecting fees from the families that they serve.**
- 5. POC providers must develop a fee policy, discuss the policy with families at initial enrollment, and review the policy with families at least every 12 months.**
 - A. The provider's fee policy must state:
 - i. The fees that the provider will charge to families prior to, during, and after delivery of service; and
 - ii. The provider's fee collection schedule.
 - B. Providers who are approved by DSS to charge POC+ fees must:
 - i. Display the POC+ certificate;
 - ii. Inform families of regular POC slots as slots become available;
 - iii. Review the POC+ contract with families;
 - iv. Complete a budget with families that agree to pay POC+ fees; and
 - v. Maintain copies of executed POC+ contracts signed by families and the provider.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11003

ORDER

Defining Family Size For Child Care

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 define family size for child care. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the October 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 2, 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 January 11, 2021, the Department/DSS proposes to amend the Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to define family size for child care.

Statutory Authority

45 CFR 98.20

Background

DSS is revising the eligibility requirements for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant Act, which mandated new eligibility requirements for child care assistance.

DSS amended DSSM 11003.9.3 "Defining Family Size for Child Care" to include the current criteria that DSS staff are to follow to calculate the family size, which is used to determine the family's financial eligibility and copayment for child care. DSS changed the formatting of the policy so that the policy is easier for DSS staff, stakeholders, and the public to understand.

Summary of Proposal

Purpose

The purpose of the proposed change is to explain how DSS groups parents and children together to determine eligibility for Purchase of Care. The family size includes parents and minor children who live together and whose needs and incomes are considered together for child care subsidy.

Summary of Proposed Changes

Effective for services provided on and after January 11, 2021, the Department/DSS proposes to amend Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to define family size for child care.

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, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for 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 November 2, 2020.

Fiscal Impact Statement

DSS amended the eligibility policy to provide clear and accurate directions on the eligibility requirements for the Child Care Subsidy Program. This policy is currently in place and there are no new financial responsibilities associated with the amended eligibility policy.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: One commenter recommended including examples.

Agency Response: DSS has amended the policy to include examples of different family situations.

Comment: One commenter suggested to make it clear that in situations where the caretaker is not a relative, eligibility still exists and only the income of the child is considered.

Agency Response: DSS added a clarifying statement to section (1)(D) that addresses family size and income for non-parent caretakers.

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 October 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 APA because the amendments are non-substantive pursuant to 29 *Del. C.* § 10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding Child Care Subsidy Program, specifically, to define family size for child care, is adopted and shall be final effective January 11, 2021.

12/17/2020

Date of Signature

Molly K. Magarik, Secretary, DHSS

POLICY – AMENDMENT

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

11003.9.3 Defining Family Size for Child Care**45 CFR 98.20**

The people whose ~~needs and income~~ are considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to determine a family's financial eligibility and the child care parent fee. Therefore, knowing who to include in the determination of family size is an important part in deciding financial eligibility. Rules to follow when considering family size are relationship and whose income is counted.

In all instances, the people counted together for family size when determining financial eligibility are the same people counted for family size when determining the family's child care parent fee.

A. Family size is defined as parents (natural, legal, adoptive, step, and unmarried partners with a child in common) and their children under 18 living in the home, will always be included together in the determination of family size.

~~EXAMPLE 1: Ms. Brown, a single mother, lives together with her two year old daughter. She is applying for child care as a Category 31, income eligible case. Mrs. Brown and her daughter are a family size of two.~~

~~EXAMPLE 2: Susan Jones and Mark Evans live together as unmarried partners. Susan has a one year old child from a previous relationship. She applies for Category 31 child care. Susan and her child are a family size of two. Mark is not counted. His income is not considered since he is not the father of the child and there is no child in common between Susan Jones and Mark Evans. (NOTE: If Mark Evans admits to being the natural parent of the child, his income is counted and this is a family of three.)~~

~~EXAMPLE 3: Ms. Johnson, a single parent, has three children ages 13, 10, and 5. She works and needs child care for her youngest child who attends preschool. She is applying for Category 31 child care. Even though she needs care for only one child, her family size is a family size of four when looking at financial eligibility.~~

~~EXAMPLE 4: Ms. Green cares for her three year old niece. Ms. Green works and needs child care. Since Ms. Green is not the parent of the child, she is considered a caretaker. Therefore, Ms. Green's income is not counted and she is not included in the family composition. Ms. Green's niece is considered a family size of one and any income attributable to the niece is countable income.~~

~~EXAMPLE 5: Mom and step dad live with mom's two children, ages two and five, from a previous marriage. Mom and step dad both work and need child care. Mom, step dad, and her two children are a family size of four. Step dad is included.~~

~~EXAMPLE 6: Mom and step dad live with mom's three year old child from a previous marriage. Step dad also has a five year old child from a previous marriage living in the home. Mom and step dad both work and need child care. This family is a family size of four.~~

~~EXAMPLE 7: Mom and her unmarried partner have a child in common. Mom and the unmarried partner also have one child each from previous relationships. Since Mom and the unmarried partner have a child in common the needs and income of each parent will be considered for all three children. This would be a family size of 5. In this example the Child Care Sub system will first build the family together as one AG. If the AG fails the system will break this family down into 3 AG's to determine as many persons eligible as possible. The three AG's~~

would be Mom, unmarried partner and child in common, Mom and child from a previous relationship, unmarried partner and his child from a previous relationship.

B. ~~Adults who are not the natural, legal, adoptive, or step parent of any of the children under 18 living in the home are not included when determining family size and child care fee.~~

~~EXAMPLE: Mom lives with her grandmother. Mom has two children ages 10 and 6 for whom she needs after school care. Mom and her two children are considered a family size of three. Grandmother is not included because she is not the parent of the children nor is her income counted.~~

Family size is defined by the individuals who live together and whose needs and incomes are considered together for child care subsidy.

1. The family size includes parents and their children under age 18 who are living in a household together.

A. DSS defines parents as:

- i. Natural birth parents of a child;
- ii. Legal parents of a child as deemed by a court of law;
- iii. Adoptive parents of a child as deemed by a court of law;
- iv. A stepparent of a child; or
- v. Unmarried partners with a child in common.

B. DSS includes in the family size the parent or parents with their natural, legal, adopted, or step-child or children under age 18 who are residing in the same household.

C. DSS groups unmarried partners together in the family size only if they live together and have a child in common residing in the same household.

i. When DSS groups unmarried partners together, the family size will include:

- The unmarried partners;
- The child in common; and
- Any other child who is the natural, legal, adoptive, or step- child of one of the unmarried partners and residing in the same household.

D. DSS excludes from the family size any adults who are not the natural, legal, adoptive, or step- parent of the child or children in the household, including a caretaker, legal guardian, or unmarried partner who is not the child's parent.

[i. In this type of case:

- **The family size will only include the child or siblings in the household; and**
- **The income of the excluded adult will not count in determining the parent copayment.]**

E. A parent may receive child care even if there is another adult living in the household who is not included in the family size, such as an unmarried partner who is not the child's parent, a relative, or a friend.

2. DSS uses the earned and unearned income per DSSM 11003.9.1 that is received by the parents and children included in the family size to determine the family's financial eligibility and copayment for child care.

[3. **Examples of family size:**

A. **Mom and dad are married with two children. Both parents are employed and meet the financial requirements for child care. This is a family size of four.**

-
- B. Dad and his unmarried partner have a child in common. Both parents are employed. Dad has two children from a previous relationship, and Dad's unmarried partner has one child from a previous relationship. The four children reside in the household. Since there is a child in common, this is a family size of six.
- C. Mom and her unmarried partner have no children in common. Mom is employed and has one child who resides in the household. Mom's unmarried partner is not employed and has two children who reside in the household. Mom is eligible to receive child care for her child only, and this is a family size of two.
- Mom's unmarried partner is not required to care for Mom's child.
 - Mom's unmarried partner is not eligible for child care because the partner does not have a need for care.
- D. Grandfather and grandmother have custody of their grandchild and receive child support for the grandchild. Grandfather is employed, and grandmother is on disability. This is a family size of one.
- Only the child support income received for the grandchild will count when determining the parent copayment.
 - Although grandmother is not working, she is not required to provide care for the child because she is not the child's parent.
- E. Uncle has custody of his nephew and his godchild. Uncle is employed and receives child support for his nephew. Because the children are not related to each other, there are two family size determinations.
- The nephew is a family size of one and only the child support income will count when determining the parent copayment.
 - The godchild is a family size of one and no income will count when determining the parent copayment.]
-

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11003

ORDER

Determining Special Needs and Income Eligibility for Child Care

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Child Care, specifically, to determine special needs and income eligibility for child care. 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 January 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 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

Purpose

The proposed rules explain technical and financial eligibility requirements for the Child Care Subsidy Program.

Statutory Authority

- 45 CFR 98.20 (a)
- 45 CFR 98.21 (c)

Background

DSS is revising the eligibility requirements for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant Act, which mandated new eligibility requirements for child care assistance. DSS has changed the formatting of the policies so that the policies are easier for DSS staff, stakeholders, and the public to understand.

DSS is proposing to remove DSSM 11003.6 "Determining Income Eligibility" as it is a redundant policy and the information can be found in DSSM 11003.9.1 "Determining Income Eligibility for Child Care" and DSSM 11003.7.8 "Determining Special Needs for Child Care."

DSS is proposing to remove DSSM 11003.7.7 "Income Waiver" as it is a redundant policy and the information can be found in DSSM 11003.7.8 "Determining Special Needs for Child Care."

DSS is proposing to amend DSSM 11003.9.1 "Determining Income Eligibility for Child Care" to include the current process that DSS staff are to follow when determining financial eligibility for the Child Care Subsidy Program. DSS updated the countable and excluded income sections to include current income requirements for the program, and a section on the net income test for parent copayments was added.

NOTE: Regulations 11003.6, 11003.7.7 and 11003.9.1 are being published as final. Regulations 11003.6, 11003.7.7, and 11003.9.1 were originally proposed with 11003.7.8 at 23 DE Reg. 531 (01/01/20) (Prop.). Regulation 11003.7.8 was published separately as final in the Delaware Register of Regulations at 24 DE Reg. 164 (08/01/20) (Final).

Summary

Effective for services provided on and after January 11, 2021 Delaware Health and Social Services/Division of Social Services proposes to amend sections 11003.6, 11003.7.7 and 11003.9.1 of the Division of Social Service Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care.

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, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for 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 January 31, 2020.

Fiscal Impact Statement

DSS amended the eligibility policies to provide clear and accurate directions on the eligibility requirements for the Child Care Subsidy Program. These policies are currently in place and there are no new financial responsibilities associated with the amended eligibility policies.

The following summarized comments were received:

Comment: One commenter recommended including more measures to account for fluctuating income in determining financial eligibility for families. Under federal regulations, states must establish eligibility processes that take into account irregular fluctuations in earnings so that temporary increases in income do not affect eligibility

Agency Response: DSS has amended DSSM 11003.9.1(3) to change the period from three months to "three to six months of family's income." A section will be added to the policy that will provide guidance to DSS staff on calculating overtime pay.

Comment: One commenter suggested DSS waive child care copayments for families whose net income falls at or below the federal poverty level (FPL), not just for families with net incomes below 40% of FPL.

Agency Response: Families that apply for child care subsidy have two opportunities for a waived copayment based on income and household size.

DSS uses a gross income test to determine if a family's gross income is at or below 70% of the FPL. If the family's gross income is at or below 70% of the FPL, DSS will waive the family's copayment.

DSS uses a net income test when a family's income is over 70% of the FPL. For the net income test, DSS deducts

the family's shelter and utility costs from their gross income to determine if the family's net income falls below 40% of the FPL. If the family's net income is below 40% of the FPL, DSS determines that the family has an "excessive financial burden" and will waive the family's copayment.

DSS is preparing to publish amendments to DSSM 11004.7 and DSSM 11004.7.1 to update the policies with information on the new copayment structure and the excessive financial burden net income test. Text regarding the parent fee and the sliding fee scale will be removed.

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 January 2020 *Register of Regulations* should be adopted with additions. The Department finds that the proposed addition does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 Del.C. §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care, is adopted and shall be final effective January 11, 2021.

12/11/2020

Date of Signature

Molly K. Magarik, Secretary, DHSS

POLICY – AMENDMENT

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

~~41003.6 Determining Income Eligibility~~

~~45 CFR 98.20~~

~~This policy applies to applicants for and recipients of child care assistance.~~

~~1. Gross Income Is Capped~~

~~Gross monthly income must be equal to or less than 200% of the Federal Poverty Limit for the family size.~~

~~2. Income Requirement~~

~~The income requirement applies to all income eligible child care programs.~~

~~Exception: Families referred by and active with the Division of Family Services do not have to meet the income limit.~~

16 DE Reg. 213 (08/01/12)

POLICY – AMENDMENT

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

~~41003.7.7 Income Waiver~~

~~DSS will waive the 200 percent income eligibility limitation for families when the child is receiving or needs to receive protective services. The need for care in this instance is coordinated with the Division of Family Services and is part of a range of services being provided to and/or required of the parent to help ensure the protection of~~

~~the child.~~

POLICY – AMENDMENT

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

11003.9.1 Determining Income Eligibility for Child Care

~~45 CFR 98.11(b)(2) 45 CFR 98.21(c)~~

~~A. Countable income. All sources of income, earned (such as wages) and unearned (such as child support, Social Security income, etc.) are countable income when determining a family's monthly gross income. Monthly gross income includes the following:~~

~~1. Money earned from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses. Count the amount earned before deductions are made for taxes, bonds, pensions, union dues, etc. This is gross income. Wages need to be equal to the federal minimum wage or an equivalent.~~

~~Earnings from self-employment are counted after applying a standard deduction for self-employment expenses. To get the self-employment deduction, self-employed households must verify at least one business cost to produce income.~~

~~Self-Employment Standard Deduction for Producing Income~~

~~The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost of Living Adjustment (COLA) notice each October. The standard deduction is considered the cost to produce income.~~

~~2. Social Security pensions, Supplemental Security Income, Veteran's benefits, public assistance payments, net rental income, unemployment compensation, workers compensation, pensions, annuities, alimony, adoption assistance, disability benefits, military allotments, Rail Road Retirement, and child support.~~

~~B. Disregarded Income~~

~~Monies received from the following sources are not counted:~~

~~1. per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commission or the Court of Claims;~~

~~2. payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act;~~

~~3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);~~

~~4. withdrawal of bank deposits;~~

~~5. money borrowed or given as gifts;~~

~~6. capital gains;~~

~~7. the value of USDA donated foods;~~

~~8. the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;~~

~~9. any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;~~

- ~~10. loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;~~
- ~~11. any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act;~~
- ~~12. home produce used for household consumption;~~
- ~~13. all of the earned income of a child under age 18 who is a student who is working but is not a full time employee (such as high school students who are employed full time during summer);~~
- ~~14. all payments derived from participation in projects under the Food-Benefit Employment & Training (FB E&T) program or other job training programs;~~
- ~~15. all Vista income; and~~
- ~~16. all income derived as a Census taker.~~

~~Resources (such as cars, homes, savings accounts, life insurance, etc.) are not considered when determining financial eligibility or the parent fee.~~

This policy outlines how DSS determines income eligibility for applicants and recipients of the Child Care Subsidy Program.

- 1. DSS will determine income eligibility for the Child Care Subsidy Program when a family submits a completed and signed application and completes an interview for child care assistance.**
- 2. Case workers must verify the past 30 days of income received by the family.**
- 3. If a family's income fluctuates, DSS will average the last three [to six] months of the family's income [and exclude temporary income (such as overtime, bonus, or holiday pay)] for eligibility determination.**
- 4. DSS considers all gross earned and unearned income received by the family when determining child care eligibility.**
 - A. Gross income is the amount of earned and unearned income before deductions such as taxes, bonds, pensions, and union dues.
 - B. To be eligible for child care assistance, a family's gross monthly income must be equal to or less than 185% of the Federal Poverty Level (FPL) for the family size.
- 5. DSS counts the following income when determining child care [eligibility, eligibility:]**
 - A. Earned income, including, but not limited to:
 - i. Wages and salary;
 - ii. Armed forces pay;
 - iii. Commissions, tips, and piece-rate payments; [and]
 - iv. Self-employment earnings.
 - a. Self-employment earnings are counted after applying a standard deduction for self-employment expenses.
 - b. Self-employed clients must verify at least one business cost to receive the self-

employment deduction.

c. Self-employment earnings must be equal to the federal minimum wage.

- B. Unearned income, including, but not limited to:
- i. Social Security benefits, including Social Security Disability Income (SSDI), Supplemental Security Income (SSI), and Retirement, Survivors, and Disability Insurance (RSDI);
 - ii. Veteran's benefits and military allotments;
 - iii. Public assistance payments, including Temporary Assistance for Needy Families (TANF);
 - iv. Net rental income;
 - v. Unemployment compensation;
 - vi. Workers' compensation;
 - vii. Pensions;
 - viii. Railroad retirement;
 - ix. Annuities; [and]
 - x. Alimony and child support.

6. DSS excludes the following income when determining child care ~~eligibility~~ eligibility:]

- A. The value of U.S. Department of Agriculture (USDA) donated ~~[foods, foods;]~~
- B. The value of Supplement Nutrition Assistance Program (SNAP) food ~~[benefits, benefits;]~~
- C. The value of supplemental food assistance under the Child Nutrition Act of 1966 and the National School Lunch Act, as ~~[amended, amended;]~~
- D. The value of homegrown produce used for household ~~[consumption, consumption;]~~
- E. The earned income of a child under the age of 18 years old who is a ~~[student, student;]~~
- F. All AmeriCorps VISTA ~~[income, income;]~~
- G. Temporary U.S. Census Bureau employment income received during the census ~~[period, period;]~~
- H. Temporary income received by a family that may determine the family to be over 85% of the State Median Income ~~[(SMI)- (SMI);]~~
 - i. The family must submit documentation of when the income will end.
 - ii. The temporary work period cannot exceed 90 days.
- I. The money received from the sale of property such as stocks, bonds, a house, or a ~~[car, car;]~~
 - i. If the client is in the business of selling such property, the net proceeds are counted as income from self-employment.
- J. Withdrawals from bank ~~[accounts, accounts;]~~
- K. Money borrowed or received as a ~~[gift, gift;]~~

- L. Capital [~~gains;~~ gains;]
 - M. Federal income tax [~~returns;~~ returns;]
 - N. Non-recurring lump sum payments (e.g. a lump sum child support [~~payment;~~ payment];)
 - O. Any payments derived from participation in activities under the Food Benefit Employment & Training program or other job training [~~programs;~~ programs;]
 - P. Loans or grants, such as scholarships obtained and used under conditions that preclude their use for current living [~~costs;~~ costs;]
 - Q. Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education [~~Act;~~ Act;]
 - R. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commission or the Court of [~~Claims;~~ Claims;]
 - S. Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the [~~Act;~~ Act; and]
 - T. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
7. **DSS does not consider resources such as cars, homes, savings accounts, or life insurance when determining income eligibility for child care assistance.**
8. **Once eligibility has been established, DSS will complete a net income test to determine if the family will have a copayment for child care assistance.**
- A. Net income is the total income counted in the child care budget after shelter and utility deductions have been applied.
 - B. The net income test determines if the family has an excessive financial burden. DSS will waive the copayment if the family's income falls below 40% of the FPL per DSSM 11004.7.1.
-

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6305(a); (7 **Del.C.** §§6010(a) and 6305(a))

7 **DE Admin. Code** 1302

Secretary's Order No.: 2020-WH-0034

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1302, Delaware's Regulations Governing Hazardous Waste (DRGHW)

Date of Issuance: December 14, 2020

Effective Date of the Amendment: January 21, 2021

1302 Regulations Governing Hazardous 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 1302, *Delaware's Regulations Governing Hazardous Waste*. Specifically, the Department proposes to amend 7 DE Admin. Code 1302, *Delaware's Regulations Governing Hazardous Waste* ("DRGHW") to incorporate federal hazardous waste regulatory amendments promulgated by the United States Environmental Protection Agency ("EPA") into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its Resource Conservation and Recovery Act ("RCRA") program delegation and remain current with the federal hazardous waste program.

In accordance with the RCRA program, the Department is required to implement state regulations that are no less stringent than those at the federal level. The Department evaluated the most recent EPA rules related to the aforementioned DRGHW regulation and determined that the following federal rules are appropriate and necessary to be adopted by Delaware to add consistency and clarification to the Department's DRGHW regulation: (1) Imports and Exports of Hazardous Waste, (2) Hazardous Waste Generator Improvement Rule, (3) Confidentiality Determinations on Hazardous Waste Import/Export documents, (4) Hazardous Waste Electronic Manifest Fee Rule, (5) Safe Management of Recalled Airbags, (6) Management Standards for Hazardous Waste Pharmaceuticals, and Amendment to P075 Listing for Nicotine, and (7) Increasing Recycling: Adding Aerosol Cans to Universal Waste Rule. The Department believes the Amendments will provide greater environmental protection and reduce human health risks.

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 August 1, 2020 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on August 27, 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 August 1, 2020 *Delaware Register of Regulations*, the Department identified two errors in the initial proposed Amendments (Department's Exhibit 7). The two identified errors were 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 six (6) members of the public in attendance at the virtual public 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 September 11, 2020, with two (2) 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. The Department's TRM fully addresses the comments provided by EPA, and also sets forth additional revisions made following the virtual public hearing in response to the same.

The additional revisions to the proposed Amendments: (1) provide corrections to clerical errors in the proposed regulatory language found subsequent to the hearing; (2) better mirror the language found in the federal regulations; and (3) provide greater clarity and understanding of the revised proposed Amendments for the benefit of the regulated community. It should be noted that none of the additional revisions as proposed in the Department's TRM are substantive in nature, nor do they constitute any new requirements of the regulated community that were not previously vetted at the time of the public hearing. Thus, no additional noticing or hearings were necessary to be held by the Department in this matter.

Hearing Officer Theresa Newman prepared her report dated October 22, 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 proposed regulatory Amendments to 7 DE Admin. Code 1302, *Delaware's Regulations Governing Hazardous Waste*, are well-supported. I further find that the Department's Waste and Hazardous Substances experts fully developed the record to support adoption of these Amendments. 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 August 27, 2020 and during the 15 days subsequent to the hearing (through September 11, 2020), before making any final decision;
4. Promulgation of the *revised* proposed amendments to 7 DE Admin. Code 1302, *Delaware's Regulations Governing Hazardous Waste*, will enable the Department to incorporate the above referenced federal amendments promulgated by EPA into Delaware's hazardous waste management program. Additionally, this promulgation will allow Delaware to maintain its RCRA program delegation and remain current with the federal hazardous waste program;
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption "B5," as the *revised* proposed Amendments are based on federal regulations that comply with, and address the Regulatory Flexibility Act;
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 August 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

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

1302 Regulations Governing Hazardous Waste

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL
Statutory Authority: 24 Delaware Code, Section 1775(c) (24 **Del.C.** §1775(c))
24 **DE Admin. Code** 1770

ORDER

1770 Respiratory Care Practice Advisory Council

FINAL ORDER ADOPTING REGULATION CHANGES

The Delaware Respiratory Care Practice Advisory Council ("the Council") of the Board of Medical Licensure and Discipline ("the Board") pursuant to 24 *Del. C.* § 1775(c), proposed to revise its regulations. Currently, Section 11.0 states that a licensee whose license has expired may renew that license within one year after the expiration date upon fulfilling specified requirements. The lengthy late renewal period is inefficient and confusing for licensees. The Council proposes amending Section 11.0 by changing the late renewal period from one year to sixty days. This change will clarify and streamline the licensure renewal process and the associated continuing education audit process.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware Register of Regulations on November 1, 2019, a public hearing was held on January 8, 2020, at a regularly scheduled meeting of the Council to receive verbal comments regarding its proposed amendments to its regulations. No comments were submitted at that time.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Council considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the News Journal;

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the Delaware State News;

There was no verbal testimony given at the public hearing on January 8, 2020. No written comments were received by the Board during the initial thirty-day public comment period; nor were any written comments received after the public hearing during the fifteen-day 29 *Del. C.* § 10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 *Del. C.* § 1775(c) the Council has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed amendments to Regulation 11 seek to change the late renewal period from one year to sixty days in order to clarify and streamline the licensure renewal process and the associated continuing education audit process.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Council's rules and regulations.
6. Having received no public comments, the Council finds no reason to amend the regulations as proposed.

**RECOMMENDATION TO THE BOARD OF MEDICAL
LICENSURE AND DISCIPLINE**

7. By the unanimous affirmative vote of the undersigned members, the Respiratory Care Practice Advisory Council hereby adopts the rules and regulations as published in the Register of Regulations of November 1, 2019, Volume 23, Issue 5 and recommends approval of such rules and regulations to the Board of Medical Licensure and Discipline.

8. If approved by the Board, these rules and regulations will be effective ten days after publication of the Board's final order in the Register of Regulations.

Respectfully submitted this 8th day of July, 2020.

/s/ Jefferson Mixell, Chairperson

/s/ Paul O'Brien, Vice Chair

/s/ Jaime Stout-Marker

/s/ Lori Boylan

/s/ Laurene Eckbold

/s/ Stephen Lawless, M.D.

/s/ Rachael Ali-Permeil

WHEREAS, the Board of Medical Licensure and Discipline has considered the attached recommendation of the Respiratory Care Practice Advisory Council for approval of amended rules and regulations changing the late renewal period from one year to sixty days; and

WHEREAS, the Board has determined to approve the aforesaid rules and regulations as proposed by the Respiratory Care Practice Advisory Council and attached hereto as Exhibit A.

NOW THEREFORE IT IS ORDERED by the Board of Medical Licensure and Discipline:

1. The rules and regulations recommended by the Respiratory Care Practice Advisory Council changing the late renewal period from one year to sixty days are hereby approved by the Board of Medical Licensure and Discipline.

2. The rules and regulations shall be effective ten days after publication of this Final Order in the Register of Regulations.

SO ORDERED this 17 day of November, 2020.

/s/ Garrett H. Colmorgen, M.D., President

/s/ Stephen Lawless, M.D., Vice-President

/s/ Randeep Kahlon, M.D.

/s/ Bryan Villar, M.D.

/s/ Georges A. Dahr, M.D.

Karyl Rattay, M.D. (Absent)

/s/ Malvine Richard, Ed.D., Public Member

/s/ Barry L. Bakst, D.O.

/s/ Janice Truitt, Public Member

/s/ Melissa Warren, Public Member

/s/ N.C. Vasuki, Public Member

/s/ Sharon Williams Mayo, Public Member

/s/ Madelyn Nellius, Public Member

/s/ Joseph F. Rubacky, D.O.

/s/ Mary Lomax, Ed.D., Public Member

*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 November 2019 issue of the *Register* at page 366 (23 DE Reg. 366). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1770 Respiratory Care Practice Advisory Council

DIVISION OF PROFESSIONAL REGULATION

2925 REAL ESTATE COMMISSION EDUCATION COMMITTEE

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 Del.C. §2906(a)(1))
24 DE Admin. Code 2925

FINAL ORDER

2925 Real Estate Commission Education Committee

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on November 12, 2020 at a scheduled meeting of the Delaware Real Estate Commission ("Commission") to receive comments regarding proposed amendments to the Commission's Education Guidelines ("Guidelines"). Specifically, Section 4.0 has been revised to state that prelicensing education and continuing education may be delivered in a traditional classroom setting or by distance learning, which may be asynchronous or synchronous. Asynchronous learning is "distance learning without the opportunity for real time interaction between the instructor and students." Synchronous learning is "distance learning that happens in real time where there is the opportunity for direct interaction between the instructor and students." The proposed revisions outline the requirements for each method of instruction. Inclusion of synchronous learning in Section 4.0 will expand educational opportunities for applicants and for licensees without compromising professional standards. This proposal strikes the current Section 4.0, including the amendment in subsection 4.5, which was adopted by emergency regulation as published in the *Register of Regulations* on August 1, 2020, Volume 24, Issue 2.

The proposed changes to the Guidelines were published in the *Register of Regulations*, Volume 24, Issue 4, on October 1, 2020. Notice of the November 12, 2020 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 Del.C. § 10118(a), the date to receive final written comments was November 30, 2020, 15 days following the public hearing. The Commission deliberated on the proposed revisions at its regularly scheduled meeting on December 10, 2020.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Commission Exhibit 1: *News Journal* Affidavit of Publication.

Commission Exhibit 2: *Delaware State News* Affidavit of Publication.

There was no verbal testimony given at the public hearing on November 12, 2020. Further, no written comments were received by the Commission.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony on the proposed amendments to the Commission's Guidelines. There were no public comments provided to the Commission either in writing or during the public hearing.

Pursuant to 24 Del.C. § 2906(a)(1), the Commission has the statutory authority to promulgate rules and

regulations.

Having received no public comments, the Commission finds no reason to amend the regulations as proposed.

Decision and Effective Date

The Commission hereby adopts the changes to the Guidelines as proposed, to be effective 10 days following publication of this Order in the *Register of Regulations*. The new Guidelines are attached hereto as Exhibit A. **IT IS SO ORDERED** this 10th day of December 2020.

DELAWARE REAL ESTATE COMMISSION

/s/ Randy Marvel, Professional Member, Chairperson	/s/ Lynette Scott, Professional Member
/s/ Nora Martin, Professional Member, Vice Chairperson	/s/ Jason Giles, Professional Member
/s/ Beverly Zimmerman, Public Member, Secretary	Lynn Rogers, Public Member (ABSENT)
/s/ Nikki Lane, Professional Member	/s/ Deborah Cottrell, Public Member

***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 October 2020 issue of the *Register* at page 335 (24 DE Reg. 335). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2925 Real Estate Commission Education Committee

CASH MANAGEMENT POLICY BOARD

Statutory Authority: 29 Delaware Code, Section 2716 (29 Del.C. §2716)
1 DE Admin. Code 1201

REGULATORY IMPLEMENTING ORDER

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

The Cash Management Policy Board (the "Board") hereby adopts and issues this ORDER repealing the prior guidelines and promulgating revised guidelines for the deposit and investments of State funds (the "Guidelines").

I. BACKGROUND

The Board is authorized by statute to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State Pension Fund or the State Deferred Compensation Program, and (b) to determine the terms, conditions, and other matters relating to those investments, including the designation of permissible investments. See 29 Del.C. §2716(a). The Board previously promulgated Guidelines that, among other things, govern the deposit of State funds in demand deposit accounts and the purchase and sale of securities by the State's investment managers. See 1 DE Admin. Code 1201.

The Board, upon the recommendations of its investment subcommittee, has proposed changes to the Guidelines. The changes: (1) provide a definition for the capitalized term "Merchant Bank" and require the Office of the State Treasurer ("OST") to reflect approved Merchant Banks on the list of accounts and cash management banks that OST is required to maintain on its website; (2) extend the reserve account maturity restriction from 10 years to 10 years and one month to permit managers to invest in securities that would otherwise be disqualified because of a technical timing issue; (3) clarify that, where the Guidelines require two or more ratings from a nationally recognized statistical rating organization, the lowest such rating shall control; (4) clarify the deadline for managers to remove securities that (a) were purchased in violation of the Guidelines, or (b) cease to qualify as

permissible investments as the result of a downgrade; and (5) modify the mutual fund exception to require endowment or other managers utilizing a mutual fund to adhere to those specific provisions of the Guidelines that OST, after consultation with the Board's consultant, determines should apply to and govern the account. The Board, after a public meeting on August 26, 2020, and by unanimous vote, approved revised Guidelines for proposal under Delaware's Administrative Procedures Act, 29 **Del.C.** Ch. 101 (the "APA").

In accordance with the APA, OST caused notice and a copy of the revised Guidelines to be published in the *Delaware Register of Regulations*, Vol. 22, Issue 4, from October 1, 2020 through October 31, 2020. No comments were received relating to the proposed changes. The revised Guidelines are approved as proposed.

II. FINDINGS OF FACT

The Board, for the reasons discussed in detail at, and reflected in the minutes of, the Board meeting convened on August 26, 2020, finds that the revised Guidelines are necessary and appropriate to ensure the safe deposit and prudent investment of State funds.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Board concludes that it is appropriate to repeal the Guidelines presently published at 1 **DE Admin. Code** 1201 and replace them with the revised Guidelines attached hereto as Exhibit A.

IV. TEXT AND CITATION

The text of 1 **DE Admin. Code** 1201, as amended hereby, shall be in the form attached hereto as Exhibit A and shall be cited as 1 **DE Admin. Code** 1201, Objectives and Guidelines for the Investment of State of Delaware Funds.

V. EFFECTIVE DATE

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

IT IS SO ORDERED the 2nd day of December 2020.

John V. Flynn, Chair
Cash Management Policy Board

David Marvin, Chair
Investment Subcommittee

Warren C. Engle, Chair
Banking Subcommittee

Colleen C. Davis, Member
State Treasurer

Jeffrey Bullock, Member
Secretary, Department of State

Manubhai C. Karia, Co-Chair
Investment Subcommittee

Tarrie Miller, Co-Chair
Banking Subcommittee

Richard J. Geisenberger, Member
Secretary, Department of Finance

Ruth Ann Jones, Member
Acting Controller General

*Please note that no changes were made to the regulation as originally proposed and published in the October 2020 issue of the *Register* at page 345 (24 DE Reg. 345). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP SEDIMENT AND STORMWATER PROGRAM

Statutory Authority: 7 Delaware Code, Section 4006(i) (7 **Del.C.** §4006(i))
7 **DE Admin. Code** 5101

GENERAL NOTICE

Regulatory Guidance Documents for Regulation 5101 Sediment and Stormwater Regulations

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship Sediment and Stormwater Program has released revised regulatory guidance documents for public review. These documents support Regulation No. 5101 Sediment and Stormwater Regulations, as set forth at 7 *Del.C.* §4006(h) and (i).

The regulatory guidance documents include the following:

- Step 1: Stormwater Assessment Study (SAS) Checklist
- Step 2: Preliminary Sediment and Stormwater Plan Review Checklist
- Step 3: Sediment and Stormwater Plan Review Checklist
- Step 2/3: Sediment and Stormwater Plan Review Checklist

The DNREC Sediment and Stormwater Program hereby provides notice of these regulatory guidance documents, pursuant to 7 *Del.C.* §4006(i), which incorporates the provisions of 7 *Del.C.* §6004. A public hearing will NOT be held unless the Secretary receives a meritorious request for a hearing within 15 days of date of this notice, ending January 15, 2021. A request for a public hearing shall be in writing and show familiarity with the regulatory guidance document and provide a reasoned statement of the regulatory guidance document's probable impact.

These documents may be reviewed under the Plan Review heading at the following link:

<https://dnrec.alpha.delaware.gov/watershed-stewardship/sediment-stormwater/resources/>

Questions regarding the revised regulatory guidance documents may be directed to Elaine Webb, elaine.webb@delaware.gov.

PREPARED BY:

Elaine Z. Webb

(302) 739-9921

elaine.webb@delaware.gov

DELAWARE SOLID WASTE AUTHORITY**PUBLIC NOTICE****502 Statewide Solid Waste Management Plan**

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing to adopt a Statewide Solid Waste Management Plan to replace, in its entirety, the Statewide Solid Waste Management Plan last adopted on December 3, 2015.

Purpose: DSWA is required, pursuant to 7 *Del. C.* § 6403, to adopt a Statewide Solid Waste Management Plan. This Plan was initially adopted in May, 1994, and has been periodically updated and replaced. The purpose of the Statewide Solid Waste Management Plan is to establish policies and goals respecting solid waste disposal and recycling diversion, together with identification of programs necessary to implement these policies and goals. The Plan is intended to address the roles and responsibilities of DSWA in solid waste disposal and recycling diversion activities as they relate to both public bodies (State, counties, municipalities) and private enterprise. The Statewide Solid Waste Management Plan proposed for adoption will provide the framework for actions to be taken by DSWA and other stakeholders in Delaware to maximize recycling and diversion of materials from landfill disposal, and to help advance sustainable materials management practices and minimize greenhouse gas emissions in the State.

Notice of Hearing: A virtual public hearing will be held via Zoom. Join Zoom meeting as follows:

When: January 25, 2021 04:00 PM Eastern Time (US and Canada)

Topic: Hearing for Changes to the Statewide Solid Waste Management Plan

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83566671572?pwd=S1ducmywRjJZSC9zRFRTQmVreE9XZz09>

Passcode: 379487

Join by iPhone one-tap:

US: +13126266799,,83566671572#,,,,,0#,,379487# or
+19292056099,,83566671572#,,,,,0#,,379487#

Join by Telephone:

Dial: 1-301-715-8592

Webinar ID: 835 6667 1572

Passcode: 379487

The hearing is to provide an opportunity for public comment on the proposed Statewide Solid Waste Management Plan. The public record will close at the close of the hearing, unless the hearing officer extends the comment period at the close of the hearing.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, 4:30 p.m., February 9, 2021. Written comments shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Written comments may also be submitted via e-mail at MDP@DSWA.com.

DEPARTMENT OF AGRICULTURE**HARNESS RACING COMMISSION****PUBLIC NOTICE****501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del. C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments for clarity by adding a

definition.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on December 1, 2020, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On December 8, 2020, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to the initial 30-day comment period from January 1 to 31, 2021 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on February 9, 2021 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB January 31, 2021. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

PLANT INDUSTRIES SECTION**PUBLIC NOTICE****805 Rules and Regulations for Delaware Domestic Hemp Production Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 3 of the Delaware Code, Chapter 1, Sections 101(2) & (3), Delaware Department of Agriculture, Plant Industries Section is proposing regulations governing the Delaware Domestic Hemp Production Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Plant Industries Section, 2320 South DuPont Highway, Camden DE 19901, by email to dda_hempprogram@delaware.gov by 4:30 p.m. on January 31, 2021. Please identify in the subject line: Regulations Governing Delaware Domestic Hemp Production Program.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Section staff analysis and the consideration of the comments and written materials filed by other interested persons.

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 TRANSPORTATION**DIVISION OF MOTOR VEHICLES****DRIVER SERVICES****PUBLIC NOTICE****2224 Defensive Driving Course, Providers, and Instructors**

Pursuant to the authority provided by 21 *Del.C.* §302 18 *Del.C.* §2503, 29 *Del.C.* §101, and 29 *Del.C.* §8404,

the Delaware Division of Motor Vehicles (DMV), adopted the Defensive Driving Course, Providers, and Instructors.

The Division of Motor Vehicles seeks to adopt general revisions to its existing regulation, the Defensive Driving Course, Providers, and Instructors, to address recent legislation, current safety concerns, and allow the provider to present the course in different formats. These collective changes are administrative in nature and serve in part to clarify the intent of the Division as enacted through this regulation.

Public Comment Period

The DMV will take written comments on these proposed general revisions to Regulation 2224 of Title 2, Delaware Administrative Code, from January 1, 2021 through January 31, 2021. The public may submit their comments to:

Christie Thomas, Executive Secretary, Division of Motor Vehicles
(dmv-defensivedriving@delaware.gov) or in writing to her attention,
Delaware Department of Transportation (DelDOT)
Division of Motor Vehicles
PO BOX 698
Dover, DE 19903