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# Delaware Register of Regulations

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Issue Date: June 1, 2007

Volume 10 - Issue 12, Pages 1743 - 1844

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## IN THIS ISSUE:

Regulations:

Proposed

Final

Governor:

Appointments

General Notices

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 May 15, 2007.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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## CITATION TO THE DELAWARE REGISTER

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

10 **DE Reg.** 1690 - 1698 (05/01/07)

Refers to Volume 10, pages 1690 - 1698 of the *Delaware Register of Regulations* issued on May 1, 2007.

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## 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.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

1745

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*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 15	4:30 p.m.
August 1	July 16	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.

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---

# TABLE OF CONTENTS

Cumulative Tables.....	1748
------------------------	------

## PROPOSED

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies.....	1758
925 Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	1761

#### Professional Standards Board

1594 Delaware Administrator Standards.....	1774
--	------

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan Attachment 4.19-D Pediatric Nursing Facility Care Reimbursement	1780
DSSM 20330.4.1 Annuities.....	1781

#### Division of Social Services

<b>DSSM:</b> 9032 Mandatory Verification.....	1783
9033 Verification of Questionable Information.....	1783
9038 Verification Subsequent to Initial Certification.....	1783

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Air and Waste Management

1138 Emission Standards for Hazardous Air Pollutants for Source Categories.....	1787
---	------

### DEPARTMENT OF STATE

#### Division of Professional Regulation

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals	1788
--	------

### DEPARTMENT OF TRANSPORTATION

#### Division of Transportation Solutions

Uniform Traffic Control Devices.....	1791
--------------------------------------	------

## FINAL

### DEPARTMENT OF AGRICULTURE

#### Harness Racing Commission

501 Harness Racing Rule 3 Officials.....	1793
--	------

#### Nutrient Management Commission

1201 Nutrient Management Certification Regulations.....	1794
1203 Mandatory Nutrient Management Plan Reporting Implementation Regulations.....	1794

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

103 Accountability for Schools, Districts and the State.....	1795
505 High School Graduation Requirements and Diplomas.....	1802
804 Immunizations; 811 School Health Record Keeping Requirements; 815 Physical Examinations and Screening; 817 Administration of Medications and Treatments.....	1807
922 - 929 Children with Disabilities, Subparts A - I, .....	1816

### DEPARTMENT OF FINANCE

#### Division of Revenue

301 Publication of Tax Information.....	1820
---	------

---

# TABLE OF CONTENTS

1747

---

<b>State Lottery Office</b>	
450 Video Lottery Regulations.....	1821
425 Delaware Lottery Rules and Regulations.....	1821
<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES</b>	
<b>Division of Social Services</b>	
DSSM 11006.6 Complaints.....	1826
<b>DEPARTMENT OF INSURANCE</b>	
1307 Group Coordination Benefits [Formerly Regulation 61].....	1828
<b>DEPARTMENT OF STATE</b>	
<b>Division of Professional Regulation</b>	
3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Air Dispensers.....	1830

---

## GOVERNOR

Appointments.....	1832
-------------------	------

---

## GENERAL NOTICES

<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES</b>	
<b>Division of Social Services</b>	
Temporary Assistance for Needy Families (TANF) Caseload Reduction Credit Report for Fiscal Year 2007.....	1838

---

## CALENDAR OF EVENTS/HEARING NOTICES

State Board of Education Monthly Meeting .....	1841
Dept. of Health and Social Services,	
<i>Div. of Medicaid and Medical Assistance</i> , Notice of Public Comment Periods.....	1841
<i>Div. of Social Services</i> , Notices of Public Comment Periods.....	1841
Dept. of Natural Resources and Environmental Control	
<i>Div. of Air and Waste Management</i> , Notice of Public Comment Period and Public Hearing.....	1842
Dept. of State	
<i>Div. of Professional Regulation:</i>	
Board of Professional Counselors of Mental Health and Chemical Dependency Professionals, Notice of Public Hearing and Comment Period.....	1843
Committee on Dietetics/Nutrition, Notice of Public Hearing and Comment Period.....	1843
Dept. of Transportation	
<i>Div. of Transportation Solutions</i> , Public Notice Uniform Traffic Control Devices.....	1843

---

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

**COUNCIL ON POLICE TRAINING**

Council on Police Training..... 10 **DE Reg.** 341 (Final)

**DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY**

201 Delaware Manufactured Home Relocation Trust Fund Regulations..... 10 **DE Reg.** 928 (Prop.)

**DELAWARE RIVER BASIN COMMISSION**

Proposed Amendments to the Comprehensive Plan and Water Code..... 10 **DE Reg.** 1356 (Prop.)

**DELAWARE STATE FIRE PREVENTION COMMISSION**

2006 Delaware State Fire Prevention Regulations..... 10 **DE Reg.** 342 (Final)

**DEPARTMENT OF AGRICULTURE****Delaware Agriculture Lands Preservation Foundation**

1201 Nutrient Management Certification Regulations..... 10 **DE Reg.** 1504 (Prop.)

1301 Regulations Governing the Delaware Agricultural Forestlands Preservation  
Program ..... 10 **DE Reg.** 9 (Prop.)  
10 **DE Reg.** 825 (Final)

**Delaware Forest Service**

402 State Forest Regulations ..... 10 **DE Reg.** 88 (Final)

**Harness Racing Commission**

501 Harness Racing Rules and Regulations..... 10 **DE Reg.** 217 (Prop.)  
10 **DE Reg.** 393 (Prop.)  
10 **DE Reg.** 980 (Final)  
Section 3.0, Officials..... 10 **DE Reg.** 931 (Prop.)  
10 **DE Reg.** 1358 (Prop.)  
10 **DE Reg.** 1421 (Final)  
10 **DE Reg.** 1653 (Prop.)  
Section 4.0, Associations..... 10 **DE Reg.** 1653 (Prop.)  
Section 5.0, Licenses..... 10 **DE Reg.** 931 (Prop.)  
10 **DE Reg.** 1422 (Final)  
Section 6.0, Types of Races..... 10 **DE Reg.** 1653 (Prop.)  
Section 8.0, Veterinary Practices, Equine Health Medication..... 10 **DE Reg.** 931 (Prop.)  
10 **DE Reg.** 1424 (Final)  
502 Delaware Standardbred Breeders Fund Regulations ..... 10 **DE Reg.** 982 (Final)

**Nutrient Management Commission**

1201 Nutrient Management Certification Regulations..... 10 **DE Reg.** 411 (Prop.)  
10 **DE Reg.** 1098 (Prop.)  
1203 Mandatory Nutrient Management Plan Reporting Implementation  
Regulation..... 10 **DE Reg.** 411 (Prop.)

**Pesticides Management**

601 Pesticide Rules and Regulations..... 10 **DE Reg.** 236 (Prop.)  
10 **DE Reg.** 833 (Final)  
10 **DE Reg.** 1300 (Final)

**Thoroughbred Racing Commission**

1001 Thoroughbred Racing Rules and Regulations..... 10 **DE Reg.** 27 (Prop.)  
10 **DE Reg.** 546 (Final)  
10 **DE Reg.** 1086 (Prop.)



Sections 6.0, 11.0 and 15.0.....10 DE Reg. 1581 (Final)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

101 Delaware Student Testing Program.....	10 DE Reg. 245 (Prop.) 10 DE Reg. 676 (Final) 10 DE Reg. 1103 (Prop.) 10 DE Reg. 1425 (Final)
103 Accountability for Schools, Districts and the State.....	10 DE Reg. 89 (Final)
201 School Shared Decision Making Transition Planning Grants.....	10 DE Reg. 773 (Prop.)
205 District Shared Decision Making Transition Planning Grants.....	10 DE Reg. 773 (Prop.)
210 Approval of School Improvement Grants.....	10 DE Reg. 773 (Prop.) 10 DE Reg. 1140 (Final)
247 Delaware Post Secondary Internship Program at the Washington Center (TWC) for Internships and Academic Seminars.....	10 DE Reg. 779 (Prop.) 10 DE Reg. 1142 (Final) 10 DE Reg. 1430 (Final)
284 Licensure and Certification of Public Education Employees in the Department.....	10 DE Reg. 600 (Prop.) 10 DE Reg. 983 (Final)
290 Approval of Teacher Education Programs.....	10 DE Reg. 835 (Final)
292 Post Secondary Institutions and Degree Granting Institutions of Higher Education.....	10 DE Reg. 850 (Final)
314 Certification Administrative Principal or Assistant Principal Administrator of Adult and Adult Alternative Education, Repeal of .....	10 DE Reg. 613 (Prop.) 10 DE Reg. 984 (Rep.)
320 Certification Adult Education Teacher, Repeal of.....	10 DE Reg. 613 (Prop.) 10 DE Reg. 984 (Rep.)
371 Certification Teacher of the Hearing Impaired.....	10 DE Reg. 781 (Prop.)
372 Certification Administrative Support Personnel (Formerly Secretarial Personnel).....	10 DE Reg. 785 (Prop.) 10 DE Reg. 1143 (Final)
398 Degree Granting Institutions of Higher Education .....	10 DE Reg. 417 (Prop.)
399 Approval of Teacher Education Programs.....	10 DE Reg. 428 (Prop.)
502 Alignment of Local School District Curricula to the State Content Standards..	10 DE Reg. 344 (Final) 10 DE Reg. 1202 (Prop.) 10 DE Reg. 1583 (Final)
503 Instructional Program Requirements .....	10 DE Reg. 615 (Prop.) 10 DE Reg. 985 (Final)
505 High School Graduation Requirements and Diplomas.....	10 DE Reg. 30 (Prop.) 10 DE Reg. 547 (Final) 10 DE Reg. 1508 (Prop.)
540 Driver Education.....	10 DE Reg. 1205 (Prop.) 10 DE Reg. 1587 (Final)
745 Criminal Background Check for Public School Related Employment.....	10 DE Reg. 253 (Prop.) 10 DE Reg. 684 (Final)
804 Immunizations.....	10 DE Reg. 1513 (Prop.)
811 School Health Record Keeping Requirements.....	10 DE Reg. 1513 (Prop.)
815 Physical Examinations and Screening.....	10 DE Reg. 1513 (Prop.)
817 Administration of Medications and Treatments.....	10 DE Reg. 1513 (Prop.)
885 Safe Management and Disposal of Chemicals in the Delaware Public School System .....	10 DE Reg. 952 (Prop.) 10 DE Reg. 1432 (Final)
910 Delaware General Educational Development (GED) Endorsement .....	10 DE Reg. 442 (Prop.) 10 DE Reg. 862 (Final)
915 James H. Groves High School.....	10 DE Reg. 617 (Prop.) 10 DE Reg. 988 (Final)

925 Children with Disabilities.....	10 DE Reg. 1365 (Prop.)
1001 Participation in Extra Curricular Activities.....	10 DE Reg. 1112 (Prop.)
1001 Participation in Extra Curricular Activities.....	10 DE Reg. 1433 (Final)
1103 Standards for School Bus Chassis and Bodies for Buses Placed in Production on or after January 1, 2007.....	10 DE Reg. 258 (Prop.) 10 DE Reg. 690 (Final)
<b>Professional Standards Board</b>	
360 Certification Early Childhood Special Education Teacher, Repeal of.....	10 DE Reg. 1114 (Prop.) 10 DE Reg. 1434 (Rep.)
1501 Knowledge, Skills and Responsibility Based Salary Supplements for Educators.....	10 DE Reg. 1208 (Prop.) 10 DE Reg. 1589 (Final)
1511 Issuance and Renewal of Continuing License.....	10 DE Reg. 97 (Final)
1516 Standard Certificate.....	10 DE Reg. 1213 (Prop.) 10 DE Reg. 1593 (Final)
1521 Standard Certificate Agriculture Teacher.....	10 DE Reg. 100 (Final)
1522 Standard Certificate Business Education Teacher.....	10 DE Reg. 100 (Final)
1525 Standard Certificate English Teacher.....	10 DE Reg. 100 (Final)
1526 Standard Certificate English to Speakers of Other Languages.....	10 DE Reg. 34 (Prop.) 10 DE Reg. 208 (Errata) 10 DE Reg. 388 (Errata) 10 DE Reg. 995 (Final)
1527 Endorsement English to Speakers of Other Languages (ESOL) Teacher, Repeal of.....	10 DE Reg. 38 (Prop.) 10 DE Reg. 999 (Rep.)
1528 Standard Certificate World Language Teacher Comprehensive.....	10 DE Reg. 100 (Final)
1534 Standard Certificate Mathematics Teacher Secondary.....	10 DE Reg. 100 (Final)
1537 Standard Certificate Bilingual Teacher K to 12 .....	10 DE Reg. 39 (Prop.) 10 DE Reg. 693 (Final)
1539 Standard Certificate Social Studies Teacher Secondary.....	10 DE Reg. 100 (Final)
1540 Standard Certificate Science Teacher Secondary.....	10 DE Reg. 100 (Final)
1541 Standard Certificate Mathematics Teacher Middle Level.....	10 DE Reg. 100 (Final)
1542 Standard Certificate Science Teacher Middle Level.....	10 DE Reg. 100 (Final)
1543 Standard Certificate Art Teacher Comprehensive.....	10 DE Reg. 100 (Final)
1548 Standard Certificate Music Teacher Comprehensive.....	10 DE Reg. 100 (Final)
1551 Standard Certificate Physical Education Teacher Comprehensive.....	10 DE Reg. 100 (Final)
1554 Standard Certificate Reading Specialist.....	10 DE Reg. 100 (Final)
1556 Standard Certificate Elementary Teacher (Grades K to 6).....	10 DE Reg. 100 (Final)
1558 Standard Certificate Bilingual Teacher (Spanish) Primary and Middle.....	10 DE Reg. 44 (Prop.) 10 DE Reg. 695 (Final)
1561 Standard Certificate Teacher Exceptional Children Special Education Elementary, Repeal of.....	10 DE Reg. 788 (Prop.)
1562 Standard Certificate Teacher Exceptional Children Special Education Secondary.....	10 DE Reg. 790 (Prop.)
1570 Standard Certificate Early Childhood Teacher Special Education .....	10 DE Reg. 45 (Prop.) 10 DE Reg. 211 (Errata) 10 DE Reg. 696 (Final)
1572 Standard Certificate Teacher of Students Who Are Deaf or Hard of Hearing	10 DE Reg. 1144 (Final)
1579 Standard Certificate Teacher of the Visually Impaired.....	10 DE Reg. 623 (Prop.) 10 DE Reg. 1147 (Final)

**DEPARTMENT OF FINANCE****Division of Revenue**

Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Programs.....	10 DE Reg. 1502 (Prop.) 10 DE Reg. 699 (Final)
---	---



301 Publication of Tax Information.....	10 DE Reg. 794 (Prop.) 10 DE Reg. 1116 (Prop.)
<b>Office of the State Lottery</b>	
450 Video Lottery Regulations, Sections 6.0 Agents: Duties, and 14.0 Employee License Procedure.....	10 DE Reg. 1367 (Prop.)
<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES</b>	
<b>Division of Long Term Care Residents Protection</b>	
Nursing Home Survey Process.....	10 DE Reg. 6 (Emer.)
<b>Division of Medicaid and Medical Assistance</b>	
Assisted Living Medicaid 1915(c) Waiver .....	10 DE Reg. 56 (Prop.) 10 DE Reg. 1001 (Final)
Attendant Services Program.....	10 DE Reg. 954 (Prop.)
Section 1515(c).....	10 DE Reg. 1301 (Final)
Diamond State Health Plan 1115 Demonstration Waiver.....	10 DE Reg. 55 (Prop.) 10 DE Reg. 549 (Final)
Title XIX Medicaid State Plan, Employee Education About False Claims Act..	10 DE Reg. 1660 (Prop.)
Title XIX Medicaid State Plan, Supplement 3 to Attachment 2.6-A, Pg. 1, Reasonable Limits on Amounts for Necessary Medical or Remedial Care Not Covered Under Medicaid.....	10 DE Reg. 52 (Prop.) 10 DE Reg. 703 (Final)
Title XIX Medicaid State Plan, Supplement 17 to Attachment 2.6-A.....	10 DE Reg. 1373 (Prop.) 10 DE Reg. 1700 (Final)
Title XIX, Transfer of Assets for Less Than Fair Market Value Made on or After February 8, 2006.....	10 DE Reg. 955 (Prop.) 10 DE Reg. 613 (Final)
Title XXI Delaware Healthy Children State Program.....	10 DE Reg. 444 (Prop.) 10 DE Reg. 865 (Final)
<b>DSSM:</b>	
20310 Long Term Care Medicaid .....	10 DE Reg. 553 (Final)
20320 Ownership of Real Property by Institutionalized Individuals.....	10 DE Reg. 1216 (Prop.) 10 DE Reg. 1596 (Final)
20320.7 Substantial Home Equity.....	10 DE Reg. 1373 (Prop.) 10 DE Reg. 1700 (Final)
20330.3 Promissory Notes, Loans and Property Agreements.....	10 DE Reg. 1216 (Prop.) 10 DE Reg. 1596 (Final)
20330.4 Retirement Funds.....	10 DE Reg. 795 (Prop.) 10 DE Reg. 1436 (Final)
20330.4.1 Annuities.....	10 DE Reg. 798 (Prop.) 10 DE Reg. 1601 (Final)
20330.7 U.S. Savings Bonds.....	10 DE Reg. 1219 (Prop.) 10 DE Reg. 1611 (Final)
20350 Transfer of Assets .....	10 DE Reg. 955 (Prop.) 10 DE Reg. 1613 (Final)
20350.4 Multiple Transfers.....	10 DE Reg. 1117 (Prop.) 10 DE Reg. 1439 (Final)
20350.10 Long Term Care Medicaid, Exceptions to the Transfer of Assets .....	10 DE Reg. 50 (Prop.) 10 DE Reg. 558 (Final)
20400.5 Irrevocable Trusts.....	10 DE Reg. 955 (Prop.) 10 DE Reg. 1613 (Final)
20400.9.1.1 Treatment of Special Needs Trusts .....	10 DE Reg. 965 (Prop.) 10 DE Reg. 1302 (Final)
20910.1 Long Term Care, Institutionalized Spouse .....	10 DE Reg. 701 (Final) 10 DE Reg. 1220 (Prop.)
20950 Initial Eligibility Determinations.....	10 DE Reg. 1619 (Final) 10 DE Reg. 283 (Prop.) 10 DE Reg. 702 (Final)

# CUMULATIVE TABLES

20970 Fair Hearings.....	10 DE Reg. 283 (Prop.)
30000 Delaware Prescription Assistance Program.....	10 DE Reg. 702 (Final)
	10 DE Reg. 446 (Prop.)
50100 Services Provided by the Chronic Renal Disease Program.....	10 DE Reg. 866 (Final)
	10 DE Reg. 347 (Final)
<b>Division of Public Health</b>	
4104 Conrad State 30/J-1 Visa Waiver Program.....	10 DE Reg. 1221 (Prop.)
	10 DE Reg. 1620 (Final)
4469 Personal Assistance Services Agencies.....	10 DE Reg. 1376 (Prop.)
<b>Division of Social Services</b>	
<b>DSSM:</b>	
2023 Disqualification Hearings.....	10 DE Reg. 1441 (Final)
3000 Temporary Assistance for Needy Families (TANF).....	10 DE Reg. 286 (Prop.)
3001 Definitions.....	10 DE Reg. 283 (Prop.)
	10 DE Reg. 706 (Final)
3006 TANF Employment and Training Program.....	10 DE Reg. 283 (Prop.)
	10 DE Reg. 706 (Final)
3008 Eligibility of Certain Minors.....	10 DE Reg. 283 (Prop.)
	10 DE Reg. 706 (Final)
3012 School Attendance.....	10 DE Reg. 283 (Prop.)
	10 DE Reg. 706 (Final)
3024 Citizens and Aliens.....	10 DE Reg. 1389 (Prop.)
	10 DE Reg. 1702 (Final)
3031 Work for Your Welfare.....	10 DE Reg. 283 (Prop.)
	10 DE Reg. 706 (Final)
5302 Exceptions.....	10 DE Reg. 1396 (Prop.)
	10 DE Reg. 1703 (Final)
5307 Dismissal of Requests.....	10 DE Reg. 1396 (Prop.)
	10 DE Reg. 1703 (Final)
9007.1 Citizenship and Alien Status.....	10 DE Reg. 1389 (Prop.)
	10 DE Reg. 1702 (Final)
9013.1 Household Definition.....	10 DE Reg. 626 (Prop.)
	10 DE Reg. 1003 (Final)
9082 Reduction in Public Assistance Benefits.....	10 DE Reg. 1398 (Prop.)
	10 DE Reg. 1704 (Final)
9085 Reporting Changes.....	10 DE Reg. 57 (Prop.)
	10 DE Reg. 560 (Final)
9092 Simplified Food Stamp Program.....	10 DE Reg. 1398 (Prop.)
	10 DE Reg. 1704 (Final)
10007.3 Supportive Services Reimbursements.....	10 DE Reg. 1401 (Prop.)
	10 DE Reg. 1708 (Final)
11000 Child Care Subsidy Program.....	10 DE Reg. 447 (Prop.)
	10 DE Reg. 564 (Final)
	10 DE Reg. 1007 (Final)
11006.6 Complaints.....	10 DE Reg. 1522 (Prop.)
15120 Financial Eligibility.....	10 DE Reg. 143 (Final)
16230.1.2 Self-Employment Income.....	10 DE Reg. 143 (Final)
17300.3.2 Self-Employment Income.....	10 DE Reg. 143 (Final)
20210.16 Self Employment.....	10 DE Reg. 143 (Final)
20400.9.1.1 Treatment of Special Needs Trusts.....	10 DE Reg. 1302 (Final)
20620.2 Necessary Medical Care Expenses.....	10 DE Reg. 52 (Prop.)
	10 DE Reg. 703 (Final)
20995.1 Post-Eligibility Deductions.....	10 DE Reg. 52 (Prop.)
	10 DE Reg. 703 (Final)

**DEPARTMENT OF INSURANCE**

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants.....	10 DE Reg. 60 (Prop.) 10 DE Reg. 734 (Final)
608 Automobile Insurance Coverage.....	10 DE Reg. 1232 (Prop.)
610 Automobile Premium Consumer Comparison.....	10 DE Reg. 62 (Prop.) 10 DE Reg. 566 (Final)
704 Homeowners Premium Consumer Comparison.....	10 DE Reg. 967 (Prop.) 10 DE Reg. 1304 (Final)
1215 Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities.....	10 DE Reg. 968 (Prop.) 10 DE Reg. 1306 (Final)
1216 Military Sales Practices.....	10 DE Reg. 1665 (Prop.)
1217 Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment.....	10 DE Reg. 1670 (Prop.)
1301 Arbitration of Health Insurance Claims and Internal Review Process of Medical Insurance Carriers.....	10 DE Reg. 1180 (Emer.) 10 DE Reg. 1233 (Prop.) 10 DE Reg. 1485(Emer.) 10 DE Reg. 1523 (Prop.)
1307 Group Coordination Benefits (Formerly Regulation 61).....	10 DE Reg. 1539 (Prop.)
1403 Health Maintenance Organizations (Formerly Regulation 58) .....	10 DE Reg. 1190 (Emer.) 10 DE Reg. 1249 (Prop.) 10 DE Reg. 1502(Emer.)
1407 Supplemental Health Insurance Coverage for Children of Insureds.....	10 DE Reg. 1403 (Prop.) 10 DE Reg. 1711 (Final)
1501 Medicare Supplement Insurance Minimum Standards.....	10 DE Reg. 802 (Prop.) 10 DE Reg. 1307(Final)

**DEPARTMENT OF JUSTICE**

**Division of Fraud and Consumer Protection**

Debt Management Services.....	10 DE Reg. 804 (Prop.) 10 DE Reg. 1308 (Final)
Identity Theft Passports.....	10 DE Reg. 811 (Prop.) 10 DE Reg. 1151 (Final)

**DEPARTMENT OF LABOR**

**Division of Employment and Training**

106 Apprenticeship and Training Regulations .....	10 DE Reg. 64 (Prop.)
(to be transferred to the Division of Industrial Affairs).....	10 DE Reg. 458 (Prop.)

**Division of Industrial Affairs**

106 Apprenticeship and Training Regulations .....	10 DE Reg. 1021 (Final)
---	-------------------------

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**Office of the Secretary**

106 Environmental Standards for Eligible Energy Resources.....	10 DE Reg. 350 (Final)
--	------------------------

**Division of Air and Waste Management**

1113 Open Burning.....	10 DE Reg. 1118 (Prop.) 10 DE Reg. 1621 (Final)
1124 Control of Volatile Organic Compound Emissions, Section 46.....	10 DE Reg. 813 (Prop.) 10 DE Reg. 867 (Final) 10 DE Reg. 1714 (Final)
1141 Limiting Emissions of VOC from Consumer and Commercial Products ..	10 DE Reg. 465 (Prop.) 10 DE Reg. 868 (Final)

# CUMULATIVE TABLES

1142 Specific Emission Control Requirements, Section 2.0 Control of NOx Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries.....	10	DE Reg.	1280 (Prop.)
1146 Electric Generating Unit (EGU) Multi-Pollutant Regulations.....	10	DE Reg.	508 (Prop.)
			10 DE Reg. 1022 (Final)
1148 Control of Stationary Combustion Turbine Electric Generating Unit Emissions.....	10	DE Reg.	1547(Prop.)
1302 Regulations Governing Hazardous Waste.....	10	DE Reg.	353 (Final)
<b>Division of Fish and Wildlife</b>			
3200 Horseshoe Crabs (3203, 3207, 3210, 3211, 3214 and 3215).....	10	DE Reg.	519 (Prop.)
			10 DE Reg. 1029 (Final)
3511 Summer Flounder Size Limits; Season.....	10	DE Reg.	1405 (Prop.)
			10 DE Reg. 1722 (Final)
3536 Fish Pot Requirements (Formerly Tidal Finfish Reg. 24).....	10	DE Reg.	629 (Prop.)
			10 DE Reg. 1035 (Final)
3581 Spiny Dogfish; Closure of Fishery (Formerly Tidal Finfish Reg. 27).....	10	DE Reg.	1285 (Prop.)
			10 DE Reg. 1724 (Final)
3700 Shellfish Regulations (3711, 3712 and 3755).....	10	DE Reg.	522 (Prop.)
			10 DE Reg. 1034 (Final)
<b>Division of Soil and Water Conservation</b>			
5101 Sediment and Stormwater Regulations (Exempt from A.P.A.).....	10	DE Reg.	735 (Final)
5102 Regulation Governing Beach Protection and the Use of Beaches.....	10	DE Reg.	870 (Final)
<b>Division of Water Resources</b>			
7402 Shellfish Sanitation Regulations.....	10	DE Reg.	145 (Final)
<b>Watershed Assessment Section</b>			
<b>Total Maximum Daily Loads (TMDLs)</b>			
7403 Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds.....			
	10	DE Reg.	1671 (Prop.)
7412 Chester River Watershed.....	10	DE Reg.	1041 (Final)
7413 Choptank River Watershed.....	10	DE Reg.	1041 (Final)
7414 Marshyhope Creek Watershed.....	10	DE Reg.	1041 (Final)
7415 Pocomoke River Watershed.....	10	DE Reg.	1041 (Final)
7416 Army Creek Watershed.....	10	DE Reg.	305 (Prop.)
			10 DE Reg. 1042 (Final)
7417 Blackbird Creek Watershed.....	10	DE Reg.	1037 (Final)
7418 Broadkill River Watershed.....	10	DE Reg.	1038 (Final)
7419 Cedar Creek Watershed.....	10	DE Reg.	1038 (Final)
7420 Dragon Run Creek Watershed.....	10	DE Reg.	305 (Prop.)
			10 DE Reg. 1042 (Final)
7421 Leipsic River Watershed.....	10	DE Reg.	1037 (Final)
7422 Little Creek Watershed.....	10	DE Reg.	1037 (Final)
7423 Mispillion River Watershed.....	10	DE Reg.	1038 (Final)
7424 Red Lion Creek Watershed.....	10	DE Reg.	305 (Prop.)
			10 DE Reg. 1042 (Final)
7425 Smyrna River Watershed.....	10	DE Reg.	1037 (Final)
7426 St. Jones River Watershed.....	10	DE Reg.	1037 (Final)
7427 Appoquinimink River Watershed, Bacteria for, (Formerly Reg. 7403) ....	10	DE Reg.	524 (Prop.)
			10 DE Reg. 1039 (Final)
7428 Murderkill River Watershed.....	10	DE Reg.	524 (Prop.)
			10 DE Reg. 1041 (Final)
7429 Inland Bays Drainage Basin.....	10	DE Reg.	524 (Prop.)
			10 DE Reg. 1041 (Final)
7430 Chesapeake Bay Drainage Basin.....	10	DE Reg.	524 (Prop.)
			10 DE Reg. 1041 (Final)

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY****Board of Examiners of Private Investigators and Private Security Agencies**

1300 Board of Examiners of Private Investigators and Private Security Agencies.....	10 DE Reg. 971 (Prop.)
	10 DE Reg. 1445 (Final)

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES****Division of Family Services**

101 Day Care Centers.....	10 DE Reg. 308 (Prop.)
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**DEPARTMENT OF STATE****Division of Professional Regulation**

200 Board of Landscape Architects.....	10 DE Reg. 1124 (Prop.)
500 Board of Podiatry.....	10 DE Reg. 309 (Prop.)
	10 DE Reg. 1153 (Final)
700 Board of Chiropractic.....	10 DE Reg. 146 (Final)
	10 DE Reg. 1126 (Prop.)
1400 Board of Electrical Examiners.....	10 DE Reg. 631 (Prop.)
	10 DE Reg. 1329 (Final)
	10 DE Reg. 1407 (Prop.)
1770 Respiratory Care Advisory Council.....	10 DE Reg. 354 (Final)
	10 DE Reg. 1551 (Prop.)
1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners.....	10 DE Reg. 65 (Prop.)
	10 DE Reg. 1680 (Prop.)
1900 Board of Nursing.....	10 DE Reg. 1127 (Prop.)
	10 DE Reg. 1725 (Final)
2000 Delaware Board of Occupational Therapy.....	10 DE Reg. 1286 (Prop.)
2100 Board of Examiners in Optometry.....	10 DE Reg. 1408 (Prop.)
	10 DE Reg. 1727 (Final)
2500 Board of Pharmacy.....	10 DE Reg. 311 (Prop.)
Section 2.0 Grounds for Disciplinary Proceeding.....	10 DE Reg. 1683 (Prop.)
Section 8.0 Requirements for Obtaining a Permit to Distribute Drugs on a Wholesale Basis .....	10 DE Reg. 972 (Prop.)
	10 DE Reg. 1628 (Final)
	10 DE Reg. 1553 (Prop.)
Section 9.0 Hospital Pharmacy.....	10 DE Reg. 821 (Prop.)
	10 DE Reg. 1629 (Final)
2600 Examining Board of Physical Therapists.....	10 DE Reg. 318 (Prop.)
	10 DE Reg. 741 (Final)
2700 Board of Professional Land Surveyors.....	10 DE Reg. 1290 (Prop.)
	10 DE Reg. 1630 (Final)
2900 Real Estate Commission.....	10 DE Reg. 1554 (Prop.)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals .....	10 DE Reg. 67 (Prop.)
	10 DE Reg. 1685 (Prop.)
Section 6.0 Renewal of Licensure.....	10 DE Reg. 871 (Final)
Sections 1.0 through 9.0 Reorganized and Renumbered.....	10 DE Reg. 872 (Final)
3100 Delaware Board of Funeral Services .....	10 DE Reg. 528 (Prop.)
	10 DE Reg. 1154 (Final)
3300 Board of Veterinary Medicine.....	10 DE Reg. 531 (Prop.)
	10 DE Reg. 884 (Final)
	10 DE Reg. 1137 (Prop.)
	10 DE Reg. 1557 (Prop.)
3500 Board of Examiners of Psychologists, Sections 5.0 and 10.0.....	10 DE Reg. 1295 (Prop.)
	10 DE Reg. 1728 (Final)
3600 Board of Registration of Geologists .....	10 DE Reg. 68 (Prop.)
	10 DE Reg. 567(Final)

3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.....	10 DE Reg. 1560 (Prop.)
3800 Committee on Dietetics/Nutrition.....	10 DE Reg. 1412 (Prop.)
3900 Board of Clinical Social Work Examiners.....	10 DE Reg. 323 (Prop.)
4400 Delaware Manufactured Home Installation Board.....	10 DE Reg. 886 (Final)
	10 DE Reg. 331 (Prop.)
	10 DE Reg. 634 (Prop.)
	10 DE Reg. 1156 (Final)
5300 State Board of Massage and Bodywork .....	10 DE Reg. 71 (Prop.)
	10 DE Reg. 575 (Final)

### Office of the State Bank Commissioner

1101 Election to be Treated for Tax Purposes as a “Subsidiary Corporation” of a DE Chartered Banking Organization or Trust Company, National Bank having its Principle Office in Delaware, or Out-of-State Bank that Operates Resulting Branch in Delaware.....	10 DE Reg. 643 (Prop.)
	10 DE Reg. 1046 (Final)
1109 Instructions for Calculation of Employment Tax Credits .....	10 DE Reg. 643 (Prop.)
	10 DE Reg. 1046 (Final)
1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30 .....	10 DE Reg. 643 (Prop.)
	10 DE Reg. 1046 (Final)
1114 Alternative Franchise Tax.....	10 DE Reg. 643 (Prop.)
	10 DE Reg. 1046 (Final)
2106/2208 Guidance on Nontraditional Mortgage Product Risks.....	10 DE Reg. 1690 (Prop.)

### Public Service Commission

Regulation Docket No. 49, Creation of a Competitive Market for Retail Electric Supply Service .....	10 DE Reg. 664 (Prop.)
	10 DE Reg. 1160 (Final)
Regulation Docket No. 50, Proposed Adoption of “Electric Service Reliability and Quality Standards” .....	10 DE Reg. 74 (Prop.)
	10 DE Reg. 576 (Final)
Regulation Docket No. 51, Amendment of Rules for Granting and Supervising Certificates of Public Convenience and Necessity for Water Utilities.....	10 DE Reg. 1563 (Prop.)
Regulation Docket No. 56, Proposed Adoption of “Rules to Implement Renewable Energy Portfolio Standards”.....	10 DE Reg. 151 (Final)

## DEPARTMENT OF TRANSPORTATION

### Division of Planning and Policy

Development Related Improvements Requiring New Rights-of-Way.....	10 DE Reg. 892 (Final)
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### Division of Transportation Solutions

Manual on Uniform Traffic Control Devices.....	10 DE Reg. 1698 (Prop)
Utilities Manual Regulations.....	10 DE Reg. 1139 (Prop.)
	10 DE Reg. 1415 (Prop.)
	10 DE Reg. 1730 (Final)

### Office of Motor Fuel Tax Administration

2401 Regulations for the Office of Retail Gasoline Sales.....	10 DE Reg. 542 (Prop.)
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## EXECUTIVE DEPARTMENT

### Delaware Economic Development Office

1151 Matching Grants Program.....	10 DE Reg. 1415 (Prop.)
1152 Direct Grants Program.....	10 DE Reg. 1415 (Prop.)

## GOVERNOR’S OFFICE

### Executive Orders:

No. 87, Establishing The State Employees’ Charitable Campaign .....	10 DE Reg. 158
No. 88, Recognizing and Establishing the Delaware Science	

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and Technology Council.....	10 DE Reg.	366
No. 89, Creating the Governor’s Consortium on Hispanic Issues.....	10 DE Reg.	578
No. 90, Establishing The Recycling Public Advisory Council.....	10 DE Reg.	903
No. 91, Amending Executive Order No. 84.....	10 DE Reg.	1067
No. 92, Authorizing The Establishment of a Special Fund to Assist any Delaware National Guard Member or Delaware-Based Reservist Who May Be Ordered to Active Duty.....	10 DE Reg.	1067
No. 93, Amendment to Executive Order Number Eighty-Eight Regarding the Delaware Science and Technology Council.....	10 DE Reg.	1162
No. 94, Declaring Tuesday, January 2, 2007 a Legal Holiday In Remembrance of Former President Gerald R. Ford.....	10 DE Reg.	1331
No. 95, Ordering a Cost, Benefit, and Policy Analysis of the Implementation of Toll Facility Bonding for the Completion of a Tolloed Highway for US Route 301 by the Department of Transportation.....	10 DE Reg.	1447
No. 96, Reallocation of State Private Activity Bond Volume Cap for Calendar Year 2006 and Initial Suballocation of State Private Activity Bond Volume Cap for Calendar Year 2007.....	10 DE Reg.	1448
No. 97, Creating the Enhanced Public Access Technology Task Force.....	10 DE Reg.	1731
<b>Appointments and Nominations:</b> .....	10 DE Reg.	368
	10 DE Reg.	905
	10 DE Reg.	1332
	10 DE Reg.	1450



## Symbol Key

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

## Proposed Regulations

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

### DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 923

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

#### 923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies

##### A. Type of Regulatory Action Required

Amendment to Existing Regulation

##### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies.

The Department of Education recently adopted Regulation 923 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the *Individuals with Disabilities Education Act*, 20 USC §1400, et.seq. ("IDEA").

The Department now proposes to amend Regulation 923 to re-adopt certain rules and standards about Extended School Year Services for children with disabilities. These requirements were formerly part of the Department's special education regulations and were inadvertently omitted when Regulation 923 was recently adopted.

Please note that the IDEA specifically requires that the Department of Education notify school districts and other education agencies of any State requirements for the education of children with disabilities that exceed federal requirements. These proposed regulations identify those additional State requirements by *italicizing* them in the text of these proposed regulations.

Persons wishing to present their views regarding the proposed amendment of the Extended School Year Services regulation may do so in writing by the close of business on or before July 2, 2007 to Martha Toomey, Director, Exceptional Children and Early Childhood Education, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the

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Department of Education business office. The proposed regulations are also available by contacting Ms. Louann Vari at the above address, or by email at: [lvari@doe.k12.de.us](mailto:lvari@doe.k12.de.us).

## C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The proposed amendment address the achievement of children with and without disabilities, including their achievement measured against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendment helps assure that children with disabilities receive equitable educational services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The proposed amendment does not directly address health and safety issues, but those issues are addressed by regulations already in place.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed amendment specifically ensures and implement the rights of children with disabilities under the *Individuals with Disabilities Education Act* and the provisions of Chapter 31 of Title 14 of the *Delaware Code*.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The proposed amendment leaves decision about Extended School Year services to the child's local planning team.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed amendment does not require any more reporting than necessary to comply with State statutory and federal requirements addressing the education of children with disabilities.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The State and school districts and other local educational agencies share authority and accountability for the education of children with disabilities, and the proposed amendment reflects that partnership.

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 proposed amendment clarifies when children with disabilities are entitled to Extended School Year services and further reflects the increased federal alignment between the *Individuals with Disabilities Education Act* and the *No Child Left Behind Act*.

9. Is there a less burdensome method for addressing the purpose of the regulation? The proposed regulations are designed to assure compliance with applicable laws regarding the education of children with disabilities in these most efficient and effective way for the Department, the school districts and other affected State and local agencies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Compliance with the IDEA is required as a condition of federal funding.

## 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

### *(Break in Continuity of Sections)*

## 6.0 Extended School Year Services

6.1 General: Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with 6.2 through 6.5.

6.2 Extended school year services shall be provided only if a child's IEP Team determines, on an individual basis, in accordance with 14 **DE Admin. Code** 925.20.0 through 925.24.0, that the services are necessary for the provision of FAPE to the child.

6.3 In implementing the requirements of this section, a public agency may not limit extended school

year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services.

6.4 Definition, as used in this section:

**“Extended School Year Services”** means special education and related services that are provided to a child with a disability beyond the normal school year of the public agency in accordance with the child's IEP and at no cost to the parents of the child; and meets the standards of the DOE.

6.5 *Determining need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education during the regular school year.*

6.5.1 *Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature or severity of the child's disability.*

6.5.2 *Regression and recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that this criterion focuses on children who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.*

6.5.3 *Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break*

6.5.4 *Vocational: For children ages 16-20 whose IEPs contain vocational or employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.*

6.5.5 *Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.*

6.6 *Extended school year services are to be based on needs and goals or objectives found within the child's IEP of the school year, though activities may be different.*

6.7 *This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, as identified on the child's IEP.*

6.8 *The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled children for the sole purpose of satisfying the LRE requirements for children receiving extended school year services.*

6.9 *Transportation shall be provided to children except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.*

6.10 *Written notice shall be provided to parents advising them that the IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.*

6.11 *In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.*

*Non-regulatory Note: Districts are encouraged to complete this process by May 1 so that appropriate planning and preparation can occur.*

Authority: 20 U.S.C. 1412(a)(1); 14 Del.C. §3110)

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**\*Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Department of Education is available at:**

<http://regulations.delaware.gov/AdminCode/title14>

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 925

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

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

##### A. Type of Regulatory Action Required

Amendment to Existing Regulation

##### B. Synopsis of Subject Matter of the Regulation

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 Program.

The Department of Education recently adopted Regulation 925 as part of a comprehensive review of Delaware's special education regulations, undertaken in response to changes in federal special education regulations implementing the *Individuals with Disabilities Education Act*, 20 USC §1400, et.seq. ("IDEA"). The Department received extensive public comment to parts of Regulation 925 that addressed "Response to Intervention" requirements. The Department also received comments suggesting improvements to the special education eligibility requirements for children with visual impairments.

The Department now proposes to amend Regulation 925 to address the suggestions, concerns and other comments the Department received about Response to Intervention and special education eligibility for children with visual impairments.

Please note that the IDEA specifically requires that the Department of Education notify school districts and other education agencies of any State requirements for the education of children with disabilities that exceed federal requirements. These proposed regulations identify those additional State requirements by *italicizing* them in the text of these proposed regulations.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 30, 2007 to Martha Toomey, Director, Exceptional Children and Early Childhood Education, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office. The proposed regulations are also available by contacting Ms. Louann Vari at the above address, or by email at: [lvari@doe.k12.de.us](mailto:lvari@doe.k12.de.us).

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The proposed amendments address the achievement of children with and without disabilities, including their achievement measured against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendments help assure that all students, including children with disabilities, receive equitable educational services.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The proposed amendments do not directly address health and safety issues, but those issues are addressed by regulations already in place.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed regulations specifically ensure and implement the rights of children with disabilities and their families

under a variety of state and federal laws, including the *Individuals with Disabilities Education Act*, the *No Child Left Behind Act*, and the *Family Educational Rights and Privacy Act* and the provisions of Chapter 31 of Title 14 of the *Delaware Code*.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The proposed regulations are specifically designed to minimize State regulations to those required under state and federal statutes. The Individuals with Disabilities Education Act specifically requires that the Department of Education notify school districts and other education agencies of any State requirements for the education of children with disabilities that exceed federal requirements. These proposed regulations identify those "excess" State requirements by *italicizing* them in the text of these proposed regulations.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed regulations are specifically designed to require only the local reporting and administration necessary to comply with State statutory and federal requirements consistent with the improved achievement and educational performance of children with disabilities.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The State and school districts and other local educational agencies share authority and accountability for the education of children with disabilities, and the proposed regulations reflect that partnership.

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 proposed amendments more closely align requirements for the education of children with disabilities with other State educational policies, particularly those addressing achievement in reading and mathematics. The proposed regulations further reflect the increased federal alignment between the *Individuals with Disabilities Education Act* and the *No Child Left Behind Act*.

9. Is there a less burdensome method for addressing the purpose of the regulation? The proposed regulations are designed to assure compliance with applicable laws regarding the education of children with disabilities in these most efficient and effective way for the Department, the school districts and other affected State and local agencies.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Compliance with the IDEA is required as a condition of federal funding.

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

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

#### ***(Break in Continuity of Sections)***

### **6.0 Determination of Eligibility**

6.1 General: Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child shall determine whether the child is a child with a disability, as defined in 14 **DE Admin. Code** 922.3.0, in accordance with 6.1.1 and the educational needs of the child; and the public agency shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. *The evaluation report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.*

6.2 Special rule for eligibility determination: A child shall not be determined to be a child with a disability under these regulations if the determinant factor for that determination is:

6.2.1 Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

6.2.2 Lack of appropriate instruction in math; or

6.2.3 Limited English proficiency; and

6.2.4 If the child does not otherwise meet the eligibility criteria to be determined a child with a disability as defined in 14 **DE Admin. Code** 922.3.0.

6.3 Procedures for determining eligibility and educational need: *Eligibility decisions may include historical information to the extent relevant to the child's current needs.* In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 14 **DE Admin. Code** 922.3.0, and the educational needs of the child, each public agency shall:

6.3.1 Draw upon information from a variety of sources, including, as appropriate, aptitude and achievement tests, information acquired from response to intervention processes, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and ensure that information obtained from all of these sources is documented and carefully considered.

6.3.2 If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for the child in accordance with 20.0 through 24.0.

6.4 ~~Reserved~~ If, prior to the effective date of 6.11, a child has been identified as a child with a learning disability or an educable mental disability, and is receiving special education services from a Delaware public agency as a result of that identification, the child shall continue to be eligible for services in Delaware as a learning disabled or educably mentally disabled student until the child's reevaluation as required in 3.0. Reevaluation of such students shall apply the eligibility requirements of 6.11 and 7.0 through 12.0 as appropriate to the child's grade level as of the date of the reevaluation.

(Authority: 20 U.S.C. 1414(b)(4) and (5); 14 **Del.C.** §3110)

6.5 Other Eligibility requirements and exit criteria.

6.5.1 A child shall be entitled to receive special education and related services, and shall be eligible to be counted as a special education student for purposes of the unit funding system established under 14 **Del.C.** Ch. 17, when the child's team has determined that the child meets the eligibility criteria of at least one of the disability classifications in this section, and by reason thereof, needs special education and related services.

6.5.2 A child's IEP team may, but is not required to, determine that a child is eligible for special education and related services under more than one disability classification. The disability classification selected by the IEP team shall not be a relevant factor in determining whether the child received FAPE, provided that the child's IEP is based on the child's educational needs.

6.5.3 When an IEP team determines that a child is eligible for special education and related services under more than one disability classification, and includes the child as a special education student in the unit funding system, the LEA or other public agency shall report the child in the disability classification which best describes the effect of the disability on the child in the educational setting. The child's primary disability classification shall be recorded first on the IEP.

6.5.4 Exit Criteria: A child's eligibility for special education and related services shall terminate when:

6.5.4.1 the child reaches his or her 21<sup>st</sup> birthday; or

6.5.4.2 the child graduates from high school with a regular high school diploma. As used in this subsection, regular high school diploma does not include a GED; or

6.5.4.3 the IEP team determines the child is no longer a child with a disability in need of special education and related services. In making such determination, the team shall consider: eligibility criteria; data based and documented measures of educational progress; and other relevant information.

6.6 Eligibility Criteria for Autism. The educational classification of autism encompasses the clinical condition of Autistic Disorder, as well as other typically less severe Pervasive Developmental Disorders, (i.e., Asperger Syndrome and Pervasive Developmental Disorder, Not Otherwise Specified). These conditions share important features, and together, comprise the Autistic Spectrum Disorders (ASDs). Students with educational classifications of autism may have ASD of differing severity as a function of the number and pattern of features defined in the eligibility criteria listed below.

6.6.1 In order for the IEP team to determine eligibility for special education services under the Autism category, the following is required:

6.6.1.1 All students with an educational classification of autism demonstrate a significant, qualitative impairment in reciprocal social interaction, as manifested by deficits in at least two of the following:

6.6.1.1.1 Use of multiple nonverbal behaviors to regulate social

interactions;

6.6.1.1.2 Development of peer relationships;

6.6.1.1.3 Spontaneous seeking to share enjoyment, interests, or achievements with other people, including parent(s) and caregivers; or

6.6.1.1.4 Social or emotional reciprocity.

6.6.1.2 All students with an educational classification of autism also demonstrate at least one feature from either 6.6.1.2.1 or 6.6.1.2.2.

6.6.1.2.1 A qualitative impairment in communication, as manifested by:

6.6.1.2.1.1 A lack of, or delay in, spoken language and failure to compensate through gesture;

6.6.1.2.1.2 Relative failure to initiate or sustain a conversation with

others;

6.6.1.2.1.3 Stereotyped, idiosyncratic, or repetitive speech; or

6.6.1.2.1.4 A lack of varied, spontaneous make believe play or social

imitative play.

6.6.1.2.2 Restricted, repetitive, and stereotyped patterns of behavior, as

manifested by:

6.6.1.2.2.1 Encompassing preoccupation or circumscribed and

restricted patterns of interest;

6.6.1.2.2.2 Apparently compulsive adherence to specific,

nonfunctional routines and rituals;

6.6.1.2.2.3 Stereotyped and repetitive motor mannerisms; or

6.6.1.2.2.4 Persistent preoccupation with parts and sensory qualities

of objects.

6.6.1.3 All students with an educational classification of autism have impairments that:

6.6.1.3.1 Are inconsistent with the student's overall developmental and functional level; and

6.6.1.3.2 Result in an educationally significant impairment in important

areas of functioning; and

6.6.1.3.3 Are a part of a clear pattern of behavior that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time; and

6.6.1.3.4 Are not primarily accounted for by an emotional disorder.

6.6.2 An educational classification of autism is established:

6.6.2.1 Using specialized, validated assessment tools that provide specific evidence of the features of ASD described above;

6.6.2.2 By individuals who have specific training in the assessment of students with ASD in general, and in the use of the assessment procedures referred to in 6.6.3.2.1; and

6.6.2.3 Based upon an observation of the student in a natural education environment, an observation under more structured conditions, and information regarding the student's behavior at home.

6.6.3 Age of Eligibility: The age of eligibility for children with autism shall be from birth through age 20, inclusive.

6.7 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child who exhibits a significant delay in one or more of the following developmental domains: cognition, communication (expressive and receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

6.7.1 In order for an IEP team to determine eligibility for special education services under the Developmental Delay category, the following is required:

6.7.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognition, communication (expressive and/or receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior; or

6.7.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

6.7.1.3 Professional judgment of the IEP team that is based on multiple sources of



information used in the assessment process and with justification documented in writing in the evaluation report of a significant difference between the child's chronological age and his or her current level of functioning. A significant difference is defined as a minimum of a 25% delay in comparison to same aged peers.

6.7.2 Multiple sources and methods of information shall be used in the determination of eligibility for service provision. An assessment shall include, but not be limited to, the following sources of information:

6.7.2.1 Developmental and medical history;

6.7.2.2 Interview with the child's parent or primary caregiver;

6.7.2.3 Behavioral observations;

6.7.2.4 Standardized norm referenced instruments; and

6.7.2.5 Other assessments which could be used for intervention planning, such as dynamic or criterion referenced assessments, behavior rating scales, or language samples.

6.7.3 The assessment of a child suspected of a developmental delay shall be culturally and linguistically sensitive.

6.7.4 Age of eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the ninth birth date.

6.8 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf blind condition:

6.8.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

6.8.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

6.8.3 Classification as a child who is deaf blind shall be made by the IEP team after consideration of the above eligibility criteria.

6.8.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

6.9 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

6.9.1 The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

6.9.2 Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse; and

6.9.2.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or

6.9.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression, or is unable to enter into age appropriate relationships with peers, teachers and others; and

6.9.3 The age of eligibility for children identified under this definition shall be from the 4<sup>th</sup> birthday through 20 years, inclusive.

6.10 Eligibility Criteria for Hearing Impairment: A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal

observation or procedure; and

6.10.1 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

6.10.2 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

6.11 Eligibility Criteria for Learning Disability:

6.11.1 ~~Reserved. Elimination of discrepancy model: As of the effective date of this section, public agencies shall not use discrepancy between achievement and intellectual ability to determine eligibility for special education and related services under the learning disability category.~~

6.11.2 ~~Reserved. Existence of a learning disability: As of the effective date of this section, and subject to the requirements of 6.11.3, public agencies shall use the standards and procedures in 7.0 through 11.0 to determine whether a child is eligible for special education and related services under the learning disability category.~~

6.11.3 ~~Reserved. Phase in of response to intervention procedures:~~

6.11.3.1 ~~Reserved. Elementary school children: No later than the beginning of the 2008- 2009 school year, public agencies shall use the standards and procedures in 7.0 through 12.0, including the response to intervention process, to determine whether a child in elementary school (as elementary school is defined by the public agency) is eligible for special education and related services under the learning disability category.~~

6.11.3.2 ~~Reserved. Other students: No later than the beginning of the 2009-2010 school year, public agencies shall use the standards and procedures in 7.0 to 12.0, including the response to intervention process, to determine whether a student is eligible for special education and related services under the learning disability category.~~

6.11.4 ~~Reserved. Use of response to intervention procedures for 2007-2008: During the 2007-2008 school year, public agencies are permitted to use the response to intervention procedures in 12.0 to determine whether a child is eligible for special education and related services as a result of a learning disability. Local education agencies implementing response to intervention procedures during the 2007-2008 school year may do so in all or some of its schools, and at all or some grade levels.~~

6.11.5 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.

6.12 Eligibility Criteria for Mental Disability: Eligibility Criteria for Mental Disability: In order for the IEP team to determine eligibility for special education services under the Mental Disability category, the following is required:

6.12.1 A level of intellectual functioning, as indicated below:

6.12.1.1 Educable Mental Disability: IQ 50 to 70 +/- 5 points;

6.12.1.2 Trainable Mental Disability: IQ 35 to 50 +/- 5 points;

6.12.1.3 Severe Mental Disability: IQ below 35; and Significant limitations in two or more areas of adaptive behavior, including communication, self care, home and school living, social and interpersonal, community use, self direction and coping, health and safety, functional academics, leisure, play and work.

6.12.2 Assessment for both intellectual functioning and adaptive behavior shall be conducted by a licensed psychologist or certified school psychologist.

6.12.3 ~~Reserved. Additional requirements for eligibility for Educable Mental Disability: In addition to the other requirements of 6.12, eligibility for special education services under the Educable Mental Disability category shall require written documentation that the child's response to scientific, research based intervention was assessed in accordance with 12.0.~~

6.12.3.1 ~~This requirement shall apply no later than the beginning of the 2008-2009 school year for children in elementary school (as elementary school is defined by the public agency) and no later than the beginning of the 2009-2010 school year for all other children.~~

6.12.3.2 ~~During the 2007-2008 school year, public agencies are permitted, but not required, to assess the child's response to scientific, research based intervention in determining a child's eligibility for special education services under the Educable Mental Disability category.~~

6.12.4 Age of Eligibility: The age of eligibility for children identified as Trainable Mental Disability

and Severe Mental Disability shall be from the third birthday through 20 years, inclusive. Children identified as Educable Mental Disability shall be from the fourth birthday through 20 years, inclusive. These children may be served at age 3, as having a Developmental Delay.

6.13 Eligibility Criteria for Orthopedic Impairment: In order for an IEP team to determine eligibility for special education services under the orthopedic impairment category, the following is required:

6.13.1 A qualified physician shall document that a child has an orthopedic impairment in order to be considered for special education and related services.

6.13.2 The IEP team shall consider the child's need for special education and related services if the orthopedic impairment substantially limits one or more major activities of daily living and the child has:

6.13.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

6.13.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture, and body use necessary for performing educational activities.

6.13.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

6.13.3.1 Medical records documenting the physical impairment (required) and current prescriptions (e.g., O.T., P.T., medications, etc., if available);

6.13.3.2 Results from physical and occupational therapist screening(s) using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary; and

6.13.3.3 Prior program or school records (if available), and, when determined necessary, a speech and language evaluation, adaptive behavior scale, vision or hearing screening, social history or psychological evaluation.

6.13.4 For purposes of initial eligibility or continued eligibility determination, at least one of the following, and as many as are appropriate for the child's needs; physical therapist, occupational therapist, or nurse, shall be members of the IEP team.

6.13.5 Age of Eligibility: The age of eligibility for children with orthopedic impairments shall be from the third birthday through 20 years, inclusive.

6.14 Eligibility Criteria for Other Health Impairment: In order for an IEP team to determine eligibility for special education services under the Other Health Impairment category, the following is required:

6.14.1 Documentation from a qualified physician that a child has a chronic or acute health problem.

6.14.2 For ADD and ADHD, the above requirement and a school team of qualified evaluators that determine the child exhibits:

6.14.2.1 Six (or more) of the following symptoms of inattention for at least six months, to a degree that is maladaptive and inconsistent with developmental level;

6.14.2.1.1 Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;

6.14.2.1.2 Often has difficulty sustaining attention in tasks or play activities;

6.14.2.1.3 Often does not seem to listen when spoken to directly;

6.14.2.1.4 Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the work place (not due to oppositional behavior or failure to understand instructions);

6.14.2.1.5 Often has difficulty organizing tasks and activities;

6.14.2.1.6 Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as school work or homework);

6.14.2.1.7 Often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools);

6.14.2.1.8 Is often easily distracted by extraneous stimuli;

6.14.2.1.9 Is often forgetful in daily activities; or

6.14.2.2 Six (or more) of the following symptoms of hyperactivity impulsivity have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

6.14.2.2.1 Often fidgets with hands or feet and squirms in seat;

6.14.2.2.2 Often leaves seat in classroom or in other situations in which

remaining seated is expected;

- 6.14.2.2.3 Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);
- 6.14.2.2.4 Often has difficulty laying or engaging in leisure activities quietly;
- 6.14.2.2.5 Is often "on the go" or often acts as if "driven by a motor";
- 6.14.2.2.6 Often talks excessively;
- 6.14.2.2.7 Often blurts out answers before questions have been completed;
- 6.14.2.2.8 Often has difficulty waiting turn;
- 6.14.2.2.9 Often interrupts or intrudes into conversations or games; and
- 6.14.2.3 Some hyperactive impulsive or inattentive symptoms that caused impairment were present before seven years of age;
- 6.14.2.4 A clear pattern that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time;
- 6.14.2.5 Clear evidence of clinically significant impairment in social, academic or occupational functioning; and
- 6.14.2.6 The symptoms do not occur exclusively during the course of a pervasive developmental disorder, schizophrenia, or other psychotic disorder, and are not better accounted for by another mental disorder (e.g. mood disorder, anxiety disorder, dissociative disorder, or personality disorder).

6.14.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

6.14.3.1 Written documentation from the formative intervention process used with the student under 14 **DE Admin. Code** 923.11.9 (relating to referral to Intervention Support Team). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected, and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

6.14.3.2 Medical records documenting the health impairment or, in the case of students with ADD and ADHD, medical or psychological records documenting that a child has such health impairment and determination by a school team of qualified evaluators, or, in the case of reevaluation, the IEP team, including the school psychologist, that the child exhibits the criteria listed in 4.11.2.

6.14.4 For purposes of initial eligibility or continued eligibility determination, the school psychologist and the school nurse shall be members of the IEP team.

6.14.5 Age of Eligibility: The age of eligibility for children with Other Health Impairments shall be from the third birthday through 20 years, inclusive.

6.15 Eligibility Criteria for Speech and/or Language Impairment: In determining eligibility under the Speech and Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech and Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; or a voice disorder.

6.15.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.

6.16 Eligibility Criteria for Traumatic Brain Injury. A qualified physician shall document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

6.16.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

6.16.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

6.17 Eligibility Criteria for Visual Impairment including Blindness:

6.17.1 ~~Legally Blind~~ Blindness shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

6.17.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. Partially sighted shall also include a degenerative eye disease, which in the opinion of a

licensed ophthalmologist or optometrist, is expected to reduce, in the future, either visual acuity or visual field, resulting in partial sight or blindness. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual perceptual or visual motor dysfunction resulting solely from a learning disability.

6.17.3 A licensed ophthalmologist or optometrist shall document that a child has at best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, ~~legally blind (for blindness),~~ or a visual acuity of 20/70 or less in the better eye after all correction ~~(for partially sighted), or a degenerative eye disease.~~

6.17.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

6.17.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

6.18 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only):

6.18.1 A speech disability is defined as a communication disorder or delay involving articulation, voice quality, or speech fluency to such a degree that it interferes with a child's overall communicative performance.

6.18.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

6.18.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized norm based instrument. It is strongly recommended that the evaluation include clinical observations or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

6.18.2.1.1 Articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,

6.18.2.1.2 Conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,

6.18.2.1.3 Oral motor involvement which may affect the development of normal articulation,

6.18.2.1.4 Speech fluency, or

6.18.2.1.5 Voice quality

6.18.3 Results of the evaluation may indicate a significant delay in receptive and expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

6.18.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

(Authority: 14 **Del.C.** §3110)

## **7.0 Learning Disabilities**

7.1 General: ~~Eligibility for special education services under the learning disability category shall be determined in accordance with 8.0 to 11.0. Subject to the effective dates in 6.11 and the special grandfathering rule in 6.4, eligibility for special education services under the learning disability category shall be contingent on the prior delivery of appropriate instruction, and shall further consider the child's response to scientific, research based interventions delivered according to the procedures in 12.0.~~

7.2 ~~Reserved. Assessments of intellectual functioning are not required to determine eligibility for special education services under the learning disability category. Assessments of intellectual functioning should generally be reserved for students suspected of having a mental disability or where an Intervention Support Team, or other group of qualified professionals (see 6.1), and the parent determines such tests are relevant in selecting appropriate instructional or behavioral interventions.~~

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 **Del.C.** §3110)

## **8.0 Additional Group Members.**

8.1 The determination of whether a child suspected of having a specific learning disability is a child

with a disability as defined in 14 DE Admin. Code 922.3.0 shall be made by the child's parents and a team of qualified professionals, which shall include:

- 8.1.1 The child's regular teacher; or
  - 8.1.2 If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
  - 8.1.3 For a child of less than school age, an individual qualified by the DOE to teach a child of his or her age; and
  - 8.1.4 At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.
- (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)); 14 Del.C. §3110)

### 9.0 Determining the Existence of a Specific Learning Disability.

9.1 Subject to 6.4 and 6.11, the The group described in 6.1 may determine that a child has a specific learning disability if:

9.1.1 Lack of achievement: The child does not achieve adequately for the child's age or to meet State approved grade level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State approved grade level standards as further described in 12.0:

- 9.1.1.1 Oral expression.
- 9.1.1.2 Listening comprehension.
- 9.1.1.3 Written expression.
- 9.1.1.4 Basic reading skill.
- 9.1.1.5 Reading fluency skills.
- 9.1.1.6 Reading comprehension.
- 9.1.1.7 Mathematics calculation.
- 9.1.1.8 Mathematics problem solving; and

9.1.2 Insufficient progress: The child does not make sufficient progress to meet age or State approved grade level standards in one or more of the areas identified in ~~9.1~~ 9.1.1 when using a process based on the child's response to scientific, research based intervention as further described in 12.0; or

9.1.3 Pattern of strengths and weaknesses: The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 4.0 and 5.0; and

9.1.4 Rule out other conditions: The group determines that its findings under 9.1.1, 9.1.2 and 9.1.3 are not primarily the result of:

- 9.1.4.1 A visual, hearing, or motor disability;
- 9.1.4.2 Mental retardation;
- 9.1.4.3 Emotional disturbance;
- 9.1.4.4 Cultural factors;
- 9.1.4.5 Environmental or economic disadvantage; or
- 9.1.4.6 Limited English proficiency.

9.2 To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group shall consider, as part of the evaluation described in 4.0 through 6.0:

9.2.1 Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

9.2.2 Data based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

9.3 The public agency shall promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and shall adhere to the timeframes described in 2.3 and 3.0 (unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 6.1):

- 9.3.1 If, prior to a referral, a child has not made adequate progress after an appropriate period of

time (as further provided in 12.0) when provided instruction, as described in 9.2; and

9.3.2 Whenever a child is referred for an evaluation.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)

## **10.0 Observation**

10.1 The public agency shall ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

10.2 The group described in 6.1, in determining whether a child has a specific learning disability, shall decide to use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.

10.3 In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)

## **11.0 Specific Documentation for the Eligibility Determination**

11.1 For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 6.1, shall contain a statement of:

11.1.1 Whether the child has a specific learning disability;

11.1.2 The basis for making the determination, including an assurance that the determination has been made in accordance with 6.3;

11.1.3 The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

11.1.4 The educationally relevant medical findings, if any;

11.1.5 Whether,

11.1.5.1 The child does not achieve adequately for the child's age or to meet State approved grade level standards consistent with 9.1.1; and

11.1.5.2 The child does not make sufficient progress to meet age or State approved grade level standards consistent with 9.1.2; or

11.2 The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State approved grade level standards or intellectual development consistent with 9.1.3;

11.3 The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

11.4 If the child has participated in a process that assesses the child's response to scientific, research based intervention:

11.4.1 The instructional strategies used and the student centered data collected; and

11.4.2 The documentation that the child's parents were notified about:

11.4.2.1 The DOE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

11.4.2.2 Strategies for increasing the child's rate of learning; and

11.4.2.3 The parents' right to request an evaluation.

11.5 Each group member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member shall submit a separate statement presenting the member's conclusions.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)

## **12.0 Response to Intervention Procedures. Reserved.**

12.1 Each public agency shall establish and implement procedures to determine whether a child responds to scientific, research-based interventions (RTI) for reading and mathematics.

12.1.1 Agencies may also establish and implement procedures to determine whether a child responds to scientific, research-based interventions in oral expression, listening comprehension, and written



expression.

12.2 Public agencies shall use rubrics approved by DOE to evaluate and select programs of instruction, and Tier 2 and Tier 3, interventions for reading and mathematics.

12.3 Instructional screening and progress monitoring instruments used as part of RTI procedures shall be curriculum based.

12.4 RTI procedures, including the same frequency and intensity of instruction, and small group settings available to all students, shall apply to children with disabilities who already receive special education and related services. RTI procedures shall not be required for students who participate in Alternate Assessment based on Alternate Achievement standards (AA-AAS).

12.4.1 IEP teams of children with disabilities may specialize the instruction and method of delivering interventions under RTI procedures.

12.4.2 IEP teams may also determine that a child with a disability requires more intensity or frequency of instruction, or smaller group settings than would otherwise be provided under RTI procedures.

12.5 RTI procedures shall include the tiers and types and duration of services and interventions described in 12.6 through 12.10.

12.6 Tier 1: Core Classroom Instruction: Tier 1 services shall be designed to be delivered in a general education setting, by a general education teacher. Instruction shall be delivered with fidelity as part of a scientifically based core curriculum and matched to student need.

12.6.1 Universal Tier 1 instructional screenings for reading and mathematics shall be conducted at least 3 times each regular school year at routine and fairly spaced intervals. The first screening shall be conducted within 2 weeks of the beginning of the regular school year, or within 2 weeks of the child's entry into school.

12.6.2 Children who score at or below the 25<sup>th</sup> percentile on any instructional screening, and children with disabilities already receiving special education and related services, shall be provided Tier 2 interventions.

12.6.3 A school based team (such as a literacy team, a leadership team or a grade-level team) shall review the program and progress of any child who does not score at benchmark on any instructional screening, but who does score above the 25<sup>th</sup> percentile, to assure that the child is receiving differentiated, needs-based instruction. In addition, the team's review shall include the fidelity of program implementation, pacing and appropriateness of instructional groupings.

12.6.3.1 The child's progress toward end of year benchmarks shall occur at least once every 2 weeks until progress monitoring consistently demonstrates that the child is on a trajectory to meet end of year benchmarks.

12.6.3.2 If, after 6 weeks of progress monitoring, the child is not on a trajectory to meet end of the year benchmarks, the child shall be provided Tier 2 interventions unless the school based team specifically determines that further progress monitoring is required before additional interventions are provided.

12.7 Tier 2: Intervention: Tier 2 interventions shall be designed to be delivered primarily in the general education setting, by a general education teacher, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention. It shall be implemented with fidelity to its scientific research base and matched to student need.

12.7.1 Tier 2 intervention shall be in addition to regularly scheduled core instruction in the general education curriculum, and shall be delivered in small group, at least 3 times each school week for at least 30 minutes per session.

12.7.2 Tier 2 interventions shall be delivered for at least 6 school weeks. Progress shall be monitored weekly against established benchmarks.

12.7.3 If, after 6 school weeks of Tier 2 intervention, a child has made no progress toward benchmarks, or has made progress, but is not on a trajectory to meet end-of-year benchmarks, an Intervention Support Team (IST) formulated in accordance with 14 DE Admin. Code 923.11.9, shall meet to review the child's program and progress, to assure that the child is receiving differentiated, needs-based instruction. In addition, the IST's review shall include fidelity of program implementation, pacing, and appropriateness of instructional groupings. Based on its review, the IST shall determine whether: additional assessments are required; additional changes to instructional or behavioral methods are required; or the child requires Tier 3 intervention.

12.7.4 If, after an additional 6 school weeks of Tier 2 intervention (or up to a total of 12 school

weeks of intervention) a child has made no progress toward benchmarks, or has made progress, but is not on a trajectory to meet end-of-year benchmarks, the child shall begin receiving Tier 3 intervention as outlined by the IST.

12.8 Tier 3: Intervention: Tier 3 interventions shall be designed to be delivered primarily in the general education setting, by a general education teacher and additional staff, but is likely to be delivered in other or additional settings, or by other trained staff as appropriate to the specific intervention. It shall be implemented with fidelity to its scientific research base and matched to the student's needs.

12.8.1 Tier 3 intervention shall be in addition to regularly scheduled core instruction in the general education curriculum, and shall be delivered in group settings smaller than those for intervention delivered in Tier 2, at least 5 times each school week for at least 30 minutes per session.

12.8.2 Tier 3 interventions shall be delivered for at least 6 school weeks. Progress shall be monitored weekly against established benchmarks.

12.8.3 If, after 6 school weeks of Tier 3 interventions (or up to a total of 18 school weeks of intervention), a child has made no progress toward benchmarks, the IST shall refer the child for an initial evaluation for special education services

12.8.4 If, after 6 school weeks of Tier 3 interventions (or up to a total of 18 school weeks of intervention), a child has made progress toward benchmarks, but is not on a trajectory to meet end-of-year benchmarks, the IST shall meet to review the child's program and progress, to assure that the child is receiving differentiated needs-based instruction. In addition, the IST's review shall include fidelity of program implementation, pacing, and appropriateness of instructional groupings. Based on its review, the IST shall determine whether: additional assessments are required; additional changes to instructional or behavioral methods are required; or the child should be referred for an initial evaluation for special education services.

12.8.5 If, after an additional 6 school weeks of Tier 3 interventions (or up to a total of 24 school weeks of interventions), a child has made progress toward benchmarks, but is not on a trajectory to meet end-of-year benchmarks, the IST shall refer the child for an initial evaluation for special education services.

12.9 RTI procedures shall also be designed to permit students to move between tiers of intervention based on the child's progress against benchmarks as measured through weekly progress monitoring. Weekly progress monitoring shall continue after a student is referred for an initial special education evaluation and for any student who is evaluated and determined eligible for special education and related services after receiving the interventions required in this section. In addition, the child's IEP team shall specifically consider the information gathered about the child's response to interventions, and the results of ongoing progress monitoring, in developing and revising the child's IEP. Subject to 3.0, a public agency shall initiate a reevaluation when ongoing progress monitoring indicates that the child's performance in reading or mathematics has improved such that the child may no longer require special education and related services.

12.10 If 80% or more of children in a classroom score below benchmark on any instructional screening, a school-based team, including a building level administrator, shall meet to consider the need for additional classroom supports and strategies.

12.11 Consistent with 1.0 through 5.0, a parent of a child may initiate a request for an initial evaluation at any time, including during the RTI process. The public agency may grant or decline the request. If the public agency declines to conduct the initial evaluation, it must provide written notice consistent with 14 DE Admin. Code 926.3.0. If the public agency agrees to conduct an initial evaluation, the evaluation shall be completed, and an eligibility determination made, within the timeframe established in 2.3. However, a child may be determined ineligible for services under the learning disability or educable mentally disabled categories where there are insufficient data to demonstrate that the child was provided appropriate instruction in the regular education setting, or where there is insufficient data-based documentation of repeated assessments of achievement. If a child is determined ineligible for special education services on these grounds, the child may be referred back to an IST to gather the required documentation and data by completing the RTI process. Eligibility for special education services may then be reconsidered at the request of the parent or a member of the IST.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)

**\*Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Department of Education is available at:**

**<http://regulations.delaware.gov/AdminCode/title14>**

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# PROPOSED REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1594

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

#### 1594 Delaware Administrator Standards

#### A. Type of Regulatory Action Requested

Reauthorization of Existing Regulation

#### B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation 14 **DE Admin. Code** 1594 Administrator Standards. The regulation addresses the Standards for Delaware Administrators. This regulation's five year review cycle requires action at this time.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Tuesday, July 3, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. Impact Criteria

1. Will the reauthorized regulation help improve student achievement as measured against state achievement standards? The reauthorized regulation addresses student achievement and concerns the establishment of uniform standards for the performance of school administrators.
2. Will the reauthorized regulation help ensure that all students receive an equitable education? The reauthorized regulation helps ensure that all school administrators demonstrate high standards of performance.
3. Will the reauthorized regulation help to ensure that all students' health and safety are adequately protected? The reauthorized regulation addresses administrator standards, not health and safety issues.
4. Will the reauthorized regulation help to ensure that all students' legal rights are respected? The reauthorized regulation addresses administrator standards, not students' legal rights.
5. Will the reauthorized regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The reauthorized regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.
6. Will the reauthorized regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The reauthorized regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision-making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.
8. Will the reauthorized 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 reauthorized regulation will 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.
9. Is there a less burdensome method for addressing the purpose of the reauthorized regulation? 14 **Del.C.** requires that we promulgate this regulation.
10. What is the cost to the state and to the local school boards of compliance with the reauthorized regulation? There is no additional cost to local school boards for compliance with the reauthorized regulation.

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## 1594 Delaware Administrator Standards

### 1.0 Interstate School Leaders Licensure Consortium

The Interstate School Leaders Licensure Consortium (ISLLC) Standards<sup>1</sup> for School Leaders establish a common set of knowledge, skills and attributes expected of school leaders.

These nationally recognized standards describe standards established for Delaware School Leaders, and serve as the foundation for preparation and appraisal of school leaders. In accordance with 14 **Del.C.** §1205, this regulation shall be applied to all school administrators employed within the public schools and charter schools of the State of Delaware.

### 2.0 Definitions

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

"**Administrator**" means an educator who is licensed and certified as an administrator and is employed in an instructional role in a school district or charter school.

### 3.0 Standard 1

A school administrator is an educational leader who promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community.

- 3.1 The administrator has knowledge and understanding of:
  - 3.1.1 Learning goals in a pluralistic society.
  - 3.1.2 The principles of developing and implementing strategic plans.
  - 3.1.3 Systems theory.
  - 3.1.4 Information sources, data collection, and data analysis strategies.
  - 3.1.5 Effective communication.
  - 3.1.6 Effective consensus building and negotiation skills.
- 3.2 The administrator believes in, values, and is committed to:
  - 3.2.1 The educability of all.
  - 3.2.2 A school vision of high standards of learning.
  - 3.2.3 Continuous school improvement.
  - 3.2.4 The inclusion of all members of the school community.
  - 3.2.5 Ensuring that students have the knowledge, skills, and values needed to become successful adults.
  - 3.2.6 A willingness to continuously examine one's own assumptions, beliefs, and practices.
  - 3.2.7 Doing the work required for high levels of personal and organizational performance.
- 3.3 The administrator facilitates processes and engages in activities ensuring that:
  - 3.3.1 The vision and mission of the school are effectively communicated to staff, parents, students, and community members.
  - 3.3.2 The vision and mission are communicated through the use of symbols, ceremonies, stories, and similar activities.
  - 3.3.3 The core beliefs of the school vision are modeled for all stakeholders.
  - 3.3.4 The vision is developed with and among stakeholders.
  - 3.3.5 The contributions of school community members to the realization of the vision are recognized and celebrated.
  - 3.3.6 Progress toward the vision and mission is communicated to all stakeholders.
  - 3.3.7 The school community is involved in school improvement efforts.
  - 3.3.8 The vision shapes the educational programs, plans, and actions.
  - 3.3.9 An implementation plan is developed in which objectives and strategies to achieve the vision and goals are clearly articulated.
  - 3.3.10 Assessment data related to student learning are used to develop the school vision and goals.
  - 3.3.11 Relevant demographic data pertaining to students and their families are used in developing the school mission and goals.

- 3.3.12 Barriers to achieving the vision are identified, clarified, and addressed.
- 3.3.13 Needed resources are sought and obtained to support the implementation of the school mission and goals.
- 3.3.14 Existing resources are used in support of the school vision and goals.
- 3.3.15 The vision, mission, and implementation plans are regularly monitored, evaluated, and revised.

## 4.0 Standard 2

A school administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth.

- 4.1 The administrator has knowledge and understanding of:
- 4.1.1 Student growth and development.
  - 4.1.2 Applied learning theories.
  - 4.1.3 Applied motivational theories.
  - 4.1.4 Curriculum design, implementation, evaluation, and refinement.
  - 4.1.5 Principles of effective instruction.
  - 4.1.6 Measurement, evaluation, and assessment strategies.
  - 4.1.7 Diversity and its meaning for educational programs.
  - 4.1.8 Adult learning and professional development models.
  - 4.1.9 The change process for systems, organizations, and individuals.
  - 4.1.10 The role of technology in promoting student learning and professional growth.
  - 4.1.11 School cultures.
- 4.2 The administrator believes in, values, and is committed to:
- 4.2.1 Student learning as the fundamental purpose of schooling.
  - 4.2.2 The proposition that all students can learn.
  - 4.2.3 The variety of ways in which students can learn.
  - 4.2.4 Life long learning for self and others.
  - 4.2.5 Professional development as an integral part of school improvement.
  - 4.2.6 The benefits that diversity brings to the school community.
  - 4.2.7 A safe and supportive learning environment.
  - 4.2.8 Preparing students to be contributing members of society.
- 4.3 The administrator facilitates processes and engages in activities ensuring that:
- 4.3.1 All individuals are treated with fairness, dignity, and respect.
  - 4.3.2 Professional development promotes a focus on student learning consistent with the school vision and goals.
  - 4.3.3 Students and staff feel valued and important.
  - 4.3.4 The responsibilities and contributions of each individual are acknowledged.
  - 4.3.5 Barriers to student learning are identified, clarified, and addressed.
  - 4.3.6 Diversity is considered in developing learning experiences.
  - 4.3.7 Life long learning is encouraged and modeled.
  - 4.3.8 There is a culture of high expectations for self, student, and staff performance.
  - 4.3.9 Technologies are used in teaching and learning.
  - 4.3.10 Student and staff accomplishments are recognized and celebrated.
  - 4.3.11 Multiple opportunities to learn are available to all students.
  - 4.3.12 The school is organized and aligned for success.
  - 4.3.13 Curricular, co-curricular, and extra-curricular programs are designed, implemented, evaluated, and refined.
  - 4.3.14 Curriculum decisions are based on research, expertise of teachers, and the recommendations of learned societies.
  - 4.3.15 The school culture and climate are assessed on a regular basis.
  - 4.3.16 A variety of sources of information is used to make decisions.
  - 4.3.17 Student learning is assessed using a variety of techniques.
  - 4.3.18 Multiple sources of information regarding performance are used by staff and students.

- 4.3.19 A variety of supervisory and evaluation models is employed.
- 4.3.20 Pupil personnel programs are developed to meet the needs of students and their families.

## 5.0 Standard 3

A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment.

- 5.1 The administrator has knowledge and understanding of:
  - 5.1.1 Theories and models of organizations and the principles of organizational development.
  - 5.1.2 Operational procedures at the school and district level.
  - 5.1.3 Principles and issues relating to school safety and security.
  - 5.1.4 Human resources management and development.
  - 5.1.5 Principles and issues relating to fiscal operations of school management.
  - 5.1.6 Principles and issues relating to school facilities and use of space.
  - 5.1.7 Legal issues impacting school operations.
  - 5.1.8 Current technologies that support management functions.
- 5.2 The administrator believes in, values, and is committed to:
  - 5.2.1 Making management decisions to enhance learning and teaching.
  - 5.2.2 Taking risks to improve schools.
  - 5.2.3 Trusting people and their judgments.
  - 5.2.4 Accepting responsibility.
  - 5.2.5 High quality standards, expectations, and performances.
  - 5.2.6 Involving stakeholders in management processes.
  - 5.2.7 A safe environment.
- 5.3 The administrator facilitates processes and engages in activities ensuring that:
  - 5.3.1 Knowledge of learning, teaching, and student development is used to inform management decisions.
  - 5.3.2 Operational procedures are designed and managed to maximize opportunities for successful learning.
  - 5.3.3 Emerging trends are recognized, studied, and applied as appropriate.
  - 5.3.4 Operational plans are procedures to achieve the vision and goals of the school are in place.
  - 5.3.5 Collective bargaining and other contractual agreements related to the school are effectively managed.
  - 5.3.6 The school plan, equipment, and support systems operate safely, efficiently, and effectively.
  - 5.3.7 Time is managed to maximize attainment of organizational goals.
  - 5.3.8 Potential problems and opportunities are identified.
  - 5.3.9 Problems are confronted and resolved in a timely manner.
  - 5.3.10 Financial, human, and material resources are aligned to the goals of schools.
  - 5.3.11 The school acts entrepreneurially to support continuous improvement.
  - 5.3.12 Organizational systems are regularly monitored and modified as needed.
  - 5.3.13 Stakeholders are involved in decisions affecting schools.
  - 5.3.14 Responsibility is shared to maximize ownership and accountability.
  - 5.3.15 Effective problem framing and problem solving skills are used.
  - 5.3.16 Effective conflict resolution skills are used.
  - 5.3.17 Effective group process and consensus building skills are used.
  - 5.3.18 Effective communication skills are used.
  - 5.3.19 There is effective use of technology to manage school operations.
  - 5.3.20 Fiscal resources of the school are managed responsibly, efficiently, and effectively.
  - 5.3.21 A safe, clean, and aesthetically pleasing school environment is created and maintained.
  - 5.3.22 Human resource functions support the attainment of school goals.
  - 5.3.23 Confidentiality and privacy of school records are maintained.

## 6.0 Standard 4

A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources.

- 6.1 The administrator has knowledge and understanding of:
  - 6.1.1 Emerging issues and trends that potentially impact the school community.
  - 6.1.2 The conditions and dynamics of the diverse school community.
  - 6.1.3 Community resources.
  - 6.1.4 Community relations and marketing strategies and processes.
  - 6.1.5 Successful models of school, family, business, community, government and higher education partnerships.
- 6.2 The administrator believes in, values, and is committed to:
  - 6.2.1 Schools operating as an integral part of the larger community.
  - 6.2.2 Collaboration and communication with families.
  - 6.2.3 Involvement of families and other stakeholders in school decision-making processes.
  - 6.2.4 The proposition that diversity enriches the school.
  - 6.2.5 Families as partners in the education of their children.
  - 6.2.6 The proposition that families have the best interests of their children in mind.
  - 6.2.7 Resources of the family and community needing to be brought to bear on the education of students.
  - 6.2.8 An informed public.
- 6.3 The administrator facilitates processes and engages in activities ensuring that:
  - 6.3.1 High visibility, active involvement, and communication with the larger community is a priority.
  - 6.3.2 Relationships with community leaders are identified and nurtured.
  - 6.3.3 Information about family and community concerns, expectations, and needs is used regularly.
  - 6.3.4 There is outreach to different business, religious, political, and service agencies and organizations.
  - 6.3.5 Credence is given to individuals and groups whose values and opinions may conflict.
  - 6.3.6 The school and community serve one another as resources.
  - 6.3.7 Available community resources are secured to help the school solve problems and achieve goals.
  - 6.3.8 Partnerships are established with area businesses, institutions of higher education, and community groups to strengthen programs and support school goals.
  - 6.3.9 Community youth family services are integrated with school programs.
  - 6.3.10 Community stakeholders are treated equitably.
  - 6.3.11 Diversity is recognized and valued.
  - 6.3.12 Effective media relations are developed and maintained.
  - 6.3.13 A comprehensive program of community relations is established.
  - 6.3.14 Public resources and funds are used appropriately and wisely.
  - 6.3.15 Community collaboration is modeled for staff.
  - 6.3.16 Opportunities for staff to develop collaborative skills are provided.

## 7.0 Standard 5

A school administrator is an educational leader who promotes the success of all students by acting with integrity, with fairness, and in an ethical manner.

- 7.1 The administrator has knowledge and understanding of:
  - 7.1.1 The purpose of education and the role of leadership in modern society.
  - 7.1.2 Various ethical frameworks and perspectives on ethics.
  - 7.1.3 The values of the diverse school community.
  - 7.1.4 Professional codes of ethics.
  - 7.1.5 The philosophy and history of education.
- 7.2 The administrator believes in, values, and is committed to:



- 7.2.1 The ideal of the common good.
- 7.2.2 The principles in the Bill of Rights.
- 7.2.3 The right of every student to a free, quality education.
- 7.2.4 Bringing ethical principles to the decision-making process.
- 7.2.5 Subordinating one's own interest to the good of the school community.
- 7.2.6 Accepting the consequences for upholding one's principles and actions.
- 7.2.7 Using the influence of one's office constructively and productively in the service of all students and their families.
- 7.2.8 Development of a caring school community.
- 7.3 The administrator:
  - 7.3.1 Examines personal and professional values.
  - 7.3.2 Demonstrates a personal and professional code of ethics.
  - 7.3.3 Demonstrates values, beliefs, and attitudes that inspire others to higher levels of performance.
  - 7.3.4 Serves as a role model.
  - 7.3.5 Accepts responsibility for school operations.
  - 7.3.6 Considers the impact of one's administrative practices on others.
  - 7.3.7 Uses the influence of the office to enhance the educational program rather than for personal gain.
  - 7.3.8 Treats people fairly, equitably, and with dignity and respect.
  - 7.3.9 Protects the rights and confidentiality of students and staff.
  - 7.3.10 Demonstrates appreciation for and sensitivity to the diversity in the school community.
  - 7.3.11 Recognizes and respects the legitimate authority of others.
  - 7.3.12 Examines and considers the prevailing values of the diverse school community.
  - 7.3.13 Expects that others in the school community will demonstrate integrity and exercise ethical behavior.
  - 7.3.14 Opens the school to public scrutiny.
  - 7.3.15 Fulfills legal and contractual obligations.
  - 7.3.16 Applies laws and procedures fairly, wisely, and considerately.

**8.0 Standard 6**

A school administrator is an educational leader who promotes the success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural contexts.

- 8.1 The administrator has knowledge and understanding of:
  - 8.1.1 Principles of representative governance that under gird the system of American schools.
  - 8.1.2 The role of public education in developing and renewing a democratic society and an economically productive nation.
  - 8.1.3 The law as related to education and schooling.
  - 8.1.4 The political, social, cultural and economic systems and processes that impact schools.
  - 8.1.5 Models and strategies of change and conflict resolution as applied to the larger political, social, cultural and economic contexts of schooling.
  - 8.1.6 Global issues and forces affecting teaching and learning.
  - 8.1.7 The dynamics of policy development and advocacy under our democratic political system.
  - 8.1.8 The importance of diversity and equity in a democratic society.
- 8.2 The administrator believes in, values, and is committed to:
  - 8.2.1 Education as a key to opportunity and social mobility.
  - 8.2.2 Recognizes a variety of ideas, values, and cultures.
  - 8.2.3 Importance of a continuing dialogue with other decision makers affecting education.
  - 8.2.4 Actively participating in the political and policy making context in the service of education.
  - 8.2.5 Using legal systems to protect student rights and improve student opportunities.
- 8.3 The administrator facilitates processes and engages in activities ensuring that:
  - 8.3.1 The environment in which schools operate is influenced on behalf of students and their families.

8.3.2 Communication occurs among the school community concerning trends, issues, and potential changes in the environment in which schools operate.

8.3.3 There is ongoing dialogue with representatives of diverse community groups.

8.3.4 The school community works within the framework of policies, laws, and regulations enacted by local, state, and federal authorities.

8.3.5 Public policy is shaped to provide quality education for students.

8.3.6 Lines of communication are developed with decision makers outside the school community.

<sup>1</sup> The Interstate School Leaders Licensure Consortium Standards for School Leaders. Washington, D.C.: Council of Chief State School Officers, 1996.

**6 DE Reg. 322 (09/01/02)**

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### PUBLIC NOTICE

#### Title XIX Medicaid State Plan Attachment 4.19-D Pediatric Nursing Facility Care Reimbursement

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), and with 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding pediatric nursing facility care reimbursement.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by June 30, 2007.

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

#### SUMMARY OF PROPOSAL

##### Statutory Authority

- 42 CFR Part 447, Subpart C – *Payment for Inpatient Hospital and Long-Term Care Facility Services*;
- 42 CFR §440.170(d), *Skilled Nursing Facility Services for Individuals Under Age 21*; and,
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*.

##### Summary of Proposal

The reason for this amendment is to establish a class of pediatric nursing care facility that offers specialized nursing care for a defined group of children under the age of 21 years. These children are not able to be served in the Prescribed Pediatric Extended Care (PPEC) Program because of their increased service requirements.

The amendment defines the requirements of a certain group of children under the age of 21 years that are eligible to be served in a pediatric nursing facility. These children must be determined to require this level of care by the DMMA Medical Evaluation Team.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

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## DMMA PROPOSED REGULATION #07-26

### REVISION:

ATTACHMENT 4.19-D  
Page 17

### IX. Reimbursement for Pediatric Nursing Facility Care

Certain Medicaid-eligible children under the age of 21 years require facility-based nursing care and would be best served in a specialized pediatric nursing facility (that is, other than a traditional nursing facility). In order to qualify for this care, clients must be determined to require this level of care by the DMMA Medical Evaluation Team.

The level of reimbursement for each client will be based on the level of care determined by the DMMA Medical Evaluation Team. A per diem rate shall be established for each level of care based on reasonable costs for comparable DMMA services that have a demonstrated cost history and that serve a similar population, adjusted as necessary to reflect substantive differences in program operation. Rates for each level of care shall be computed for a base year and may be inflated each year thereafter using a nationally recognized inflation index. In addition to all nursing and operational costs, per diem rates are inclusive of all services, including but not limited to all therapies, supplies, non-custom durable medical equipment and over-the-counter (OTC) drugs required to treat the child's medical condition but do not include custom durable medical equipment for the individual use of a client or prescription ("legend product") drugs, which will be billed directly to Medicaid by the appropriate medical care provider in accordance with Medicaid policy.

Eligible recipients meeting the eligibility criteria for pediatric nursing facility care but who are being cared for in a facility other than a Pediatric Nursing Care Facility shall be reimbursed at the lowest appropriate Pediatric Nursing Facility rate after an assessment by the DMMA Medical Evaluation Team.

Eligible children in Pediatric Nursing Facilities located outside of Delaware are reimbursed at the lowest Delaware Pediatric Nursing Facility rate for each client category level to which they are assigned after being assessed by the DMMA Medical Evaluation Team.

In special cases, the State has the option to provide additional reimbursement if circumstances warrant, where such additional reimbursement is necessary to ensure that the appropriate level of care is given to assure that the child's health status is not jeopardized.

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## **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

### **PUBLIC NOTICE**

#### **Long Term Care Medicaid - Annuities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) regarding the treatment of annuities provisions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by June 30, 2007.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials

filed by other interested persons.

### SUMMARY OF PROPOSAL

#### Statutory Authority

- Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

#### Background

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(B)(i) of Social Security Act affecting Long Term Care services and supports.

#### Summary of Proposal

DSSM 20330.4.1.A, *Treatment of Annuities Purchased Prior to February 8, 2006*: The Division of Medicaid and Medical Assistance (DMMA) recently made changes to the annuity policy provisions based on the mandates of the DRA (**see 10 DE Reg. 1601**). This regulatory action incorporates additional guidance received from the Centers for Medicare and Medicaid Services (CMS) regarding the DRA as it applies to the treatment of annuities.

#### **DMMA PROPOSED REGULATION #07-28**

#### REVISIONS:

##### 20330.4.1 Annuities

An annuity is a financial device between an individual and a commercial company that conveys a right to receive periodic payments for life or a fixed number of months or years.

##### 20330.4.1.A

A. Treatment of annuities purchased prior to February 8, 2006:

While the annuity itself may or may not be an available resource, the stream of income generated by the annuity is a countable income. The applicant must demonstrate to DMMA that a market to purchase the annuity stream of income does not exist. If a market exists, DMMA will consider the annuity to be an available resource. See 20 CFR 416.1201 (a).

DMMA will require that the fair market value of the annuity income stream be sold at Fair Market Value counted as a resource. See DSSM 20350.1.7 Fair Market Value (FMV).

DMMA will not count the value of an annuity purchased by a third party, e.g., the applicant's employer, as a retirement benefit to the applicant. However, DMMA will count the value of the income generated from a third party annuity.

An annuity that is revocable is always a countable resource. Revocable annuities are able to be converted to cash.

Spouses that claim the income allowance is inadequate to meet the needs of the Community Spouse may request additional resources be set aside to bring their income up to the minimum maintenance needs allowance. These requests **MUST** go through the fair hearing process in order to retain excess resources for their protected income share. See DSSM 20970 and 42 USC 1396r-5(e). In these cases, at the death of the annuity's owner, the beneficiary of the annuity must be the estate of the Medicaid recipient.

**8 DE Reg. 1617 (05/01/05)**

**10 DE Reg. 1601 (04/01/07)**

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

### FOOD STAMP 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 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend food stamp program policies in the Division of Social Services Manual (DSSM) regarding verification changes.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program and Development Unit, Division of Social Services, 1901 North Dopotant Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 (new fax number) by June 30, 2007.

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

### SUMMARY OF PROPOSED CHANGES

#### Statutory Authority

- 7 CFR §273.2(f)(1), *Mandatory Verification*
- 7 CFR §273.2(f)(3), *State Agency Options*
- 7 CFR §273.2(f)(8), *Verification Subsequent to Initial Certification*

#### Summary of Proposed Changes

DSS is making these changes in the Division of Social Services Manual (DSSM) due to ongoing payment accuracy errors in food stamp cases involving income and shelter/utility costs. These errors occur when clients fail to report changes at recertification. Verifying income and shelter/utility costs at recertification and for interim changes will help reduce the payment error rate. And, providing guidelines for determining outdated information will make the process of eligibility determinations consistent among all staff. This regulatory action contains revised and clarified policy as summarized below:

1) DSSM 9032, *Mandatory Verification*: Requires verification of shelter and utility costs at recertification and interim changes; clarified which standard utility allowance; and, the word "Changes" is substituted for "Charges" in the heading.

2) DSSM 9033, *Verification of Questionable Information*: This is a technical correction as DSS stopped using actual utilities several years ago when Standard Utility Allowances were mandated.

3) DSSM 9038, *Verification Subsequent to Initial Certification*: Requires verification of all income at recertification and interim changes; requires verification of shelter and utility costs at recertification and interim changes; and, provides guidelines for determining outdated verifications.

**DSS PROPOSED REGULATIONS #07-27****REVISIONS:****9032 Mandatory Verification**

[273.2(f)(1)]

*(Break in Continuity of Sections)***9032.3 Utility Expenses**

If a household wishes to claim expenses for an unoccupied home, verify the actual utility expenses in every case and do not use the standard utility allowance.

For those households entitled to a the heating/cooling or limited standard utility allowance as specified in DSSM 9060, verify that the household actually incurs a utility expense, although there is no need to verify the amount of the expense. ~~Verification will be on a one-time basis unless the household has moved or changed its utilities or unless questionable as defined in DSSM 9033.~~

Do not verify more than one utility, except for the limited utility allowance, unless questionable in accordance with DSSM 9033.

For those households entitled to the one-utility standard, verify the actual amount of the utility at each application and recertification.

*(Break in Continuity of Sections)***9032.9 Continuing Shelter Charges**

~~Verify these shelter costs specified in DSSM 9060(F), other than utilities, at initial application, at recertification, and when shelter expenses change~~ if allowing the expense could potentially result in a deduction. ~~Verification will be on a one-time basis unless the household has moved, reported an increase in the amount of its individual shelter costs that would potentially affect the level of the deduction (in which case only those changed individual costs could be reverified) or unless questionable as defined in DSSM 9033.~~

*(Break in Continuity of Sections)***9033 Verification of Questionable Information**

[273.2(f)(2)]

Eligibility factors other than those listed in DSSM 9032 will be verified only if questionable and if they affect a household's eligibility or benefit level.

Questionable information is information inconsistent with statements made by the applicant, with other information on the application or previous applications, or with information received by the agency. Procedures described below will apply when one of the following eligibility factors is questionable:

When expenses claimed by the household for purposes of determining allowable program deductions (per DSSM 9060) or those otherwise reported during the certification interview (e.g., car payments, credit card bills) exceed declared income, ask the household to verify how such expenses were paid. New applicants must satisfactorily explain past management. Possible methods to verify payments are as follows:

Income SourceType of Verification

Loans and gifts	Statement from lender
Sale of personal property	Receipt from sale
Exchange of services/ in-kind benefits	Statement from landlord, etc.
Gambling proceeds	Lottery tickets
Odd jobs	Note from employer

Benefits may be authorized if the following conditions are met:

- a) A new household provides a satisfactory explanation of past management including any verification that is reasonably available to the household.
- b) A participating household satisfactorily verifies factors of past management. Verification must be from the month(s) immediately preceding certification/recertification.

Additionally, households where management has been questionable will be notified that they will be responsible for verifications of all cash outflow at times of recertification if management continues to appear questionable.

A. Household Composition. Verify factors affecting the composition of a household, if questionable. Individuals who wish to be a separate household from those with whom they reside will be responsible for proving a claim that they are a separate household to the satisfaction of the Division.

Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors for determining separateness will be responsible for proving a claim of separateness in accordance with DSSM 9032.11.

B. Citizenship. The household must provide acceptable verification for any member whose U.S. citizenship is questionable.

A claim to citizenship may be considered questionable if:

- 1) The claim of citizenship is inconsistent with statements made by the applicant or with other information on the application or on previous applications.
- 2) The claim of citizenship is inconsistent with information received from another source.
- 3) The individual does not have a Social Security Number.

When a household's statement that one or more of its members are U.S. citizens or has the status as a non-citizen national is questionable, ask the household to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, voter registration cards, certificates of citizenship or naturalization provided by INS, such as identification cards for use of resident citizens in the United States (INS form I- 179 or INS form I- 197), or U.S. passports. Participation in the TANF Program will also be considered acceptable verification if verification of citizenship or non-citizen national status was obtained for that program. If the above forms of verification cannot be obtained and the household can provide a reasonable explanation as to why verification is not available, accept a signed statement from a third party indicating a reasonable basis for personal knowledge that the member in question is a U.S. citizen. The signed statement must contain a warning of the penalties for helping someone commit fraud, such as: "If you intentionally give false information to help this person get food stamps, you may be fined, imprisoned, or both."

The member whose citizenship or non-citizen national status is in question will be ineligible to participate until proof of U.S. citizenship or non-citizen national status is obtained. Until proof of U.S. citizenship or non-citizen national status is obtained, the member whose citizenship or non-citizen national status is in question will have his or her income, less a prorata share, and all of his or her resources considered available to any remaining household members as set forth in DSSM 9076.2.

C. Deductible expenses. If obtaining verification for a deductible expense may delay certification, advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses per DSSM 9032. Shelter costs would be computed without including the unverified components. The standard utility allowance will be used if the household is entitled to claim it ~~and has not verified higher actual costs.~~

If the expense cannot be verified within 30 days of the date of application, determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in DSSM 9085. If the expense could not be verified within the 30- day processing standard because the Division failed to allow the household sufficient time per DSSM 9040 to verify the expense, the household will be entitled to the restoration of benefits retroactive to the month of application, provided that the missing verification is supplied in accordance with DSSM 9040. If the household would be ineligible unless the expense is allowed, the household's application will be handled as provided in DSSM 9040.

*(Break in Continuity of Sections)*

### 9038 Verification Subsequent to Initial Certification

[273.2(f)(8)]

A. Recertification - ~~Verify a change in income expenses if the source has changed or the amount has changed by more than \$50. Verify all income at each recertification. Verify shelter and utility expenses at each recertification.~~ Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25 shall also be verified at recertification. ~~Do not verify income if the source has not changed and if the amount is unchanged or has changed by \$50 or less unless the information is incomplete, inaccurate, or inconsistent.~~ Do not verify total medical expenses ~~or actual utility expenses~~ claimed by households which are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate, ~~or inconsistent,~~ or outdated.

Verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of actual payments made to non household members for households eligible for the child support deduction. Verify unchanged child support payments only if questionable.

Verify newly obtained Social Security Numbers at recertification according to procedures outlined in DSSM 9032.5.

Other information which has changed may be verified at recertification. Do not verify unchanged information unless the information is incomplete, inaccurate, ~~or inconsistent,~~ or outdated.

For individuals who are satisfying the ABAWD work requirements by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State, the individuals' work hours shall be verified.

B. Changes - Changes reported during the certification period are subject to the same verification procedures as apply at initial certification, ~~except that we shall not verify changes in income if the source has not changed and if the amount has changed by \$50 or less, unless the information is incomplete, inaccurate, or inconsistent.~~ Verify all changes in income. Verify all changes in shelter and utility expenses. Do not verify total medical expenses, unless the information is incomplete, inaccurate, ~~or inconsistent,~~ or outdated.

#### Guidelines for determining if information is outdated:

- Expenses billed monthly - no more than 3 months old
- Expenses billed quarterly - no more than 6 months old
- Expenses billed seasonally - no more than 1 year old
- Expenses billed annually - no more than 1 year old.



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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)  
7 DE Admin. Code 1138

SAN # 2006-22

**1. Title of the Regulations:**

Amendment to Regulation No. **1138 Emission Standards for Hazardous Air Pollutants for Source Categories**

**2. Brief Synopsis of the Subject, Substance and Issues:**

Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standards applicable to halogenated solvent degreasers (40 CFR Part 63 Subpart T) and aluminum sweat furnaces (40 CFR Part 63 Subpart RRR) into Regulation No. 38 on November 1, 2001 and June 1, 2003, respectively. When Delaware adopted these standards all sources subject to them were required to get a Title V operating permit. In December 2005, the EPA revised the Title V permitting requirements to permanently exempt the smaller area sources from having to obtain a Title V permit.

The purpose of this amendment to Subparts T and RRR of Regulation No. 38 is to be consistent with federal requirements by permanently exempting small area sources from Title V permitting requirements. These sources must still obtain air permits under Regulation 1102.

With this rulemaking, the Department will also amend Subparts T and RRR to be consistent with the Delaware Administrative Code format. The Department will also change from the adoption by reference format and provide the complete regulatory text. This latter change will eliminate the need for the public and regulated community to interpret the adopted federal standards and the changes made when the Department originally adopted these standards into Regulation No. 38.

**3. Possible Terms of the Agency Action:**

None

**4. Statutory Basis or Legal Authority to Act:**

7 Delaware Code, Chapter 60

**5. Other Regulations that May be Affected by the Proposal:**

None

**6. Notice Of Public Comment:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, June 21, 2007 beginning at 6:00PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

**7. Prepared By:**

James R. Snead (302) 323-4542 james.snead@state.de.us  
April 11, 2007

### PROLOGUE

- The Department proposes to amend Regulation 1138 (formerly regulation 38) by replacing Subparts T and RRR with the following. New Sections 8.0 and 12.0 do not change any of the other sections of Regulation 1138.
- ~~Strikeout~~ and underlines include newly added federal changes and miscellaneous changes to correct

technical errors, to improve clarity, and to provide consistency between Sections 8.0 and 12.0 and other sections in the Regulation 1138.

- Changes in the numbering system and errata corrections (spellings, punctuation, capitalization, etc.) have not been shown using ~~strikeouts~~ and underlines.

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

**1138 Emission Standards for Hazardous Air Pollutants for Source Categories**

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

**3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals**  
Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))  
**24 DE Admin. Code 3000**

### PUBLIC NOTICE

The Delaware Board of Mental Health and Chemical Dependency Professionals, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3006(a)(1), proposes changes to its **Regulation 2.0** affecting the definition of Professional Counseling Experience. Specifically, the proposed changes clarify the definition of "Professional Counseling Experience" for the benefit of prospective applicants.

A public hearing is scheduled for Thursday, June 27, 2007 at 12:00 noon in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Timothy E. Oswell at the above address. The final date to submit written comments will be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Timothy E. Oswell at the above address or by calling (302) 744-4530.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

### **3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals**

#### *(Break in Continuity of Sections)*

#### **2.0 Licensure for Professional Counselors of Mental Health (LPCMH)**

##### 2.1 Licensure by Certification Requirements

2.1.1 Certification - The applicant for licensure by certification shall be certified by the National Board for Certified Counselors, Inc. (NBCC) as a National Certified Counselor (NCC), by the Academy of Clinical Mental Health Counselors (ACMHC) as a Certified Clinical Mental Health Counselor (CCMHC), or by a certifying organization acceptable to the Board. This certification shall be verified by the "NBCC Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

2.1.1.1 Certifying organizations acceptable to the Board shall include NBCC, ACMHC, and other certifying organizations that meet all of the following criteria:

2.1.1.1.1 The organization shall be a national professional mental health organization recognized as setting national standards of clinical competency.

2.1.1.1.2 The organization shall require the applicant to take a standardized examination designed to test his/her understanding of the principles involved in the mental health specialty for which he/she is being certified. Certification shall be based upon the applicant's attaining the minimum passing score set by the organization.

2.1.1.1.3 The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

2.1.1.1.4 The organization shall require the minimum of a master's degree in a counseling or behavioral science field.

2.1.1.2 Individuals licensed prior to the effective date of this Rule may maintain certification or membership in the certifying organization, acceptable to the board at the time of their initial licensure in order to qualify for renewal of their license notwithstanding that such certifying organization is no longer deemed acceptable to the board.

2.1.2 Graduate Transcript - The applicant's master's degree in a counseling or behavioral science field, required by his/her certifying organization for certification, shall be documented by an official transcript submitted directly to the Board by the accredited educational institution granting the degree.

2.1.3 Professional Counseling Experience - ~~Professional Counseling experience shall be defined as~~ means the accumulation of hours spent providing face-to-face professional mental health clinical counseling services ~~in a professional mental health clinical counseling setting, including face to face interaction with clients, and other matters directly related to the treatment of clients, in a setting or facility that is clearly designated to provide professional mental health clinical counseling services and is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).~~

2.1.3.1 Designated Objective Agent - For purposes of professional counseling experience obtained through self-employment, a designated objective agent shall be a professional colleague, supervisor or other individual with personal knowledge of the extent of the professional practice of the applicant, who certifies or attests to such professional practice. Under no circumstances shall a spouse, former spouse, parent, step-parent, grand-parent, child, step-child, sibling, aunt, uncle, cousin or in-law of the applicant be acceptable as a designated objective agent.

2.1.3.2 Thirty (30) graduate semester hours or more attained beyond the master's degree, may be substituted for up to 1,600 hours of the required clinical experience, provided that hours are clearly related to the field of counseling and are acceptable to the Board. Graduate credit hours shall be verified by an official transcript submitted directly to the Board by the accredited educational institution at which the course work was done.

2.1.3.3 Supervised clinical experience or post-master's degree alternative shall be verified by the "Professional Experience Reference Form" and/or the "Verification of Self Employment" form.

2.1.4 Supervised Professional Counseling Experience - Supervised professional counseling experience shall be the accumulation of hours spent providing mental health counseling services while under the supervision of an approved clinical supervisor. Supervised professional counseling experience acceptable to the Board shall be defined as follows:

2.1.4.1 Supervised professional counseling experience shall consist of 1,600 hours of clinical experience, directly supervised by a LPCMH. Where direct supervision by a LPCMH is not available, a licensed clinical social worker, licensed psychologist or licensed physician specializing in psychiatry may supervise the applicant.

2.1.4.2 Direct Supervision - 1600 hours of direct supervision acceptable to the Board, for purposes of §3008(a)(2) shall mean supervision overseeing the supervisee's application of clinical counseling principles, methods or procedures to assist individuals in achieving more effective personal and social adjustment. At least 100 of the 1600 hours of supervision shall consist of face to face consultation between the supervisor and the supervisee. Direct supervision may take place in individual and/or group settings, defined as follows:

2.1.4.2.1 Individual Supervision - Individual supervision shall consist of one-to-one, face-to-face meetings between supervisor and supervisee.

2.1.4.2.2 Group Supervision - Group supervision shall consist of face-to-face meetings between supervisor and no more than six (6) supervisees.

2.1.4.2.3 Supervisory Setting - No more than forty (40) hours of group supervision shall be acceptable toward the 100-hour requirement. The entire 100-hour requirement may be fulfilled by individual supervision.

2.1.4.3 Supervision shall be verified by the "Direct Supervision Reference Form," submitted directly to the Board by the approved clinical supervisor.

## 2.2 Licensure by Reciprocity Requirements

2.2.1 Proof of Licensure Status - The applicant shall hold an active professional counseling license in good standing from another state. Verification of licensure status shall be submitted directly to the Board

by that state on the "Verification of Licensure or Certification from Another State" form.

2.2.2 Notarized Statement of Prior Licensing Jurisdictions - The applicant shall submit a notarized statement listing all licensing jurisdictions in which he/she formerly practiced and a signed "Release of Information" granting the Board permission to contact said jurisdictions for verification of disciplinary history and current status.

2.2.3 Determination of Substantial Similarity of Licensing Standards - The applicant shall submit a copy of the statute and rules of licensure from the state issuing his/her license. The burden of proof is upon the applicant to demonstrate that the statute and rules of the licensing state are at least equivalent to the educational, experience and supervision requirements set forth in Title 24, **Delaware Code**, Chapter 30. Based upon the information presented, the Board shall make a determination regarding whether the licensing requirements of the applicant's licensing state are substantially similar to those of Delaware.

2.2.4 LACMH Option - If the Board determines that the requirements of the applicant's licensing state are not equivalent with regard only to the experience requirements of §3008(a)(2), the applicant shall be eligible for licensure as a LACMH, in which case he/she shall have four (4) years to complete the supervision requirements of §3008(a)(2). The applicant shall be given full credit for such properly documented experience and/or supervised experience as was required for licensure in his/her licensing state.

### 2.3 Renewal of Licensure

2.3.1 Renewal Date - The LPCMH license shall be renewable biennially on September 30 of even-numbered years. License renewal may be accomplished online at <http://dpr.delaware.gov>.

#### 2.3.2 Requirements for Renewal are as follows:

2.3.2.1 Certification - The candidate for renewal shall hold current certification in good standing as of the date of licensure renewal in NBCC, ACMHC or other certifying organization acceptable to the board. This certification shall be verified by attestation. Attestation shall be completed electronically if the renewal is accomplished online.

#### 2.3.2.2 Continuing Education

2.3.2.2.1 Requirement - The candidate for renewal shall have completed no less than 40 clock hours of acceptable continuing education per two (2) year licensure renewal period. Continuing education requirements for initial licensure periods of less than two (2) years shall be prorated.

2.3.2.2.2 Acceptable Continuing Education - Acceptable continuing education shall include the following:

2.3.2.2.2.1 Continuing education hours approved by a national mental health organization, such as NBCC, ACMHC, APA, shall be acceptable. Other training programs may apply for continuing education oriented towards enhancement, knowledge and practice of counseling. Hours are to be documented by a certificate signed by the presenter or by a designated official of the sponsoring organization.

2.3.2.2.2.2 Academic course work, and presentation of original papers providing training and clinical supervision may be applied for up to 20 clock hours of the continuing education requirement. These hours are to be documented by an official transcript, syllabus, or a copy of the published paper presented.

Under no circumstances may there be less than 20 hours of face-to-face participation in continuing education as outlined above.

2.3.2.2.3 Make-Up of Disallowed Hours - In the event that the board disallows certain continuing education clock hours, the candidate for renewal shall have three (3) months after the licensure renewal date to complete the balance of acceptable continuing education hours required.

2.3.2.3 Hardship. The board shall have the authority to make exceptions to the continuing education requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not necessarily limited to: disability, illness, military service, extended absence from the jurisdiction and exceptional family responsibilities. Request for hardship consideration must be submitted to the board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. A license shall be renewed upon approval of the hardship extension by the board, but the license shall be subject to revocation if the licensee does not comply with the terms of the hardship exception established by the board.

2.3.2.4 Verification - Verification of continuing education hours shall be by Attestation shall be completed electronically if the renewal is accomplished online.

2.3.2.4.1 All licensees shall maintain documentation of continuing education during the licensure period to be submitted if their renewal application is selected for audit. Random

audits will be performed by the Board to ensure compliance with the continuing education requirement. Licensees selected for the random audit shall submit attendance verification

2.3.2.5 Fees - The candidate for renewal shall make payment of a renewal fee in an amount prescribed by the Division for that licensure renewal period. A 50% late charge shall be imposed upon any fee paid after the renewal date.

2.3.2.6 It shall be the responsibility of all licensees to keep the Division informed of any change of address. Renewal notices will be sent to the last address on file with the Division.

2.4 Return to Active Status - Return to active status from inactive status shall be granted upon fulfillment of the following requirements:

2.4.1 Written Request - Written request to the Board requesting return to active status.

2.4.2 Certification - Current certification in good standing, as of the date of the request for return to active status, in NBCC, ACMHC or other certifying organization.

2.4.3 Continuing Education - Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for return to active status.

2.4.4 Fee - Payment of the current fee for licensure renewal. No late fee shall be assessed for return to active status.

**4 DE Reg. 970 (12/01/00)**

**5 DE Reg. 2109 (05/01/02)**

**10 DE Reg. 872 (11/01/06)**

**\*Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Professional Counselors of Mental Health and Chemical Dependency Professionals is available at:**

**3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals**

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## DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code Sections 134, 141 and 21 Delaware Code Chapter 41  
(17 Del.C. §§134,141 and 21 Del.C. Ch. 41)

### PUBLIC NOTICE

#### Revisions to the Delaware Manual on Uniform Traffic Control Devices

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), is seeking to adopt a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). This proposed revision includes the Department's draft changes to Part 6 of the Federal MUTCD. The remaining portions of the MUTCD (Parts 1, 7, 8, and 9) will be reviewed and revised at a later date.

#### Public Comment Period

The Department will take written comments on the draft changes to the Delaware MUTCD from June 1, 2007 through June 30, 2007.

Copies of the Draft Delaware MUTCD can be obtained by reviewing or downloading a PDF copy at the following web address:

**Manual on Uniform Traffic Control Devices (MUTCD) Part 6**

Questions or comments regarding this document should be directed to:

Donald Weber, P.E.  
Assistant Director of Transportation Engineering  
Division of Transportation Solutions  
Delaware Department of Transportation  
169 Brick Store Landing Road  
Smyrna, DE 19977  
(302) 659-2002 (telephone)  
(302) 653-2859 (fax)  
[don.weber@state.de.us](mailto:don.weber@state.de.us)

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**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 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.

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**DEPARTMENT OF AGRICULTURE  
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 April 10, 2007, the Commission makes the following findings and conclusions:

**SUMMARY OF THE EVIDENCE**

1. The Commission posted public notice of the proposed amendments in the March 1, 2007 *Register of Regulations* and for two consecutive weeks in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 3.4 to update the responsibilities of the Paddock Judge.

2. The Commission received no written comments during March, 2007 or April, 2007. The Commission held a public hearing on April 10, 2007 and also received no public comment on the changes.

**FINDINGS OF FACT AND CONCLUSIONS**

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

4. In light of the lack of public comment on the rule changes as proposed, 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 more accurately reflect current policies and procedures.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on June 1, 2007.

IT IS SO ORDERED this 8th day of May, 2007.

George P. Staats, Commissioner            Beth Steele, Chair  
Mary Ann Lambertson, Commissioner    Kenneth Williamson, Commissioner

\* Please note that no changes were made to the regulation as originally proposed and published in the March 2007 issue of the *Register* at page 1358 (10 DE Reg. 1358). Therefore, the final regulation is not being republished. Please refer to the March 2007 issue of the *Register* or contact the Harness Racing Commission for more information.

A complete set of the rules and regulations for the Harness Racing Commission are available at:  
<http://regulations.delaware.gov/AdminCode/title3/500/501/index.shtml>

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### NUTRIENT MANAGEMENT COMMISSION

Statutory Authority: 3 Delaware Code, Section 2221 (3 Del.C. §2221)  
3 DE Admin. Code 1201, 1203

#### ORDER

#### **1201 Nutrient Management Certification Regulations** **1203 Mandatory Nutrient Management Plan Reporting Implementation Regulations**

Pursuant to 29 Del.C. §10115, I Michael T. Scuse, hereby recommend adoption of the modified nutrient management regulations and request that they be published as final regulations.

The proposed regulations (Exhibit A) were posted in Volume 10, Issue 10, pages 35 - 38, April 1, 2007. The comment period was from April 1, 2007 until April 30, 2007. No comments were received. The proposed regulations (Exhibit B) were posted in Volume 10, Issue 3, pages 32 - 37, September 1, 2006. The comment period was from September 1, 2006 until September 30, 2006. No comments were received. These modifications were brought before the Commission at the DNMC Full Commission Meeting on May 8, 2007 and were adopted as final. This final order shall be effective June 10, 2007.

#### Synopsis:

Nutrient Management Certification Regulation Amendment (Exhibit A): Certification by the Delaware Nutrient Management Program, 2320 S. Dupont Hwy., Dover, DE 19901, is required (3 Del.C. §2201 - 2290) for all who apply fertilizer and/or animal manure greater than 10 acres or who manage animals greater than 8,000 pounds of live animal weight. The proposed changes to the certification regulations establish nutrient handling requirements for certain nutrient handlers. The proposed regulation addresses application timing and placement for commercial inorganic fertilizer and organic fertilizer.

Mandate Amendment (Exhibit B): The proposed regulation requires nutrient handlers and animal operations to develop and implement nutrient management practices as required by the Nutrient Management Law (3 Del.C. §2201 - 2290).

\* Please note that no changes were made to the regulations as originally proposed and published, for regulation 1201, in the April 2007 issue of the *Register* at page 1201 (10 DE Reg. 1201); for regulation 1203, in the September 2006 issue of the *Register* at page 411 (10 DE Reg. 411). Therefore, these final regulations are not being republished. Please refer to the April 2007 and September 2006 issues of the *Register* or contact the Nutrient Management Commission for more information.

A complete set of the rules and regulations for the Nutrient Management Commission are available at:  
<http://regulations.delaware.gov/AdminCode/title3/1200/index.shtml>



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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 1220(a) (14 **Del.C.** §1220(a))  
14 **DE Admin. Code** 103

### Regulatory Implementing Order

### 103 Accountability for Schools, Districts and the State

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State in order to clarify the specific steps in the Review Process in sections 8.2.1 through 8.2.3. This regulation as amended is *exempted* from the Administrative Procedures Act as per 29 **Del.C.** §10113 (2) Rules of Practice and Procedure of the Agency and hence is recommended for final approval.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 103 in order to clarify the specific steps in the Review Process.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 103. Therefore, pursuant to 14 **Del.C.** §§154, 155, and 156, 14 **DE Admin. Code** 103 attached hereto is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 103 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** 103 amended hereby shall be in the form attached hereto, and said regulation shall be cited as 14 **DE Admin. Code** 103 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 May 17, 2007. 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 17<sup>th</sup> day of May 2007.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 17<sup>th</sup> day of May 2007

**STATE BOARD OF EDUCATION**

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara Rutt

Dr. Claibourne D. Smith

Richard M. Farmer, Jr., Vice President

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**103 Accountability for Schools, Districts and the State****1.0 Accountability**

1.1 Accountability: All public schools, including charter schools, reorganized and career technical school districts and the state shall be subject to the calculation and reporting of Adequate Yearly Progress (AYP) as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq. Additionally, public schools, including charter schools, reorganized and career technical school districts shall be subject to the applicable rewards, sanctions and other accountability activities as prescribed in this regulation.

**7 DE Reg. 57 (07/01/03)**

**10 DE Reg. 89 (07/01/06)**

**2.0 Adequate Yearly Progress (AYP)**

2.1 Adequate Yearly Progress shall be determined by the Department of Education for all public schools, including charter schools, reorganized and career technical school districts and the State on an annual basis. In order for a public school, including a charter school, reorganized or career technical school district or the State to meet AYP, the aggregate student population and each subgroup of students as identified in ESEA, must meet or exceed the target for percent proficient using a confidence interval to be determined by the Department of Education in the state assessments of reading/language arts and mathematics; 95% of the students as an aggregate and within each subgroup must participate in the state assessments of reading/language arts and mathematics, and the respective entity must meet the requirements of the Other Academic Indicator(s) as defined in 2.6. In calculating the percent proficient each year, the state will average the most recent two years of percent proficient (including the current year's percent proficient) and compare the results to the current year percent proficient. The highest percent proficient score will be used to determine the school, district or State AYP status.

2.1.1 Adequate yearly progress shall include three levels: Above Target, Meets Target and Below Target.

2.1.1.1 Above Target shall mean that the school, district or State in the aggregate student population and for each subgroup exceeds the annual target in English language arts and mathematics for percent proficient as defined in 2.3 and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.

2.1.1.2 Meets Target shall mean that the school, district or State in the aggregate student population and for each subgroup meets the annual target in English language arts and mathematics with or without the application of a confidence interval for percent proficient as defined in 2.3 or meets the criteria of Safe Harbor defined in 2.5, and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.

2.1.1.3 Below Target shall mean that the school, district or State in the aggregate student population and for each subgroup did not meet the annual target in English language arts and mathematics through the application of a confidence interval for percent proficient as defined in 2.3 or does not meet the criteria of Safe Harbor defined in 2.5, or does not meet the criteria for participation as defined in 2.4 or does not meet the criteria of Other Academic Indicator(s) as defined in 2.6.

2.2 Full academic year for accountability:

2.2.1 For school accountability students enrolled continuously in the school from September 30 through May 31 of a school year including those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.

2.2.2 For district accountability students enrolled continuously in the district (but not necessarily the same school), from September 30 through May 31 of a school year, including those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.

2.2.3 For state accountability students enrolled continuously in the state (but not necessarily the same school or district) from September 30 through May 31 of a school year shall be considered enrolled for a full academic year.

2.3 Proficient: For accountability purposes students who score at Performance Level 3 (Meets the Standard) or above and who have met the requirements of a Full Academic Year as defined in 2.2 shall be deemed proficient. Students who score at Performance Level 2 or Level 1 who have met the requirements of a Full Academic Year as defined in 2.2 shall not meet the definition of proficient.

2.4 Participation Rate: For accountability purposes in school years 2002-2003 through 2004-2005, the

participation rate for each subgroup, all public schools, including charter schools, districts, and the State, shall be the number of students who participate in the DSTP in grades 3,5, 8 and 10 divided by the number of students enrolled in these tested grades during the testing period. Beginning with the 2005-2006 school year the participation rate shall include the number of students who participate in the DSTP in grades 3 through 8 inclusive and grade 10 divided by the number of students enrolled in these tested grades during the testing period. Students exempted by 14 DE Admin. Code 101.9.0 shall be included in the participation rate calculation unless their medical condition prevents them from being in school during the testing period.

2.5 Safe Harbor: For accountability purposes if a school, district or the State fails to meet the target for percent proficient for a given subgroup or for the entity in aggregate, Safe Harbor provisions shall be examined for that group. When the percentage of students in a subgroup not meeting the definition of proficient decreases by at least 10% when compared to the previous year's data, the participation rate for the population is at least 95%, and the subgroup meets the requirements of the Other Academic Indicator(s) as defined in 2.6. the subgroup will have met AYP.

2.6 Other Academic Indicator(s):

2.6.1 High School: For AYP purposes, the Other Academic Indicator(s) shall be graduation rate as defined as the number of students in one cohort who started in the school, the district or the state in 9th grade and graduated four years later or in the time frame specified in the Individual Education Program (IEP), excluding students who earn a GED certificate, divided by the same number plus those that have dropped out during the same four year period.

2.6.1.1 The statewide target for the high school Other Academic Indicator shall be a graduation rate of 90% by the school year 2013-2014. The statewide target for 2003-2004 shall be 75% and shall increase by 1.5% each year until 90% is reached in 2013-2014. Beginning with the school year 2002-2003, if the graduation rate is used for Safe Harbor purposes, the high school shall maintain its graduation rate or show positive progress when compared to the previous year or meet or exceed the statewide target for that school year.

2.6.1.2 A school that does not maintain its graduation rate or show positive progress from the previous year or meet or exceed the statewide target for that school year shall be considered as not meeting AYP for that year.

2.6.2 Elementary and Middle School: For AYP purposes, the Other Academic Indicator for elementary and middle schools shall be determined by improvement of the scores of the low achieving students, defined as students performing below Performance Level 3, in reading and mathematics combined or a decrease in the percent of students scoring at Performance Level 1 in reading and mathematics. The average scale score for the students who perform at Performance Level 1 and 2 in reading and mathematics combined shall be determined for the current and previous years. The scores from the current year will be compared to the previous year to determine if the school has shown progress. A confidence interval determined by the Department of Education shall be applied to the average scale scores when making this determination. Students included in this calculation shall have been in the school for a full academic year.

2.6.2.1 The statewide target for the elementary and middle school Other Academic Indicator shall be 0% of students scoring at Performance Level 1 in reading and mathematics by the school year 2013-2014. Beginning with the school year 2003-2004, when compared to the previous year, the school or subgroup, if used for Safe Harbor purposes, shall maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year.

2.6.2.2 An elementary or middle school that does not maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year shall be considered as not meeting AYP for that year.

2.6.3 For state and district accountability purposes, the state or a district shall be expected to meet the requirements in 2.6.1.2 and 2.6.2.2.

2.7 Annual Objective: The annual objectives for reading/language arts and mathematics shall be determined by the Department of Education and published annually. The annual objectives shall be the same for all schools, districts and subgroups of students.

2.8 Intermediate Target: There shall be seven intermediate targets with the first intermediate target occurring in the 2004-2005 school year. The second intermediate target shall occur in 2006-2007; the third in 2008-2009; the fourth in 2009-2010; the fifth in 2010-2011, the sixth in 2011-2012 and the seventh in 2012-2013. By the

end of the school year 2013-2014, all students in all subgroups shall be proficient in reading/language arts and mathematics. The intermediate targets shall be calculated using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.

2.9 Starting Point: A single statewide starting point shall be calculated for reading/language arts and a single statewide starting point shall be calculated for mathematics using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.

2.10 Subgroup categories: For AYP purposes, subgroup categories shall be delineated as follows: 1) Children with Disabilities (as per IDEA); 2) Economically Disadvantaged Students, as determined by eligibility for free and reduced lunch program; 3) Students with Limited English Proficiency, as determined by the language proficiency assessment; and 4) Race and ethnicity, to be further divided into African American and Black, American Indian and Alaska Native, Asian and Pacific Islander, Hispanic, and White. Such subgroup categories shall include all students eligible for the AYP calculation as further defined throughout this Chapter. The "All" categories shall include all students in the entity for which AYP is calculated and who meet all other eligibility criteria for the AYP calculation.

2.11 AYP Determinations

2.11.1 For each public school, including charter schools, reorganized and career technical school districts, and the State, AYP shall be calculated annually.

2.11.2 School AYP: In order to meet AYP, the school shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.

2.11.3 District AYP: In order to meet AYP, the district shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.

2.11.4 State AYP: In order to meet AYP, the state shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.

2.11.5 Under Improvement: A school or district shall be deemed Under Improvement if AYP is not met two consecutive years in the same content area of reading/language arts or mathematics for percent proficient or for participation rate, or if a school or district in the aggregate does not meet the requirements of the Other Academic Indicator(s) as defined in 2.6.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

### 3.0 Accountability School and Accountability District

For AYP purposes, the school or district to which a student's performance is assigned for a full academic year shall be the Accountability School or Accountability District. No student shall have his/her performance assigned to more than one Accountability School or Accountability District in a given school year.

3.1 For a student enrolled in an intradistrict intensive learning center intradistrict special school, or intradistrict special school program operating within one or more existing school facilities, the district has the option of tracking the assessment scores of the students back to the school of residence or to the school or program that is providing the instruction. The school or program shall be the Accountability School. The district shall communicate its decision regarding this option to the State Department of Education by May 15, 2006. The option that the district decides for accountability purposes for one year must remain the same for the second year. Further provided, the State Department of Education will monitor the assignment of students to ensure students are appropriately assigned. For a student enrolled in interdistrict special schools or programs that have an agreement to serve students from multiple school districts, the special school that provides the instructional program shall be considered the Accountability School for that student. For district accountability purposes, the district of residence shall be the district to which these special school students are included for accountability.

3.2 For a student enrolled in an alternative program pursuant to 14 **Del.C.** Ch. 16 or the Delaware Adolescent Program, the Accountability School or District shall be the school/district that assigned such student to the program or the school or district of residence. The time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School or District.

3.3 For a student who participates in a choice program the Accountability School or District shall be the school or district to which the student has choiced.

3.4 For accountability purposes, a school shall be considered a new school if: less than sixty percent of the students would have been enrolled in the same school together without the creation of the new school; or it is the first year of operation of a charter school; or two or more grade levels have been added to the school or to a charter school's charter.

3.5 If a school is determined not to be a new school, the school shall receive the accountability rating and related consequences of the school in which the majority of students would attend in that year.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

#### **4.0 Assessment Criteria**

4.1 For a student who takes a portion of the assessment more than once during the school year, the first score shall be included in the AYP calculation; however, provided a student takes a portion of the assessment because of state mandated summer school attendance in grades 3, 5, or 8 in reading, or grade 8 in mathematics, the highest of the student's scores shall be used to recalculate the AYP determination.

4.2 A student who tests with non aggregable conditions as defined in the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency shall have his/her earned performance level included in the calculation of AYP.

4.3 For accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's scoring specifications or otherwise receives an invalid score shall be deemed as not meeting proficiency.

4.4 A student participating in alternate assessments shall have her/his earned performance level included in the AYP calculation consistent with the regulations as prescribed by the federal Elementary and Secondary Education Act (ESEA) 20 U.S. C.A. §6301 et seq. or Individuals with Disabilities Education Act (IDEA).

4.5 Schools with more than one tested grade shall receive a single accountability rating.

4.6 Student performance in a tested grade shall be apportioned in equal weights to each grade in a standards cluster, except that Kindergarten shall be weighted at 10% and grade 10 shall be weighted at 100%. Beginning with the school year 2005-2006 students in grades 4, 5, 6, 7, 8, and 10 will count 100%. Students in grade 3 will continue to be weighted to each grade in the K to 3 standards cluster.

4.7 For AYP purposes the reading/language arts percent proficient shall be based on a combination of the reading and writing DSTP assessments. The reading percent proficient scores shall be weighted to count 90% and the writing percent proficient scores shall be weighted to count 10%.

4.8 For AYP purposes, the mathematics percent proficient shall be based on 100% of the DSTP mathematics assessment.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

#### **5.0 State Progress Determinations**

Each school and district shall receive a State Progress Determination of Above Target, Meets Target or Below Target. The State Progress shall be determined by improvement in the composite score of the reading, mathematics, science and social studies DSTP assessments combined. The composite score range shall be from 25 to 125 and is determined by the following formula: Composite Score = 25 (reading score x reading weight) + (math score x math weight) + (science score x science weight) + (social studies score x social studies weight) where: Reading score = (5 x % of students in level 5 in reading) + (4 x % of students in level 4 in reading) + (3 x % of students in level 3 in reading) + (2 x % of students in level 2 in reading) + (1 x % of students in level 1 in reading); Math score = (5 x % of students in level 5 in math) + (4 x % of students in level 4 in math) + (3 x % of students in level 3 in math) + (2 x % of students in level 2 in math) + (1 x % of students in level 1 in math)]; Science score = (5 x % of students in level 5 in science) + (4 x % of students in level 4 in science) + (3 x % of students in level 3 in science) + (2 x % of students in level 2 in science) + (1 x % of students in level 1 in science); Social Studies = (5 x

% of students in level 5 in social studies) + (4 x % of students in level 4 in social studies) + (3 x % of students in level 3 in social studies) + (2 x % of students in level 2 in social studies) + (1 x % of students in level 1 in social studies). Each of the subject areas shall be weighted equally at 25%. A two year average of the composite score shall be used if it is higher than the current year's composite score.

5.1 Above Target shall mean that the school or district has a minimum composite score of 75.00 for the current year; or the school or district has demonstrated a growth of 6.00 or more points when comparing last year's composite score to the current year's composite score provided the composite score is 45.00 or more.

5.2 Meets Target shall mean that the school or district with a composite score of 61.00 or less than 75.00 in the current year, shall demonstrate a growth of 1.00 or more points when comparing last year's composite score to the current year's composite score. For a school or district with a composite score of 45.00 but less than 61.00 in the current year, the school or district shall demonstrate a growth of 2.00 or more points when comparing last year's composite score to the current year's composite score.

5.3 Below Target shall mean that the school or district has a composite score of less than 45.00; or the school or district does not meet the criteria of 5.2.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

## 6.0 Performance Classifications

Schools and districts shall receive one of five levels of performance classification annually which shall be based on a combination of AYP determinations and State Progress determinations.

6.1 Superior: A school or district's performance is deemed excellent. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement and is a combination of Above Target for AYP and Above Target for State Progress or Above Target for AYP and Meets Target for State Progress or Meets Target for AYP and Above Target for State Progress.

6.2 Commendable: A school or district's performance is deemed above average. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement. Combinations of Above Target for AYP and Below Target for State Progress or Meets Target for AYP and Meets Target for State Progress shall be rated as Commendable. A school or district with a combination of Meets Target for AYP and Below Target for State Progress shall be determined Commendable for no more than one year; if this same combination exists for the school or district in the following year, the school or district shall be rated Academic Review.

6.3 Academic Review: A school or district's performance is deemed acceptable. Schools or districts in this category are not Under Improvement. Combinations of: Below Target for AYP and Above Target for State Progress; or Below Target for AYP and Meets Target for State Progress shall be rated as Academic Review for no more than one year; if the same combination exists for the school or district in the following year, the school or district shall be rated Academic Progress unless the provisions of 6.5 or 6.6 are met. A school or district with a combination of Below Target for AYP and Below Target for State Progress shall be rated as Academic Review unless the provisions of 6.5 and 6.6 are met.

6.4 Academic Progress: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.

6.5 Academic Progress Under Improvement: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall have met AYP for one year while the school or district is Under Improvement. If a school or district was classified as Academic Watch the prior year, all accountability sanctions from that prior year remain in effect.

6.6 Academic Watch: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.

6.7 Academic Watch Under Improvement: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not have met AYP for two or more consecutive years in the same content area as described in 2.11.5 and shall be Under Improvement.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

## 7.0 Schools or Districts that are classified as Under Improvement

7.1 Accountability sanctions for schools that are classified as Under Improvement:

7.1.1 Under Improvement Year 1, a school shall review and modify its current School

Improvement Plan outlining additional specific school improvement activities to be implemented beginning in this same year. A school designated as Title I shall provide supplemental services to students according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts or mathematics assessments.

7.1.2 Under Improvement Year 2, a school shall continue to review and modify the School Improvement Plan as needed. A school designated as Title I shall offer federal ESEA Choice. In addition a Title I school shall provide supplemental services according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts or mathematics assessments.

7.1.3 Under Improvement Year 3, a school shall continue with the activities as per 7.1.2. In addition, all schools shall be subject to corrective action as outlined by federal ESEA requirements.

7.1.4 Under Improvement Year 4, a school shall continue with the activities as per 7.1.3. In addition, the school shall develop a plan for restructuring as outlined by federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the school's performance and shall consult with the State Board of Education prior to making comment.

7.1.5 Under Improvement Year 5, a school shall continue with the activities as per 7.1.2. In addition, the school shall implement the restructuring plan as outlined by federal ESEA requirements.

7.2 Accountability sanctions for districts that are classified as Under Improvement:

7.2.1 Under Improvement Year 1, a district shall develop and implement a District Improvement Plan.

7.2.2 Under Improvement Year 2, a district shall evaluate and modify the District Improvement Plan and shall incorporate such plan into the Consolidated Application.

7.2.3 Under Improvement Year 3, a district shall continue with the activities outlined in 7.2.2. In addition the district shall develop a corrective action plan as outlined by Federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the district's performance and shall consult with the State Board of Education prior to making comment.

7.2.4 Under Improvement Year 4, a district shall continue with the activities as outlined in 7.2.3. In addition the district and the Department of Education shall evaluate the corrective action plan and make appropriate modifications as needed.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

## **8.0 Review Process**

A school or district may review school or district level data, including academic assessment data upon which the proposed classification is based. The school or district shall present statistical evidence or other substantive reasons why the classification should be changed before the final classification will be determined.

8.1 The school or district must file a written notice of review with the Secretary no later than 15 calendar days after receiving preliminary notification of its proposed classification. The request for review shall state with specificity the grounds for the review, and shall be signed by the principal or lead authority of the school, or the signature of the Superintendent of the district. This request for review shall include all supporting evidence and documentation and shall be clear and concise.

8.2 Upon receipt of a written notice of review, ~~the Department of Education shall conduct a review of the evidence or other substantive reasons presented by the school or district, the Secretary shall refer the review to his or her designee.~~

8.2.1 The designee shall be responsible for bringing the review forward to the Review Advisory Committee. The Review Advisory Committee shall be composed of a minimum of three members and assigned by the Secretary.

8.2.2 The Review Advisory Committee shall conduct a review of the statistical evidence or other substantive reasons presented by the school or district.

8.2.3 The Review Advisory Committee shall make a recommendation to the Secretary about whether the proposed classification should remain as is or should be changed.

8.3 The Department of Education shall make a final determination within 30 calendar days from the written notice of review on the proposed classification of the school or district based on the evidence or other substantive reasons presented by the school or district.

**7 DE Reg. 1692 (06/01/04)**

**10 DE Reg. 89 (07/01/06)**

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 152 (14 **Del.C.** §152)  
14 **DE Admin. Code** 505

#### Regulatory Implementing Order

### 505 High School Graduation Requirements and Diplomas

#### I. Summary Of The Evidence And Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in order to update the definition of Career Pathway, to change the name and definition of the "Individual Learning Plan" to the "Student Success Plan" and in 4.0 to describe the process for implementing the Student Success Plan. A grammatical error was also corrected at the end of the Science definition.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday March 19, 2007, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. Clarifications and word changes as suggested by the Councils have been made. In order to clarify the relationship between the IEP and the SSP language has been added to 4.0 to show the relationship between the two Plans.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 505 in order to update the definition of Career Pathway, to change the name and definition of the "Individual Learning Plan" to the "Student Success Plan" and in 4.0 to describe the process for implementing the Student Success Plan.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 505. Therefore, pursuant to 14 **Del.C.** §152 and §159, 14 **DE Admin. Code** 505 attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 505 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 505 amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 505 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 May 17, 2007. 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 17th day of May 2007.

**Department of Education**

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of May 2007

**State Board of Education**

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara Rutt

Dr. Claibourne D. Smith

Richard M. Farmer, Jr., Vice President

Gregory A. Hastings

Dennis J. Savage

**505 High School Graduation Requirements and Diplomas**

**1.0 Definitions:**

**“Career Pathway”** means ~~a planned program of at least 3 credits in sequenced or specialized courses designed to develop knowledge and skills in a particular career or academic area~~ the three (3) credits of pre planned and sequential courses required for graduation designed to develop knowledge and skills in a particular career or academic area. The Career Pathway shall be included in the Student Success Plan.

**“Credit”** means the acquisition of skills and knowledge at a satisfactory level as determined by the district and charter school boards through 135 hours (a Carnegie Unit) of actual classroom instruction or through locally approved options contained in Section 8.0.

**“Credit for Computer Literacy”** means credit granted toward graduation at any point when the student can demonstrate competency in the required skill areas either through an integrated approach, a specific course, or a demonstration of accumulated knowledge over the student's educational career.

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

**“English Language Arts”** means those components of reading, writing and oral communication that are included in the State Content Standards for high school English Language Arts as required in 14 **DE Admin. Code** 501.

**“Health Education”** means those components that are included in the State Content Standards for high school health education as required in 14 **DE Admin. Code** 501.

**“High School”** means grades 9 through 12.

~~**“Individual Learning Plan (ILP)”** means a plan for a student to reach the goal of high school graduation inclusive of at least one year of post high school activity. This plan also serves as a guide for the student's choice of courses including any support services necessary for the student to graduate from high school.~~

~~**“Instructional Support Team”** means those educators, counselors and specialists or other personnel whose responsibility it is to monitor student progress in consultation with students and their parent(s), guardian(s) or Relative Caregiver and to recommend and arrange support services.~~

**“Mathematics”** means those components of number sense, algebra, geometry, statistics and probability combined with problem solving, reasoning, communicating, and making connections that are included in the State Content Standards for high school mathematics as required in 14 **DE Admin. Code** 501 either through integrated courses or in courses titles such as Algebra I, Algebra II, Geometry, Trigonometry, Pre-Calculus, Calculus, Discrete Mathematics, Statistics, and Probability.

**“Physical Education”** means those components that are included in the State Content Standards for high school physical education as required in 14 **DE Admin. Code** 501.

**“Science”** means those components of the nature of science which include inquiry, materials and their properties, energy and its effects, Earth in space, Earth's dynamic systems, life processes, diversity and continuity of living things, and ecology that are included in the State Content Standards for high school science as required in 14 **DE Admin. Code** 501 either through integrated courses or in course titles such as Earth Science, Biology ~~and~~ **[er]** Chemistry and Physics.

**“Social Studies”** means those components of civics, economics, geography, and history that are included the State Content Standards for high school social studies as required in 14 **DE Admin. Code** 501 either through

integrated courses or in course titles such as United States History, World History, Geography, Economics, and Civics.

“Student Success Plan (SSP)” means a plan encompassing a minimum of five years including one year beyond high school developed and updated at least annually by the student, ~~their guidance counselor the student’s advisor~~, at least one other staff member and the student’s parent(s) guardian(s) or relative caregiver. The student’s plan includes courses needed in preparation for immediate entry into the work force or opportunities in post secondary education. The plan also includes the support services necessary for the student to graduate from high school. An additional year of high school may be an option for inclusion in the Student Success Plan.

“Support Services” means those ~~academic educational~~ interventions such as tutoring; extra time before school, in school, or after school; summer school, ~~a fifth year an extra year(s)~~ of high school or any other strategy to provide student ~~academic educational~~ assistance.

“World Languages” RESERVED

## 2.0 Current Graduation Requirements

2.1 A public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two credits in order to graduate including: 4 credits in English Language Arts, 3 credits in mathematics, 3 credits in science, 3 credits in social studies, 1 credit in physical education, 1/2 credit in health, 1 credit in computer literacy, 3 credits in a Career Pathway, and 3 1/2 credits in elective courses.

## 3.0 Graduation Requirements Beginning with the Class of 2011 (Freshman Class of 2007-2008)

3.1 Beginning with the graduating class of 2011, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two (22) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics; three (3) credits in Science, three (3) credits in Social Studies, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.

3.1.1 Students shall complete mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses.

3.1.2 Scientific investigations related to the State Science Standards shall be included in all three science course requirements.

3.1.3 During the senior year students shall maintain a credit load each semester that earns them at least a majority of credits that could be taken that semester including one (1) of the four credits required in Mathematics.

3.1.3.1 Senior year credits shall include regular high school course offerings, the options available in 8.0 or a combination of both.

3.1.3.1.1 Options for the senior year in 3.1.3.1 that the districts and charter schools provide shall be submitted to the Department with a copy to the office of the State Board of Education for review.

## 4.0 Monitoring Student Progress

~~4.1 Beginning with the 2007-2008 school year each district or charter school board, as applicable, shall require each middle school to develop an Individual Learning Plan (ILP) for all eighth grade students. ILPs shall be developed by the guidance counselor, the student, the student’s parent(s), guardian(s) or Relative Caregiver, and at least one core content teacher. For the 2007-2008 school year only each district or charter school board, as applicable, shall also require each high school to develop an Individual Learning Plan (ILP) for all ninth grade students.~~

~~4.2 Beginning with the 2007-2008 school year each high school shall establish Instructional Support Teams to monitor student progress in consultation with students and their parent(s), guardian(s) or Relative Caregiver to recommend and arrange support services.~~

~~4.2.1 Each marking period student progress on the ILP shall be monitored by Instructional Support Teams. Students not making satisfactory progress in the courses required for graduation in English Language Arts, Mathematics, Science or Social Studies shall receive support services.~~

~~4.2.2 Students who have failed courses required for graduation in English Language Arts, Mathematics, Science or Social Studies at the end of any high school year may have their ILP revised to include~~

~~appropriate support services. A fifth year of high school may be an option for inclusion in the student's ILP. Changes in a student's ILP shall require consultation with the student and with the student's parent(s), guardian(s) or Relative Caregiver, if appropriate.~~

#### **4.0 Monitoring Student Progress (Personalizing the High School Experience)**

~~4.1 Beginning with the 2007-2008 school year, every eighth and ninth grade student shall have a Student Success Plan (SSP) developed by the student, [their guidance counselor the student's advisor], at least one other school staff member and the student's parent(s), guardian(s) or relative caregiver. [For a student with an Individualized Education Program (IEP) the Student Success Plan (SSP) shall also incorporate the other aspects of the transition plan required by 14 DE Admin. Code 925.]~~

~~4.2 Each local school district and charter school shall establish a process for developing Student Success Plans that includes:~~

~~4.2.1 [Monitoring Actively monitoring] student progress[, on an ongoing basis and,] at a minimum, by the end of each marking period in those courses required for graduation.~~

~~4.2.2 Providing support services if a student is failing or in danger of failing courses required for graduation, and~~

~~4.2.3 Annual updating of the Student Success plans by the student, [their advisor the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver] and others as appropriate.~~

~~4.2.4 Following the guidelines for Career and Technical Education (CTE) programs of study outlined in the CTE State Plan.~~

#### **5.0 Credit Requirements Beginning with the Graduation Class of 2013 (Freshman Class of 2009-2010)**

~~5.1 Beginning with the graduating class of 2013, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.~~

~~5.4 5.2 World Language (RESERVED)~~

#### **6.0 Career Pathway**

~~Districts and charter school boards shall establish policies concerning the purpose and content of their Career Pathways.~~

~~6.1 Local school districts and charter school boards shall establish policies concerning the purpose, content, development, and approval of Career Pathways.~~

#### **7.0 Additional Credit Requirements**

~~7.1 District and charter school boards may establish additional credit requirements for graduation above the minimum number of credits required by the Department.~~

#### **8.0 Options for Awarding Credit Toward High School Graduation**

~~8.1 District and charter school boards are authorized to award credit toward high school graduation for the following activities, on the condition that the activities incorporate any applicable state content standards. Before awarding credit for any of the following activities, the districts and charter school boards shall have adopted a policy approving the activity for credit and establishing any specific conditions for the award of credit for the activity. Such policy shall be applicable to each school within the district or each charter high school.~~

~~8.1.1 Courses taken at or through an accredited community college, two or four year college.~~

~~8.1.2 Voluntary community service as defined in 14 Del.C. §§8901A and 8902A.~~

~~8.1.3 Supervised work experience in the school and the community which meets the educational objectives or special career interest of the individual student.~~

~~8.1.4 Independent study.~~

~~8.1.5 Correspondence Courses.~~

8.1.6 Distance learning courses. These courses may be delivered by the teacher to the learner in real time, online or by video.

8.1.7 High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high school(s). Such credit shall also transfer to a high school in another district or to a charter school.

8.1.8 Course credit transferred from another high school.

8.1.9 Course credit earned through summer or evening school classes, as a member of the military service or as part of the James H. Groves Adult High School.

8.1.10 Tutoring programs taught by a teacher certified in the subject being taught.

8.1.11 Course credit awarded by agencies or instrumentalities of the state other than public schools which provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district or charter school prior to receipt of credit.

## 9.0 High School Diplomas and the Certificate of Performance

9.1 A State sanctioned diploma shall be granted to students who meet the state and local district or charter school requirements for graduation pursuant to regulation 14 **Del.C.** §152.

9.2 A State sanctioned Certificate of Performance shall be granted to students who meet the requirements of 14 **Del.C.** §152.

9.3 Diplomas from one school year shall not be issued after December 31 of the next school year.

9.4 Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of the diploma or the certificate of performance will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not have the records then the student should contact the Department in Dover for a notarized letter of certification that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available).

9.5 State High School Diploma for World War II Veterans Pursuant to 14 **Del.C.** §159

9.5.1 "World War II Veteran" means any veteran who performed wartime service between December 7, 1941 and December 31, 1946. If the veteran was in the service on December 31, 1946, continuous service before July 16, 1947 is considered World War II.

9.5.2 The Department shall provide a high school diploma to any World War II veteran who:

9.5.2.1 Left a Delaware high school prior to graduation in order to serve in the armed forces of the United States.

9.5.2.2 Did not receive a high school diploma, or received a G.E.D., as a consequence of such service and,

9.5.2.3 Was discharged from the armed forces under honorable circumstances.

9.5.3 The diploma may also be awarded posthumously if the deceased veteran meets the qualifications in 9.5.2.1 through 9.5.2.3.

9.5.4 Applications for this high school diploma shall be made on forms designated by the Department and the Delaware Commission of Veterans Affairs and shall have a copy of the candidate's honorable discharge papers attached to the application.

**4 DE Reg. 995 (12/01/00)**

**5 DE Reg. 625 (09/01/01)**

**7 DE Reg. 1344 (04/01/04)**

**10 DE Reg. 547 (09/01/06)**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 152 (14 Del.C. §152)  
14 DE Admin. Code 804, 811, 815 and 817

### Regulatory Implementing Order

#### **804 Immunizations; 811 School Health Record Keeping Requirements; 815 Physical Examinations and Screening; 817 Administration of Medications and Treatments**

##### **I. Summary Of The Evidence And Information Submitted**

The Secretary of Education intends to amend the following: 14 DE Admin. Code 804 Immunizations, 14 DE Admin. Code 811 School Health Record Keeping Requirements, 14 DE Admin. Code 815 Physical Examinations and Screening and 14 DE Admin. Code 817 Administration of Medications and Treatments. In addition to some formatting changes, the following comments describe the specific amendments to each of the regulations.

##### **804 Immunizations**

- 2.0 Has been reformatted
- 2.1.1 Puts in place the new immunization nomenclature and preferred vaccines for DPT and TD.
- 2.1.5 Increases the number of required dosages for Varicella vaccine from 1 to 2, but grandfathers those children who have received the 1 dose at their school entry. This section has been reformatted in the final version into a single paragraph in order to add clarity.
- 2.1.5 States that after FY08, the schools will not accept disease history of Varicella from a parent as an exemption. The doctor will need to verify this.
- 7.0 States that school nurses must keep documentation of immunizations and report to DPH. This has been the practice and expectation, but it has never been in regulation.

##### **811 School Health Record Keeping Requirements**

- 1.0 Now contains definitions for the Emergency Treatment Card and the Delaware School Health Record Form
- 2.0 and 3.0 have been reformatted.
- 3.2.1 States that electronic health records are recognized as acceptable but identifies FY08 as the last year for non-electronic formats. School all have access to eSchool or other electronic data bases and all health information must be stored electronically.
- 5.0 States that the Summary of School Health Services will be due to the Department by August 31 rather than June 30. This will allow schools to include summer school data.

##### **815 Physical Examinations and Screening**

- 2.2.21 Requires a follow up evaluation or referral to the student's health care provider. It has been a practice but it has never been in regulation.
- 2.3 Adds the lead screening requirements.

##### **817 Administration of Medications and Treatments**

- 2.0 and 3.0 have been reformatted.
- 3.2 States that the medications and dosages must be FDA approved. Schools have been struggling with doctors writing large doses of antipsychotic medications for children, which are outside of the recommended doses. Also, parents bring in herbal medications. These later medications have not been tested in children, do not have directions on proper dosing, nor does one know what side effects to look for.
- 3.2.2 Recommends that an adult transport medications to the school.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday March 19, 2007, in the form hereto attached. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities.

- In response to the Councils suggestions the Department has changed "two months" to "birth" in the definition of "School Enterer" in 804 Immunizations, has reformatted section 2.1.1 under Minimum Immunizations for clarity and has made edits as suggested.
- In 811 School Record Keeping Section 1.0 Definitions, the department has edited the language so it is clear that the Emergency Card is about general school procedures and is not procedures for individual students. The Department declines to specify the person that decides who has access to the Emergency Card in 2.0 but states that access is based on the educational and health needs of the student.
- In 815 Physical Examinations and Screening Section 2.3 Lead Screening, the Department has reformatted the section to remove any indication of regulating other agencies and has added a reference to the religious exemption and has cleared up the age issue concerning Lead Screening.
- In 817 Administration of Medications and Treatments Section 3.2 has been rewritten for clarity concerning the use of FDA approved dosages for administering student medications.

## II. Findings Of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 804, 811, 815 and 817 in order to do the following:

- 804 increases the number of required dosages for Varicella vaccine from 1 to 2, but grandfather those children who have received the 1 dose at their school entry, only accept a disease history of Varicella from a doctor and require that school nurses keep documentation of immunizations and report to the Division of Public Health.
- 811 defines the Emergency Treatment Card and the Delaware School Health Record Form, identifies FY08 as the last year for non-electronic formats and states that the Summary of School Health Services will be due to the Department by August 31 rather than June 30.
- 815 Requires a follow up evaluation or referral to the student's health care provider and adds the lead screening requirements.
- 817 Requires that the medications and dosages must be FDA approved and recommends that an adult transport medications to the school.

## III. Decision To Amend The Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 804, 811, 815 and 817. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 804, 811, 815 and 817 attached are hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 804, 811, 815 and 817 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** 804, 811, 815 and 817 amended hereby shall be in the form attached hereto, and said regulations shall be cited as 14 **DE Admin. Code** 804, 811, 815 and 817 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 May 15, 2007. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of May 2007.

## Department of Education

Valerie A. Woodruff, Secretary of Education

### 804 Immunizations

#### 4.0 Definition of School Enterer

A school enterer is any child between the ages of two months and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from nonpublic schools.

#### 1.0 Definition

"School Enterer" means any child between ~~the ages of two months and 21 years~~ **birth and twenty (20) years inclusive** entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from nonpublic schools.

#### 2.0 Minimum Immunizations Required for All School Enterers

Children who enter school prior to age 4 shall follow current Division of Public Health recommendations. Disease histories for measles, rubella and mumps will not be accepted unless serologically confirmed. Immunizations given up to four days prior to the minimum interval or age will be accepted.

2.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other approved vaccine) or diphtheria, tetanus (DT) vaccine or a combination of these vaccines with the following exceptions: (1) a child who received a fourth dose prior to the fourth birthday must have a fifth dose; (2) a child who received the first dose of Td (adult) at or after age seven may meet this requirement with only three doses of Td (adult).

2.1.1 A booster dose of Td (adult) is recommended for all students, five years after the last DTaP, DTP or DT dose was administered.

2.2 Three or more doses of inactivated polio virus (IPV), oral polio vaccine (OPV), or a combination of these vaccines with the following exception: A child who received a third dose prior to the fourth birthday must have a fourth dose.

2.3 Two doses of measles, mumps and rubella (MMR) vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. Individual combination vaccines of measles, mumps, rubella (MMR) can be used to meet this requirement.

2.4 Three doses of Hepatitis B vaccine beginning in the 1999-2000 school year with kindergarten and grade seven. (By adding a grade at each of the levels, by the year 2004-2005 all students will be required to have the vaccine.) Two doses of CDC approved vaccine for children ages 11 to 15 may be used.

2.5 Varicella vaccine is required beginning in the 2003-2004 school year with kindergarten and adding a grade each subsequent year. One dose is required for children through age 12. Two doses are required for children age 13 and older.

2.5.1 A written disease history, provided by the health care provider, parent, legal guardian, Relative Caregiver or school enterer who has reached the statutory age of majority (18), 14 ~~Del.C. §131(a)(9)~~, will be accepted in lieu of vaccination.

2.1 All School Enterers shall have immunizations given up to four days prior to the minimum interval or age and ~~will~~ **shall** include:

~~[2.1.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other approved vaccine) or a combination of these vaccines with the following exceptions: a child who received a fourth dose prior to the fourth birthday shall have a fifth dose; a child who received the first dose of Td (adult) at or after age seven may meet this requirement with only three doses of Td or Tdap (adult). A booster dose of Td or Tdap (adult) is recommended by the Division of Public Health for all students at age 11 or five years after the last DTaP, DTP or DT dose was administered whichever is later.~~

2.1.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other approved vaccine) or a combination of these vaccines. A booster dose of Td or Tdap (adult) is recommended by the

Division of Public Health for all students at age 11 or five years after the last DTaP, DTP or DT dose was administered whichever is later. Notwithstanding this requirement:

2.1.1.1 A child who received a fourth dose prior to his or her fourth birthday shall have a fifth dose;

2.1.1.2 A child who received the first dose of Td (adult) at or after age seven may meet this requirement with only three doses of Td or Tdap (adult).]

2.1.2 Three or more doses of inactivated polio virus (IPV), oral polio vaccine (OPV), or a combination of these vaccines with the following exception: a child who received a third dose prior to the fourth birthday shall have a fourth dose.

2.1.3 Two doses of measles, mumps and rubella (MMR) vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. Individual combination vaccines of measles, mumps, rubella (MMR) may be used to meet this requirement.

2.1.3.1 Disease histories for measles, rubella and mumps shall not be accepted unless serologically confirmed.

2.1.4 Three doses of Hepatitis B vaccine.

2.1.4.1 For children 11 to 15 years old age, two doses of a vaccine approved by the Center for Disease Control (CDC) may be used.

2.1.4.2 Titers are not acceptable in lieu of completing the vaccine series and a disease history for Hepatitis B shall not be accepted unless serologically confirmed.

~~2.1.5 Two doses of Varicella vaccine (beginning in the 2007-2008 school year) for new school enterers in grades K to 4. By adding a grade each year, in the year 2015-2016 all students will be required to have two doses of the vaccine.~~

~~2.1.5.1 The first dose of the Varicella vaccine should be administered on or after the age of twelve (12) months and the second at kindergarten entry.~~

~~2.1.5.2 A written disease history, provided by the health care provider, parent, legal guardian, Relative Caregiver or school enterer who has reached the statutory age of majority (18), 14 Del.C. §131(a)(9), will be accepted in lieu of the varicella vaccination.~~

~~2.1.5.2.1 Beginning in the 2008-2009 school year, a disease history for the varicella vaccination shall be verified by a health care provider to be exempted from the vaccination.~~

2.1.5 Varicella vaccine is required beginning in the 2003-2004 school year with kindergarten. One grade shall be added each year thereafter so that by the 2015-2016 school year all children in grades kindergarten through 12 shall have received the vaccination. Beginning in the 2007-2008 school year new enterers into the affected grades shall be required to have two doses of the Varicella vaccine. The first dose shall be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school. A written disease history, provided by the health care provider, parent, legal guardian, Relative Caregiver or School Enterer who has reached the statutory age of majority (18), 14 Del.C. §131(a)(9), will be accepted in lieu of the Varicella vaccination. Beginning in the 2008-2009 school year, a disease history for the Varicella vaccination must be verified by a health care provider to be exempted from the vaccination.]

2.2 Children who enter school prior to age four (4) shall follow current Delaware Division of Public Health recommendations.

### 3.0 Certification of Immunization

3.1 The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18), 14 Del.C. §131(a)(9), shall present a certificate specifying the month, day, and year that the immunizations were administered by the state a licensed health care practitioner.

3.2 According to 14 Del.C. §131, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18), 14 Del.C. §131(a)(9), shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.

3.3 A School Enterer may be conditionally admitted to a Delaware school district by presenting a statement from a state licensed health care practitioner who specifies that the School Enterer has received at least:

~~3.3.1 Has received at least one~~ One dose of DTaP, or DTP, or DT, and



- 3.3.2 ~~Has received at least e~~One dose of IPV or OPV<sub>1</sub> and
- 3.3.3 ~~Has received at least e~~One dose of measles, mumps and rubella (MMR) vaccine; and
- 3.3.4 ~~Has received the~~ The first dose of the Hepatitis B series ~~as per 2.4;~~ and
- 3.3.5 ~~Has received at least e~~One dose of Varicella vaccine as per 2.5.

3.4 ~~Regulation 14 DE Admin. Code~~ 901 Education of Homeless Children and Youth 6.0 states that "School districts shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth". To that end, school districts shall **[stated]** in ~~6.4~~ 14 DE Admin. Code "assist homeless children and youth in meeting the immunization requirements".

3.5 If the School Enterer fails to complete the series of required immunizations the parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), ~~will~~ shall be notified ~~that~~ the child School Enterer will be excluded according to 14 **Del.C.** §131.

#### **4.0 Lost or Destroyed Immunization Record**

When ~~[an a student's]~~ immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall sign a written statement to this effect and must obtain at least one dose of DTaP, DTP or DT, one dose of IPV or OPV, one dose of Hepatitis B (as per 2.4) immunization against measles, mumps and rubella and one dose of varicella (as per 2.5) each of the immunizations as identified in 3.3. Evidence that the vaccines were administered shall be presented to the superintendent or designated person his or her designee. ~~An exemption to this requirement would be a statement from a state licensed health care practitioner demonstrating serological evidence of immunity to measles, mumps or rubella.~~

#### **5.0 Exemption from Immunization**

5.1 Exemption from this requirement may be granted in accordance with 14 **Del.C.** §131 ~~[that which]~~ permits approved medical and notarized religious exemptions.

5.2 Alternative dosages or immunization schedules may be accepted with the written approval of the Delaware Division of Public Health.

#### **6.0 Verification of School Records**

The Delaware Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

#### **7.0 Documentation**

7.1 School nurses shall record and maintain documentation of [the each] student's immunization status.

7.2 [The Each] student's immunization record shall be included in the Delaware Immunization Registry.

1 DE Reg. 1808 (05/01/98)

4 DE Reg. 1515 (03/01/01)

5 DE Reg. 2295 (06/01/02)

### **811 School Health Record Keeping Requirements**

#### **1.0 Emergency Treatment Card**

1.1 ~~An Emergency Treatment Card shall be on file for each public school student. The card shall contain general emergency procedures for the care of a student when the student becomes sick or injured at school. The card shall contain the student's name, birth date, school district, school, grade, home room or teacher, home address, home telephone and the name, place of employment and work telephone of the parent, guardian or Relative Caregiver. The card shall also contain two other names, addresses and phone numbers of individuals who can be contacted at times when the parent, guardian or Relative Caregiver can not be reached. The name and telephone number of the family physician and family dentist, any medical conditions or allergies the student has and the student's medical insurance shall be on the Emergency Treatment Card.~~

1.2 ~~The information on the Emergency Treatment Card may be shared only on a need to know basis.~~

1.3 The parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) shall sign the card to assure they understand the purpose of the card and acknowledge the accuracy of the information.

## **2.0 School Health Record**

2.1 A School Health Record shall be prepared and updated for each public school student. This record is confidential and shall be protected so that only duly authorized persons have access to it.

2.2 When a student transfers to another school in the district or transfers to another school in or out of state, the School Health Record shall be forwarded with the student's other school records.

2.3 The School Health Record shall be maintained for the duration of the student's schooling. The school nurse shall use the Student Health History Update form to keep health records current.

2.4 The School Health Record shall remain in the general school file or nurse's file during the student's attendance in school. The school nurse shall destroy any duplicate or partial health record after entries have been transferred to the official record so that there is only one correct and up to date record.

Nonregulatory note: also see 14 ~~DE Admin. Code~~ 251 and 252 and the Delaware Public Archives Document Delaware School Districts General Records Retention Schedule.

2.5 The school nurse shall document any nursing care provided including the school name, a three point date, the person's (student, staff or visitor) first and last name, the time of arrival and departure, the presenting complaint, the nurse's assessment intervention plan and outcome, the disposition of the situation, the parent or other contact, if appropriate, and the nurse's complete signature.

2.5.1 Accident Reporting: In addition to documenting the care given at the time of an accident, the school nurse shall also complete the Student Accident Report Form if the school nurse has referred the student for a medical evaluation regardless of whether the parent, guardian or Relative Caregiver or student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) followed through on that request or if the student missed more than one half day due to the accident.

## **3.0 Submission of Records**

The school nurse shall submit the Delaware Department of Education form, Summary of School Health Services for his or her building to the local school district or charter school designee. The district or charter school shall submit the summary of all school health services to the Department by June 30th of each school year.

**7-DE-Reg-68 (7/1/03)**

## **1.0 Definitions**

"Delaware School Health Record Form" means a form containing documentation of an student's health information, which includes but is not limited to identifying information, health history, immunizations, results of mandated testing and screenings, medical diagnoses, long term medications and referrals.

"Emergency Treatment Card" means a card containing general [school] emergency procedures for the care of a student ~~when the student~~ who becomes sick or injured at school. The card contains the following information: the student's name, birth date, school district, school, grade, home room or teacher, home address, home telephone, the name, place of employment and work telephone of the parent, guardian or Relative Caregiver; two other names, addresses and phone numbers of individuals who can be contacted at times when the parent, guardian or Relative Caregiver can not be reached; the name and telephone number of the family physician and family dentist; any medical conditions or allergies the student has; and the student's medical insurance.

## **2.0 Emergency Treatment Card**

2.1 An Emergency Treatment Card ~~shall be on file for each public school student,~~ for each public school student shall be on file in the office of the school nurse.]

2.1.1 The information on the Emergency Treatment Card shall be shared only on a need to know basis. [as related to the education and health needs of the student and consistent with state and federal laws.]

2.1.2 The parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) shall sign the Emergency Treatment Card to assure they understand the purpose of the form and acknowledge the accuracy of the information.

## **3.0 Delaware School Health Record Form**

3.1 The Delaware School Health Record Form shall be current and shall be part of the student's health record within the Cumulative Record File (14 DE Admin. Code 252) which accompanies the student when he or she moves to another school.

3.2. The Delaware School Health Record Form shall be maintained for the duration of the student's schooling and the school nurse shall use the Student Health History Update Form to keep health records current. The Delaware School Health Record Form shall remain in the nurse's file during the student's attendance in school.

3.2.1 The Delaware School Health Record Form may be maintained in hard copy or within an electronic documentation program and transferred electronically. Beginning with the 2008-2009 school year, all Delaware School Health Records Forms shall be in an electronic format.

**NON REGULATORY NOTE:** also see 14 DE Admin. Code 251 and 252 and the Delaware Public Archives Document Delaware School Districts General Records Retention Schedule.

## **4.0 Other Required Documentation**

4.1 The school nurse shall document any nursing care provided including the school name, a three point date, the person's (student, staff or visitor) first and last name, the time of arrival and departure, the presenting complaint, the nurse's assessment intervention and the outcome, the disposition of the situation, the parent or other contact, if appropriate, and the nurse's complete signature or initials.

4.1.1 The school nurse shall document the care given at the time of a school based accident by completing the Student Accident Report Form if the student missed more than one half day because of the accident or if the school nurse has referred the student for a medical evaluation regardless of whether the parent, guardian or Relative Caregiver or student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) followed through on that request.

## **5.0 Submission of Records**

5.1 All local school districts and charter schools shall submit the Summary of School Health Services Form, to the Delaware Department of Education by August 31st of each year.-The form shall include all of the school health services provided in all schools during the fiscal year including summer programs.

## **815 Physical Examinations and Screening**

### **1.0 Physical Examinations**

1.1 All public school students shall have a physical examination that has been administered by a licensed medical physician, nurse practitioner or physician's assistant. The physical examination shall have been done within the two years prior to entry into school. Within fourteen calendar days after notification of the requirement for a physical examination, new enterers shall have received a physical examination or shall have a documented appointment with a licensed health care provider for a physical examination.

1.1.1 The requirement for the physical examination may be waived for students whose parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of physical examinations.

1.1.2 The school nurse shall record all findings on the ~~School Health Record~~ Delaware School Health Record Form (see 14 DE Admin. Code 811) and maintain the original copy in the child's medical file.

### **2.0 Screening**

2.1 Vision and Hearing Screening

2.1.1 ~~Beginning with the school year 2004-2005, each~~ Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year.

2.1.1.1 In addition to the screening requirements in 2.1.1, screening shall also be provided to new enterers, students referred by a teacher or an administrator, and students considered for special

education.

2.1.1.1.1 Driver education students shall have a vision screening within a year prior to their in car driving hours.

2.1.2 The school nurse shall record the results on the Delaware School Health Record Form and shall notify the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if the student has a suspected problem.

2.2 Postural and Gait Screening

2.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December 15th.

2.2.2 The school nurse shall record the findings on the ~~school health record~~ Delaware School Health Record Form (see 14 DE Admin. Code 811) and shall notify the parents, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if a suspected deviation has been detected.

2.2.2.1 If a suspected deviation is detected, the school nurse shall refer the student for further evaluation through an on site follow up evaluation or a referral to the student's health care provider.

~~2.3~~ **Lead Screening**

~~2.3.1 The Childhood Lead Poison Prevention Act, 16 Del.C. Ch. 26, requires all health care providers to order lead screening for children at or around the age of 12 months of age.~~

~~2.3.1.1 Child care facilities, public and private nursery schools, preschools and kindergartens shall require documentation of lead screening at the time of registration. Children shall be excluded from school after 60 days from the date of enrollment if the documentation of lead screening is not provided.~~

~~2.3.2 The school nurse shall document the lead screening on the Delaware School Health Record Form (see 14 DE Admin. Code 811).~~

2.3 Lead Screening

2.3.1 Children who enter school at kindergarten or at age 5 or prior, shall be required to provide documentation of lead screening as per 16 Del.C. Ch. 26.

2.3.1.1 For children enrolling in kindergarten, documentation of lead screening shall be provided within sixty (60) calendar days of the date of enrollment. Failure to provide the required documentation shall result in the child's exclusion from school until the documentation is provided.

2.3.1.2 Exemption from this requirement may be granted for religious exemptions, per 16 Del.C. §2603.

2.3.1.3 The Childhood Lead Poisoning Prevention Act, 16 Del.C., Ch. 26, requires all health care providers to order lead screening for children at or around the age of 12 months of age.

2.3.2 The school nurse shall document the lead screening on the Delaware School Health Record form. See 14 DE Admin. Code 811.]

7 DE Reg. 68 (07/01/03)

## 817 Administration of Medications and Treatments

### 1.0 Administration of Medications and Treatment

1.1 Medications, in their original container, and treatments may be administered to a public school student by the school nurse when a written request to administer the medication or treatment is on file from the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). The school nurse shall check the student health records and history for contra indications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist. The school nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.

### 2.0 Licensed Health Care Provider

~~Any prescribed medication or treatment administered to a student, in addition to the requirements in 1.0, shall be prescribed by a licensed health care provider. Prescription medication shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when~~

it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.

Treatment, including, specialized health procedures, shall be signed by a licensed health care provider with directions on how and when to administer.

~~2.1 The prescription and the medication shall be current and long term prescriptions shall be re-authorized at least once a year.~~

~~2.2 All medications classified as controlled substances shall be counted and reconciled each month by the school nurse and kept under double lock.~~

2.1 Any prescribed medication administered to a student, in addition to the requirements in 1.0, shall be prescribed by a licensed health care provider. Treatment, including specialized health procedures, shall be signed by a licensed health care provider with directions relative to administration or supervision.

### **3.0 Prescription Medications**

3.1 Prescription medication shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.

3.2 Medications and dosages administered by the school nurse shall be ~~approved by the Federal Drug Administration (FDA) and comply with FDA recommendations,~~ limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective or guidelines that are specified in regional or national guidelines.]

3.2.1 The prescription and the medication shall be current and long term prescriptions shall be re authorized at least once a year.

3.2.2 All medications classified as controlled substances shall be counted and reconciled each month by the school nurse and kept under double lock. Such medications should be transported to and from school by an adult.

### **3 4.0 Non Prescription Medications**

4.1 Non prescription medications may be given by the school nurse after the nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered and if all requirements in 1.0 have been met.

### **4 5.0 IEP Team**

5.1 For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the school nurse.

### **5 6.0 Assistance With Medications on Field Trips**

#### 5 6.1 Definitions

"**Assist a Student with Medication**" means assisting a student in the self administration of a medication, provided that the medication is in a properly labeled container as hereinafter provided. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self administering the medication. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

"**Field Trip**" means any off campus, school sponsored activity.

"**Medication**" means a drug taken orally, by inhalation, or applied topically, and which is either prescribed for a student by a physician or is an over the counter drug which a parent, guardian or Relative Caregiver has authorized a student to use.

"**Paraeducator**" mean teaching assistants or aides.

5 6.2 Teachers, administrators and paraeducator employed by a student's local school district are authorized to assist a student with medication on a field trip subject to the following provisions:

5 6.2.1 Assistance with medication shall not be provided without the prior written request or consent of a parent, guardian or Relative Caregiver (or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time of administration; and the method of

administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip.

§ 6.2.2 The prescribed medication, in addition to the requirements in 1.0, shall be prescribed by a licensed health care provider. The medication shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.

§ 6.2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which teachers, administrators and paraeducators are qualified to safely assist a student with medication. In order to be qualified, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 **Del.C.** §1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall assist a student with medication without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

§ 6.2.4 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student's name, the name of the medication, the dose, the time of administration, the method of administration, and the name of the person assisting.

§ 6.2.5 Except for a school nurse, no employee of a school district shall be compelled to assist a student with medication. Nothing contained herein shall be interpreted to otherwise relieve a school district of its obligation to staff schools with certified school nurses.

Nonregulatory note: 14 **DE Admin. Code** 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self administration of a prescribed asthmatic quick relief inhaler and student self administration of prescribed autoinjectable epinephrine.

**7 DE Reg. 68 (07/01/03)**

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 925

### Regulatory Implementing Order

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

### I. Summary of the Evidence and Information Submitted

On March 1, 2007, the Secretary of Education, with the consent of the State Board of Education, proposed to repeal existing regulation 14 **DE Admin. Code** 925, Children with Disabilities, and adopt new regulation 14 **DE Admin. Code** 925, Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.

On December 3, 2004, President Bush signed into law the *Individuals with Disabilities Education Improvement Act of 2004* ("IDEA 2004"). Most of IDEA 2004 became effective in July 2005. On August 14, 2006, the U.S. Department of Education issued its final regulations implementing IDEA 2004. The new federal regulations, located at 34 CFR Part 300, became effective on October 13, 2006.

The current State regulations relating to the education of children with disabilities are codified in 14 **DE Admin. Code** 925. Concurrent with this Order, the Secretary, with the consent of the State Board of Education, will enter additional Orders replacing existing regulation 14 **DE Admin. Code** 925 with the following new regulations:

- 14 **DE Admin. Code** 922 Children with Disabilities, Subpart A, Purposes and Definitions
- 14 **DE Admin. Code** 923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies

- 14 **DE Admin. Code** 924 Children with Disabilities, Subpart C, Local Educational Agency Eligibility
- 14 **DE Admin. Code** 925 Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs
- 14 **DE Admin. Code** 926 Children with Disabilities, Subpart E, Procedural Safeguards for Parents and Children
- 14 **DE Admin. Code** 927, Children with Disabilities, Subpart F, Monitoring, Enforcement and Confidentiality of Information
- 14 **DE Admin. Code** 928 Children with Disabilities, Subpart G, Use and Administration of Funds, Subpart H Reserved
- 14 **DE Admin. Code** 929 Children with Disabilities, Subpart I, Special Programs and Unique Educational Alternatives

Notice of all the proposed regulations was published in the News Journal and the Delaware State News on February 26, 2007, in the form hereto attached. The Department received extensive comments on proposed regulation 14 **DE Admin. Code** 925, Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs, as noted below in Findings of Facts.

## **II. Findings of Facts**

The Secretary finds that it is appropriate to repeal existing regulation 14 **DE Admin. Code** 925, Children with Disabilities, and adopt proposed regulation 14 **DE Admin. Code** 925, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs, except for sections relating to Response to Intervention, as part of a comprehensive review of existing State regulations in light of changes to federal law.

The Secretary makes the following specific findings:

**Response to Intervention (RTI).** The Department received extensive comment about the proposed response to intervention regulations. As a result, the Secretary finds it is appropriate to make substantive changes to the proposed RTI procedures. The Department will "reserve" space in Regulation 925, Subpart D, in order to revise and republish RTI regulations and will accept additional public comments about the revised RTI procedures. Accordingly, it is not necessary to summarize all of the comments received to the original proposal here. Generally, commenters were in mostly in favor of RTI, but suggested that the proposed roll-out schedule was too rapid, particularly for middle and high schools; were concerned about the cost of implementation, particularly as related to group sizes and intensity of services in Tiers 2 and 3; stressed the need for continued professional guidance and technical assistance; expressed concern that RTI procedures not delay services to children with disabilities; and sought clarification about the application of RTI to children with other types of disabilities, such as autism.

**The Department also received the following comments about other parts of Regulation 925, not related to response to intervention.**

**Informed consent.** A comment suggested that agencies be required to provide detailed information about special education rights and specific services at the same time the agency asks parents to consent to evaluate whether a child needs such services. The information that is required as part of "consent" is specifically defined in Section 3.0 of Regulation 922, Children with Disabilities, Subpart A, Purposes and Definitions (which will be adopted concurrent with this regulation) and is the same as the federal requirement. It is unnecessary to require additional information beyond what is required by the federal regulations. As noted below, the Department plans to develop additional State forms and will carefully consider whether a State-consent form should be developed and what information it should contain.

**Evaluation standards.** A comment suggested that the regulations should permit districts to take into account possible future negative outcomes associated with a particular type of disability as part of continuing a child's eligibility for services, even if the student does not currently require specialized services. The Department believes this suggestion would impermissibly expand the use of federal special education funds, such that the suggestion should not be incorporated into the regulation.

The Governor's Advisory Council for Exceptional Citizens also suggested adding a requirement that agreements between families and districts around the timing of reevaluations be in writing. While the

Department agrees that memorializing agreements in writing will often be good practice, it is not required by federal regulations and would add another documentation requirement around an area that is rarely a source of dispute. Likewise, the Department will also follow federal regulations by permitting evaluations and reevaluation reviews to occur without a meeting. Meetings may, of course, be held, but would not be required.

The Council also suggested revising subsection 6.3 to permit teams to consider historical data older than two years. The Department agrees, and has made a non-substantive revision to the regulation.

**Speech and language impairment eligibility.** Comments questioned whether the eligibility criteria for students with speech and language impairment should be more carefully delineated to eliminate inter-district variations. The proposed eligibility standards are the same as currently used and have presented few concerns about application or differences between districts in eligibility, such that no change to the regulation is necessary.

**Visual impairment eligibility.** Comments suggested that the eligibility criteria for students with visual impairments should include children with degenerative eye diseases who are likely to become visually impaired as a result, and suggested other changes to improve the clarity of subsection 6.17. The Department agrees with most of these recommendations and will revise and republish subsection 6.17 to accept additional public comment on the revisions.

**Multiple disabilities eligibility.** The Governor's Advisory Council for Exceptional Citizens noted that the regulation does not include detailed criteria for students who may be eligible for special education services under the multiple disabilities category. The federal definition of "multiple disabilities" is included as one of the categories of "children with disabilities" who are eligible for special education services in 14 **DE Admin. Code** 922, Children with Disabilities, Subpart A, Definitions and Purposes, adopted concurrent with this regulation. The Department does not believe that any further detail about the eligibility of such students is required. It would be extremely unusual for a student to be eligible under the "multiple disabilities" category without already also being eligible under at least one other category and once a student is eligible under any category, the student is entitled to a free appropriate public education based on the student's own individual needs, not the category of eligibility.

**Other eligibility categories.** The Council also made a number of suggestions about specific criteria for other eligibility categories, including emotional disturbance and other health impairment. The Department has corrected subsection 6.9.2.2 to correct a typographical error that was inconsistent with federal requirements and corrected subsection 6.14.3.2 for clarity. Otherwise, the proposed eligibility standards are the same as currently used, were comprehensively reviewed late in 2004 and are consistent with federal requirements and with prevailing understandings of various disorders as presented in DSM-IV. They have presented few concerns with respect to eligibility of students for special education services or about differences between districts in eligibility and no further changes to these regulations are necessary.

**Agency representative at IEP team meetings.** Comments suggested that it was unnecessary to have a person with the authority to commit agency resources at every meeting as required by Subsection 21.1.4.4. This language reflects long-standing federal interpretation about the authority of the person designated to represent a district at a meeting and is appropriate to the regulation.

**Objectives.** A few comments suggested that IEPs for all students should continue to include objectives. Federal law no longer requires objectives so long as each student's IEP contains measurable annual goals and the Department believes that well-written, measurable and carefully monitored annual goals will both meet student needs and be easier for families to understand. Delaware IEPs will continue to require both goals and objectives for students who participate in the DSTP via a portfolio assessment.

**IEPs of transferring students.** Some comments suggested that districts should be able to implement IEPs developed by other Delaware districts without an IEP meeting. Parent participation in the IEP process is particularly important when students change school districts, and that a meeting should be held by the receiving district even if the IEP will be adopted as received from the student's sending district. No change will be made to Subsection 23.4.

**Model forms.** Comments were received suggesting the Department develop or revise standard forms for RTI implementation. The Department plans to update the existing required State forms in light of these new regulations and will also consider developing new forms as appropriate to implement the regulations.

Finally, in addition to other comments, the Governor's Advisory Council for Exceptional Citizens made stylistic suggestions and noted various typographical or grammatical errors some of which the Department was able to correct before publication of the proposed regulation and some of which are corrected as part of this adoption.



**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal existing regulation 14 **DE Admin. Code** 925, Children with Disabilities, and adopt most of proposed regulation 14 **DE Admin. Code** 925, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs, with the non-substantive revisions noted above. Substantive changes to the proposed regulation will be republished for additional public comment.

Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925, attached hereto as Exhibit "B," is hereby adopted. Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 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 shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 925 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. 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 17th day of May 2007.

**Department of Education**

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of May 2007

**State Board of Education**

Jean W. Allen, President

Mary B. Graham, Esquire

Dennis J. Savage

Richard M. Farmer, Jr., Vice President

Barbara Rutt

Dr. Claibourne D. Smith

\* Please note that the Education final regulations regarding Children with Disabilities, 922 - 929, originally proposed and published in the March 2007 issue of the *Register* at page 1365 (10 DE Reg. 1365), are not being published here, due to the size of the regulations. PDF versions are available at the links indicated below:

- [14 DE Admin. Code 922 Children with Disabilities, Subpart A, Purposes and Definitions](#)
- [14 DE Admin. Code 923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies](#)
- [14 DE Admin. Code 924 Children with Disabilities, Subpart C, Local Educational Agency Eligibility](#)
- [14 DE Admin. Code 925 Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs](#)
- [14 DE Admin. Code 926 Children with Disabilities, Subpart E, Procedural Safeguards for Parents and Children](#)
- [14 DE Admin. Code 927, Children with Disabilities, Subpart F, Monitoring, Enforcement and Confidentiality of Information](#)
- [14 DE Admin. Code 928 Children with Disabilities, Subpart G, Use and Administration of Funds, Subpart H Reserved](#)
- [14 DE Admin. Code 929 Children with Disabilities, Subpart I, Special Programs and Unique Educational Alternatives](#)

Please contact the Department of Education for more information.

A complete set of the rules and regulations for the Department of Education is available at:

<http://regulations.delaware.gov/AdminCode/title14/index.shtml>

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**DEPARTMENT OF FINANCE**  
**DIVISION OF REVENUE**

Statutory Authority: 12 Delaware Code, Section 1154 (12 Del.C. §1154)

**ORDER**

**301 Publication of Tax Information**

**Summary of the Evidence and Information Submitted**

The Department published Proposed Regulations to address questions that had arisen about the application and interplay between sections (b)(2) and (b)(4) of the act as they relate to the publication of names when in the case of entities other than natural persons the Department is contemplating publishing the names of 25% owners, beneficial owners, or responsible officers of such entities, particularly, the Department has been asked if the word "taxpayer" appearing in the first line of section (b)(2) and in section (b)(4) means only "the entities other than natural persons" referred to in last part of section (b)(2) or whether the word "taxpayer" as used in section (b)(2) includes those individual 25% owners, beneficial owners or responsible officers of the entities whose names the Department intends to publish?, in the November 1, 2006 edition of the *Delaware Register of Regulations*. Publication in the *Delaware Register of Regulations* also signified the start of a 30-day public comment period that began on the same date and ended on November 30, 2006.

As a result of the aforementioned public outreach, the following is a summary of the comments received related to the Regulations:

**Comments**

The Department received an email with comments from: Richard Bacon and Thomas Sweeney, attorneys with Richard, Layton and Finger, in Delaware, objected to the proposed language in the Discussion section and proposed new language.

**Findings of Fact**

Based upon the comments received and summarized above, the proposed language was adopted and changes were made to the Proposed Regulations and re-published in the January 1, 2007 edition of the *Delaware Register of Regulations*. Publication in the *Delaware Register of Regulations* also signified the start of a 30-day public comment period that began on the same date and ended on January 31, 2007.

As no other comments have been received during the 30 day January 2007 period, the following Final Regulation is being issued.

**Order and Effective Date**

**NOW THEREFORE**, it is ordered that the proposed regulations, as set forth in the attached copy, are adopted and shall be final effective ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 10th day of June 2007.

**DEPARTMENT OF FINANCE**

Richard Cordrey, Secretary of Finance

Approved this 10th day of June 2007

**SUBJECT:** "PUBLICATION OF TAX INFORMATION"  
30 Del.C. §359(b). A NEW ENACTMENT OF THE 143<sup>RD</sup> GENERAL ASSEMBLY

**DATED:** October 5, 2006

**AUTHORITY:**

This regulation is promulgated pursuant to the authority given the Secretary of Finance, State of Delaware (the Department) in section 354 of Title 30 of the **Delaware Code** as well as section (8) of the new act.

Questions have arisen about the application and interplay between sections (b)(2) and (b)(4) of the act as they relate to the publication of names when in the case of entities other than natural persons the Department is contemplating publishing the names of 25% owners, beneficial owners, or responsible officers of such entities. Particularly, the Department has been asked if the word "taxpayer" appearing in the first line of section (b)(2) and in section (b)(4) means only "the entities other than natural persons" referred to in last part of section (b)(2) or whether the word "taxpayer" as used in section (b)(2) includes those individual 25% owners, beneficial owners or responsible officers of the entities whose names the Department intends to publish?

**REGULATION:**

The Department interprets the word "taxpayer" appearing in sections (b)(2) and (4) to include within its scope those individual 25% owners, beneficial owners and responsible officers of entities other than natural persons. Therefore, before one of their names can be published the liability against the individual owner, beneficial owner or responsible officer must be reduced to judgment.

**DISCUSSION:**

The specific requirement of subsection (b)(4) given the plain meaning of the words that appear therein is that a taxpayer's liability must be reduced to judgment before that taxpayer's name can be published. The Secretary of Finance understands the provisions of subsection (b)(4) to be a precautionary measure intended to insure that the taxpayer is aware of the taxpayer's personal responsibility for a tax liability that has become fixed, liquidated and final by being reduced to judgment. To that extent, any judgment against the taxpayer must be final, that is, not subject to appeal or further appeal. Because subsection (b)(4) requires that notice of the judgment be given to the same persons who are described in subsection (b)(2), that is, taxpayers, taxpayer's owners, beneficial owners or officers, it is concluded that the limitations imposed by subsection (b)(4), that is, that the liability be reduced to judgment and that sixty day advance notice be given, apply to the persons described in subsection (b)(2), namely, 25% owners, beneficial owners or officers as well as to taxpayers themselves.

Questions or comments about this regulation may be directed to Deputy Director Colleen Yegla at [c.yegla@state.de.us](mailto:c.yegla@state.de.us) or by phone to (302) 577-8680. The deadline for receipt of public comments is November 30, 2006.

**10 DE Reg. 1116 (01/01/07)**

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## STATE LOTTERY OFFICE

Statutory Authority: 29 Delaware Code, Section 4805 (29 Del.C. §4805)

### ORDER

**425 Delaware Lottery Rules and Regulations**  
**450 Video Lottery Regulations**

#### Summary of Proposed Changes

Currently, under the Video Lottery Regulations relating to 6.30, an ATM may not be located within 25 feet of a VLT.

Currently, under the Video Lottery Regulations relating to 6.33(4), all agent employees must file a

completed License Application Form (LAF) with the Delaware State Police Video Lottery Enforcement Unit (VLEU). The VLEU only needs completed LAFs from key employees and video operations employees.

Currently, under the Video Lottery Regulations relating to 14.2.1.3, 14.2.2 and 14.4, the Delaware State Police Video Lottery Enforcement Unit (VLEU) must wait for the criminal history report from SBI before it can recommend suitability for licensure of an applicant to the Director. That process can take up to 10 weeks, during which time, the applicant/employee cannot begin working. The temporary license procedure set forth below is designed to allow the VLEU to conduct preliminary background checks and make temporary suitability recommendations about applicants shortly after the applicant applies.

Currently, under the Video Lottery Regulations relating to 14.12 and 14.14, a licensed employee of Video Lottery agent (or an employee who has submitted an application to become licensed) has seven days to notify the Delaware State Police Video Lottery Enforcement Unit of any change in his/her criminal history information. The proposal is to shorten that time to three days.

Pursuant to 29 **Del.C.** §10118, the Delaware Lottery Office (Lottery) issues this Order adopting proposed amendments to the Lottery Rules. Following notice and a public hearing on April 2, 2007, the Lottery makes the following findings and conclusions:

### Summary of Evidence

The Lottery posted public notice of the proposed amendments on March 12, 2007 and for two consecutive weeks in the *Delaware State News* and the *Delaware Capital Review*. The Lottery proposed to update:

- Video Lottery Rule 6.34(4) to eliminate the need for licensees to submit license application forms for each of its employees.
- Video Lottery Rules 14.1.1, 14.3 and 14.4 to alleviate the lengthy screening process and allow the Lottery to grant a temporary license after a preliminary background check shortly after the applicant applies.
- Video Lottery Rules 14.11 and 14.13 to shorten the time a licensee has to notify the Delaware State Police Video Lottery Enforcement Unit of any change in his/her criminal history.
- Video Lottery Rule 6.3 to remove the limitation on the placement of automated teller machines (ATMs) within 25 feet of a video lottery machine.

The Lottery received no written comments during March 2007. The Lottery held a public hearing on April 2, 2007 and received no public comments.

### Decision

The Lottery believes that these changes to its Video Lottery Rules are in the best interest of the State. The Lottery will adopt the amendments to the Video Lottery Rules as published in the March *Register of Regulations*. The final form of the amendments to the Video Lottery Rules is also attached hereto.

Furthermore, the Lottery adopts two additional amendments to its Rules in final form, exempt from the requirements of subchapter II of Chapter 101 of Title 29 of the **Delaware Code**. They are exempt under 29 **Del.C.** §10113(b)(6) because they conform the Lottery's Rules to the same changes made in the amendments above. Specifically, Video Lottery Rule 3.10 is amended to reflect the same change to Video Lottery Rule 6.3. And Traditional Lottery Rule 29.0 is amended to reflect the same change to the temporary licensing procedure set forth in Video Lottery Rules 14.1.1, 14.3 and 14.4. The final form of these exempt amendments is attached hereto.

**IT IS SO ORDERED** this 15th day of May, 2007

Wayne Lemons, Director

**\* Please note that no changes to the Video Lottery Regulations -- except as indicate below -- were made to the regulations as originally proposed and published in the March 2007 issue of the *Register* at page 1367 (10 DE Reg. 1367). Therefore, the final regulation, in its entirety, is not being republished. Please refer to the March 2007 issue of the *Register* or contact the State Lottery Office for more information.**

**425 Delaware Lottery Rules and Regulations*****(Break in Continuity of Sections)*****29.0 Fingerprinting Procedures****29.1 State Bureau of Identification**

29.1.1 The applicant or licensee will contact the State Bureau of Identification to make arrangements for fingerprint processing.

29.1.2 A fee is required for state and federal processing of fingerprint cards and criminal history records, payment shall be made in the form of certified check or money order payable to the Delaware State Police Video Lottery Enforcement Unit (VLEU). The fee is set by the State Bureau of Identifications and payment is to be made directly to that agency.

29.1.3 Applicants must complete fingerprint cards with the necessary personal information to sign the waiver form to release criminal history record information to the Director. At the time of the processing, the applicant must show proof of identification to complete the criminal history request and pay the appropriate fee.

29.1.3.1 The applicant must contact the VLEU and submit the completed license application form and fingerprint verification/receipt for processing. No investigation will proceed without a copy of the SBI fingerprinting receipt.

29.1.3.2 Investigators assigned to the VLEU will conduct an initial investigation to determine the suitability of the applicant. If the applicant is approved, a temporary license may, at the discretion of the Director, be issued at that time pending SBI's final report. This temporary license is valid for thirty (30) days from the issue date.

29.1.3.3 A waiver will be signed by the applicant indicating that should an unfavorable criminal history background check be received by the VLEU, including any detrimental information or failure to fully disclose criminal history, the applicant's temporary license may be revoked. If revoked, the applicant will then be required to respond to VLEU within five (5) working days for another interview.

29.1.3.4 Should the Director determine the applicant is to be fully licensed, the Lottery shall send the applicant a letter stating such.

29.1.4 Certified copies of the criminal history will be forwarded to the Director of the Lottery, with a copy available to the applicant upon request.

29.1.5 A Verification Form of Processing will be completed by Delaware State Police personnel and provided to the applicant.

29.1.6 The State Bureau of Identification shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Identification. The State Bureau of Identification shall forward the results of these federal record checks to the attention of the Lottery Director in a confidential manner.

**29.2 Lottery Office****29.2.1 Determination of Suitability and Appeal Process**

29.2.1.1 A person subject to 29 **Del.C.** §4807A shall have the opportunity to respond to the Lottery Director regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) working days of the person's receipt of the criminal background information from the State Bureau of Identification. The determination of suitability for licensure shall be made by the Lottery pursuant to the factors listed in 29 **Del.C.** §4807A in regard to an applicant's criminal history. The Lottery will also consider the factors contained in 29 **Del.C.** Ch. 48 and the Lottery Regulations in considering agent applications for licensure.

29.2.1.2 The Lottery shall communicate the results of the determination of suitability in writing, within thirty (30) days of the receipt of the person's response to the criminal history information, unless extenuating circumstances require a longer period. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below.

29.2.1.2.1 Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 **Del.C.** §4807A and in compliance with Section 5(c) of these Regulations by submitting a letter of appeal to the Lottery Director within ten (10) working days of the receipt of the written notice.

29.2.1.2.2 The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within ten (10) working days of the receipt of letter of appeal, unless extenuating circumstances require a longer period.

29.2.1.2.3 A written decision shall be rendered by the Director or the Director's designee within thirty (30) working days of the hearing, unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.

### 29.3 Confidentiality

29.3.1 All records pertaining to criminal background checks, pursuant to 29 **Del.C.** §4807A and copies of suitability determinations of applicants for licensure, shall be maintained in a confidential manner, including, but not limited to, the following:

29.3.1.1 Access to criminal background check records, and letters of reference accompanying out-of-state criminal background checks, and determinations of suitability of applicants shall be limited to the Director and designated personnel;

29.3.1.2 All such records shall be kept in locked, fireproof cabinets;

29.3.1.3 No information from such records shall be released without the signed approval of and appropriate signed release of the applicant.

### 29.4 Subsequent Criminal History Information

29.4.1 Subsequent criminal history shall be sent by the State Bureau of Identification to the Director of the Lottery and shall be used by the Lottery in making a determination about the person's continued suitability as a licensee.

**4 DE Reg. 498 (09/01/00)**

**\*Please Note: As the rest of the sections were not amended they are not being published. For more information, please contact the State Lottery Office.**

## 450 Video Lottery Regulations

### *(Break in Continuity of Sections)*

### 3.0 Licensing of Agents; Business Plans

3.1 Any applicant desiring to obtain a license to act as an agent shall apply to the agency on forms specified by the Director from time to time. Application forms shall require the applicant to provide the following, without limitation:

### *(Break in Continuity within this Section)*

3.10. The approval of any license or the renewal of a license to an agent is subject to the following conditions:

3.10.1 Operation pursuant to a license issued under these regulations shall signify agreement by the agent to abide by all provisions of the regulations, including those contained in this section.

3.10.2 The agent shall at all times make its premises available for inspection by authorized representatives of the agency or the VLEU personnel, on a 24-hour unannounced basis. The VLEU shall be authorized entry to the premises and access to any video lottery machines or records of the agent without acquiring a warrant.

~~3.10.3 The agent shall not permit any automated teller machines (ATMs) to be present within twenty five (25) feet of any video lottery machine on the premises.~~

3.10.4 The agent and any entity owned by the agent in which the agent has a controlling ownership interest shall consent in writing to the examination of all accounts, bank accounts, and records under the control of the agent or the owned entity; and, upon request of the agency, shall authorize all third parties in possession or control of the said documents to allow the agency to examine such documents.

3.10.54 To the extent permitted by law, an agent accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication of material or information supplied to the agency in connection with the application for the agent's operations.

3.10.65 An agent shall immediately notify the agency of any proposed or effective change regarding the makeup of the owners, directors, officers, partners, or key employees of the agent.

3.10.76 The agent shall certify by a sworn notarized statement that it has not entered and does not intend to enter into any joint venture, partnership or teaming agreement in order to fulfill its obligations in connection with the video lottery operations; that it is not acting as a distributor of products manufactured by another entity; and that it has not entered and does not intend to enter into any agreement whereunder the proceeds generated by any agreement between the agent and the agency would be shared with one or more other persons. Provided, however, that an agent may enter into a management agreement with a third-party, who is not licensed under these regulations as a technology provider, for the operation of the lottery on the agent's premises provided that: (1) the proposed management agreement is provided to and approved by the agency, and (2) the third-party complies with all these regulations which apply to agents, including without limitation the licensure requirements.

3.11 Any license granted may not be transferred, assigned or pledged as collateral. A change of ownership which occurs after the Director has issued a license shall automatically terminate the license ninety (90) days thereafter. Provided, however, that the Director may issue a license to the new owner if satisfied, after the submission of an application that the new owner has met the requirements contained in 29 **Del.C.** §4806 (a) (1-4), as well as the fitness and background standards contained in such law and these regulations. In the case of a death of an owner, the estate of such owner shall be deemed to have met the requirements of §4806 (a) (1-4) for a period of one year following such death without the need for submitting an application, and, thereafter, need only supply such additional information as the Director may request. In the case of a shift in equity positions of owners, or a transfer among owners, notice shall be given the Director, but the license shall not terminate so long as no new owner is created or results. An agent may also seek approval of a proposed change in ownership prior to the actual change.

3.12 If the Director proposes to deny a license application and the agency is subject to the requirements contained in subchapter IV of 29 **Del.C.** chapter 101, the agency shall first give written notice to the applicant of the intended action, the reasons therefore, and the right to a hearing as provided for in 29 **Del.C.** chapter 101.

3.13 At the time of issuance of the license or thereafter, in the Director's sole discretion, the Director may approve the proposed business plan of the applicant or the agent. If the Director determines that an amendment or amendments to the plan are necessary to increase revenues from the video lottery, protect the public welfare or ensure the security of the video lottery, he or she may amend the plan accordingly. An agent may request an amendment to an approved business plan, which proposed amendment shall be subject to the approval of the Director.

3.14 To the extent provided by law, any information obtained pursuant to this Section 3 shall be held in confidence and not subject to the Delaware Freedom of Information Act, 29 **Del.C.** chapter 100.

**2 DE Reg. 115 (07/01/98)**

**7 DE Reg. 958 (01/01/04)**

***(Break in Continuity of Sections-)***

**14.0 Employee License Procedure**

14.1 The license applicant, licensee, or video lottery agent or technology provider employee will contact the State Bureau of Identification or the Delaware State Police Video Lottery Enforcement Unit to make arrangements for fingerprint processing.

***(Break in Continuity within this Section)***

14.12 License renewal. The Lottery license shall expire and be renewable on the last day of the month on the third anniversary of the issuance date. ~~Thirty~~ At a minimum of sixty (60) days prior to expiration, each licensee shall contact the VLEU and submit a new and updated license application form **[and fingerprints]** for a background investigation. The background investigation will follow the procedures set forth in Video Lottery Regulations 14.7-14.8

14.13 Terminations/End of Employment. The Lottery license is the property of the Lottery and shall be returned to the Lottery or the VLEU when the licensee's employment is either terminated involuntarily by the employer or terminated at the request of the employee.

14.14 Any person licensed under these Video Lottery Regulations or any employee who has submitted a license application shall notify the VLEU within ~~seven (7) days~~ Seventy-two hours (72) of any change in his/her criminal history information. This subsequent criminal history information shall be used by the Lottery in making a determination about the person's continued suitability as a licensee or employee of a video lottery agent or other licensed entity.

4 DE Reg. 498 (09/01/00)

5 DE Reg. 1286 (12/01/01)

7 DE Reg. 958 (01/01/04)

#### 15.0 Severability

The sections and subsections of these rules and regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of Delaware, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and regulations and all other sections shall remain in full force and effect.

4 DE Reg. 498 (09/01/00)

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

#### ORDER

#### Child Care Subsidy Program; 11006.6 Complaints

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM) as it relates to the Child Care Subsidy Program. 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 April 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSED CHANGE

##### Statutory Authority

- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996; and,
- Title XX of the Social Security Act.

##### Summary of Proposed Change

DSSM 11006.6, *Complaints* is revised to clarify the complaint process for the child care program. This revision also adds the requirement to send a copy of the complaint to the Child Care Monitor.



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## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following technical observations and recommendation summarized below. DSS has considered each comment and responds as follows.

In the "Client Complaints" section, DSS includes the following sentence: "Forward the complaint to the Office of Child Care Licensing with a copy to the Child Care Monitor." In the "Provider Complaints" section, DSS includes the following sentence: "Send provider complaints regarding DSS provider contracts or payments process to the Child Care Administrator." In both instances, the implication is that the Case Manager would conduct the "forwarding" and "sending". However, as written, this is not explicit. It would be preferable to modify both sentences to recite that "(t)he Case Manager will forward..." and "(t)he Case Manager will send..."

**Agency Response:** Both sentences "Forward the complaint to the Office of Child Care Licensing with a copy to the Child Care Monitor" and "Send provider complaints regarding DSS provider contracts or payments process to the Child Care Administrator" were reviewed. DSS agrees with the Councils that the text could benefit from clarification. DSS thanks the GACEC and the SCPD for their comments and have made the revisions as requested.

### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2007 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the complaint procedures for the Child Care Subsidy Program is adopted and shall be final effective June 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 5/11/2007

### DSS FINAL ORDER REGULATION #07-30 REVISIONS:

#### 11006.6 Complaints

##### Client Complaints

~~Clients are informed as to how they may make a complaint when they believe a facility is not meeting the licensing regulations or the provisions of the DSS contract. When a client makes a complaint to a Case Manager, the Case Manager will complete a Client Provider Complaint Information Form (Form 633), and forward it~~ **[Forward the complaint The Case Manager will forward the complaint]** to the Office of Child Care Licensing ~~or with a copy to the Child Care Monitor for action. Licensing will send results of the investigation to the Child Care Administrator.~~

##### Provider Complaints

~~Providers may make complaints regarding clients should be forwarded to the Food Stamp Employment & Training Case Manager. The complaint should be~~ in writing.

~~Provider complaints regarding the system must conform to the Miscellaneous Conditions section of the Day Care Contract.~~

**[Send Clients will send]** provider complaints regarding DSS provider contracts or payments process to **[their Case Manager. The Case Manager will send the complaint to]** the Child Care Administrator.

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**FINAL REGULATIONS**

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**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)  
18 DE Admin. Code 1307

**ORDER****1307 Group Coordination Benefits [Formerly Regulation 61]**

Proposed changes to Regulation 1307 relating to Group Coordination Benefits were published in the *Delaware Register of Regulations* on April 1, 2007. The comment period remained open until May 2, 2007. There was no public hearing on the proposed changes to Regulation 1307. Public notice of the proposed changes to Regulation 1307 in the *Register of Regulations* and two newspapers of general circulation were in conformity with Delaware law.

**Summary of the Evidence and Information Submitted**

Public comment was received as a result of the publication of the proposed changes for comment. That public comment expressed two area of concern: the first is that the coordination of benefits requirements could violate an insurance contract and current federal and state privacy laws. The second comment related to issuance of an insurance card, suggesting the providing of proof of insurance as an alternative. That public comment was considered and is reflected in the Regulation. With the reality of divorce and separation in marriages the need has long existed to provide insurance coverage for dependents in order to ensure that dependents have proof of coverage, no matter which parent is the ensured and which parents has custody.

**Findings of Fact**

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. Either parent should be able to obtain from a carrier proof on insurance for a dependent without regard to which parent has custody or is the name insured.
2. Upon the request of either parent, the carrier needs to provide proof of insurance.
3. The providing of proof of insurance for the purposed of insurance for a dependent is not a violation of the privacy rights of the insured.

**Decision and Effective Date**

4. Based on the provisions of 18 Del.C. §§311(a) and 1307 and 29 Del.C. §§10113-10118 and the record in this docket, I hereby adopt Regulation 1307 as amended and as may more fully and at large appear in the version attached hereto to be effective on June 1, 2007.

**Text and Citation**

The text of the proposed amendments to Regulation 1307 last appeared in the *Register of Regulations* Vol. 10, Issue 10, pages 1539-1546.

**IT IS SO ORDERED** this 18th day of May 2007.

Matthew Denn  
Insurance Commissioner

**\* Please note that no changes -- except as indicate below -- were made to the regulation as originally proposed and published in the April 2007 issue of the *Register* at page 1523 (10 DE Reg. 1523). Therefore, the final regulation, in its entirety, is not being republished. Please refer to the April 2007 issue of the *Register* or contact the Insurance Department for more information.**

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## 1307 Group Coordination Benefits [Formerly Regulation 61]

### *(Break in Continuity of Sections)*

#### 5.0 Rules for Coordination of Benefits

5.1 The general order of benefits is as follows:

5.1.1 The Primary Plan must pay or provide its benefits as if the Secondary Plan or Plans did not exist. A Plan that does not include a coordination of benefits provision may not take the benefits of another Plan as defined in section 3.0, definitions into account when it determines its benefits. There is one exception: a contract holder's coverage that is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder.

5.1.2 A Secondary Plan may take the benefits of another plan into account only when, under these rules, it is Secondary to that other plan.

5.1.3 The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than a dependent) are determined before those of the plan which covers the person as a dependent.

5.2 The rules for the order of benefits for a dependent child when the parents are not separated or divorced are as follows:

5.2.1 The benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year;

5.2.2 If both parents have the same birthday, the benefits of the plan which covered the parent longer are determined before those of the plan which covered the other parent for a shorter period of time;

5.2.3 The word "birthday" refers only to month and day in a calendar year, not the year in which the person was born;

5.2.4 A group contract which includes COB and which is issued or renewed, or which has an anniversary date on or after sixty days after the effective date of this subchapter shall include the substance of the provision in sections 5.2.1, 5.2.2, and 5.2.3 above. Until that provision becomes effective, the group contract may instead contain wording such as: "Except as stated in section 5.1.3, the benefits of a plan which covers the person as a dependent of a female."

5.2.5 If the other plan does not have the rule described in sections 5.2.1, 5.2.2, and 5.2.3 above but instead has a rule based upon the gender of the parent; and if, as a result, the plans do not agree on the order of benefits, the rule based upon the gender of the parent will determine the order of benefits.

5.3 If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

5.3.1 First, the plan of the parent with custody of the child;

5.3.2 Then, the plan of the spouse of the parent with the custody of the child; and

5.3.3 Finally, the plan of the parent not having custody of the child.

5.3.4 If the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. The plan of the other parent shall be the Secondary Plan. This paragraph does not apply with respect to any Claim Determination Period or Plan Year during which any benefits are actually paid or provided before the entity has that actual knowledge.

5.3.5 Upon request by either parent of a dependent child, a carrier subject to this Section 5.3 shall immediately issue an insurance card [showing or, if it does not issue such cards to its policy holders, equivalent] proof of applicable insurance for the dependent child to the parent making such request.

5.3.6 If benefits are not assigned and would be paid to an individual other than the provider, the carrier shall issue the benefits to the parent who sought the treatment for the dependent child.

5.4 The benefits of a plan which ~~that~~ covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule; and if, as a result, the plans do not agree on the order of benefits, this rule is ignored.

5.5 If none of the above rules determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the plan which covered that person for the shorter term.

5.5.1 To determine the length of time a person has been covered under a plan, two plans shall

be treated as one if the claimant was eligible under the second within twenty-four hours after the first ended.

5.5.2 The start of a new plan does not include:

5.5.2.1 a change in the amount of scope of a plan's benefits;

5.5.2.2 a change in the entity which pays, provides or administers the plan's benefits; or

5.5.2.3 a change from one type of plan to another (such as, from a single employer plan

to that of a multiple employer plan).

5.5.3 The claimant's length of time covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Department of Insurance is available at:**

<http://regulations.delaware.gov/AdminCode/title18/index.shtml>

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**

**3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers**

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 Del.C. §3706(a)(1))

**24 DE Admin. Code 3700**

**ORDER**

The Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the professions under its purview. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 Del.C. §3706(a)(1) to make, adopt, amend, and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 Del.C. §3706(a)(1), the Board proposed amendments to its regulation 8.0 relating to the continuing education reporting period and process and the licensure renewal process. Specifically, the proposed amendments to 8.0 Continuing Education For All Licensees to provide for online license renewal, allow for attestation of continuing education (CE) compliance, push the CE completion deadline back to July 31st of renewal years, and shift the CE compliance audit from pre-renewal to post-renewal. Minor grammatical, typographic, or stylistic changes were also included.

Pursuant to 29 Del.C. §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the *Delaware Register of Regulations*, Volume 10, Issue 10, at page 1560 on April 1, 2007.

**Summary of the Evidence and Information Submitted**

No written or verbal comments were received.

**Findings of Fact**

The Board finds that adoption of the proposed amendments will result in a more efficient license renewal process and will effectuate licensee compliance with the Board's continuing education requirements.

**Decision and Effective Date**

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

## Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

**IT IS SO ORDERED** this 9th day of May, 2007, by the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers of the State of Delaware.

Dr. Michael Michelli, President

Carol Guilbert, Secretary

Regina Bilton

Illene Courtright

George Christensen

Dr. Cynthia Parker

**\* Please note that no changes -- except as indicate below -- were made to the regulations as originally proposed and published in the April 2007 issue of the *Register* at page 1560 (10 DE Reg. 1560). Therefore, the final regulation, in its entirety, is not being republished. Please refer to the April 2007 issue of the *Register* or contact the Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers for more information.**

### 3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers

#### *(Break in Continuity of Sections)*

#### 8.0 Continuing Education For All Licensees:

~~Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers~~

##### 8.1 Philosophy

8.1.1 Continuing education is required by the ~~Delaware Board of Examiners~~ to maintain professional licensure in the fields of Speech/Language Pathology, Audiology and Hearing Aid Dispensing. Continuing education requirements arise from an awareness that these fields are in a continual state of transition due to the introduction of new philosophies and the refinement of already existing knowledge. Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers should continually strive to update their clinical skills in an effort to deliver high quality services.

8.1.2 The ~~Delaware Board of Examiners~~ is keenly aware of existing educational opportunities in Delaware and neighboring states and has established regulations which will provide continuing education credit as effortlessly as possible while assuring quality instruction. Credit will be given for participation in a variety of activities ~~which that~~ increase knowledge and enhance professional growth.

8.1.3 These regulations recognize the financial and time limitations of Delaware's professionals while assuring continued appropriate services to those individuals who require them.

##### 8.2 Continuing Education Criteria

8.2.1 One continuing education contact hour is ~~abbreviated as (CE) and~~ is defined as 60 minutes of attendance/participation in an approved continuing education activity unless otherwise stated. (Therefore, credits and CEU's issued by various organizations must be translated: e.g., 1.0 ASHA CEU = 10 CE's)

8.2.2 ~~Continuing Education CE~~ Time Frame: CE requirements must be completed ~~by April 30th of in~~ each license renewal period. ~~Each licensee has up to 24 months in which to complete the minimum continuing education requirements, that is from May 1 (of the current renewal year) to April 30 of the next renewal year. [Licenses] expire on [Licensees] have until the renewal deadline, July 31st of the in odd-numbered years, to complete the required CEs.~~

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers is available at:**

<http://regulations.delaware.gov/AdminCode/title24/>

[3700%20Board%20of%20Examiners%20of%20Speech%20Language%20Pathologists,%20Audiologists%20&%20Hearing%20Aid%20Dispensers.shtml](http://regulations.delaware.gov/AdminCode/title24/3700%20Board%20of%20Examiners%20of%20Speech%20Language%20Pathologists,%20Audiologists%20&%20Hearing%20Aid%20Dispensers.shtml)

**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council to the Division of Substance Abuse and Mental Health	Mr. Charles L. Tarver	01/07/2008
Advisory Council on Pedestrian Awareness and Walkability	Mr. Christopher E. Asay	02/28/2007
	Mr. Daniel E. Bockover	Pleasure of the Governor
	Mr. Joseph Cantalupo	Pleasure of the Governor
	Mr. Wayne C. Carter	Pleasure of the Governor
	Mr. Matthew Chesser	Pleasure of the Governor
	Mr. Milton A. Daves	Pleasure of the Governor
	Mr. Nicholas A. Dipasquale	Pleasure of the Governor
	Mr. Bradley F. Killian	Pleasure of the Governor
	Ms. Jane C. McEvilly	Pleasure of the Governor
	Mr. Donald H. Mulrine, Jr.	Pleasure of the Governor
	Ms. Tonda L. Parks	Pleasure of the Governor
	Ms. Patricia G. Roberts	Pleasure of the Governor
	Mr. Lloyd F. Schmitz	Pleasure of the Governor
Mr. Carl J. Solberg	Pleasure of the Governor	
Mr. Michael R. Tyler	Pleasure of the Governor	
Advisory Council on Tidal Finfisheries, Chair	Dewayne A. Fox, Ph.D.	6/30/2008
Advisory Council on Tidal Finfisheries, Member	Mr. Marvin M. Kahl, Jr.	6/12/2007
	Mr. James G. Little	6/25/2007
Agricultural Lands Preservation Foundation, Member	Mr. L. Allen Messick, Jr.	2/28/2010
Appalachian State Low-Level Radioactive Waste Commission, Alternate Commissioner	Harry Otto, Ph.D.	2/26/2011

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# GOVERNOR'S APPOINTMENTS

1833

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Appalachian State Low-Level Radioactive Waste Commission, Commissioner	The Honorable John A. Hughes	2/26/2011
Architectural Accessibility Board, Member	Ms. Ada M. Stokes	2/26/2011
Bicycle Council, Member	Mr. John B. Kay	2/26/2011
Board of Accountancy, Member	Mr. William D. Fletcher Ms. Diane Marky	2/28/2010 4/6/2010
Board of Cosmetology and Barbering, Member	Mr. John H. Cook, Jr.	4/6/2010
Board of Dental Examiners, Member	Mr. James S. King	2/26/2010
Board of Electrical Examiners, Member	Mr. Donald T. Collins Mr. Joseph A. Sparco, Sr. Mr. Dess. S. Stokes	2/26/2010 2/26/2010 2/26/2010
Board of Examiners in Optometry, Member	Ms. Ruth Banta	4/6/2010
Board of Funeral Services, Member	Ms. Marceline W. Knox	2/26/2010
Board of Landscape Architecture, Member	Mr. Matthew T. Spong	8/25/2008
Board of Massage and Bodywork, Member	Ms. Barbara A. Uniatowski	4/6/2010
Board of Medical Practice, Member	Stephen Cooper, M.D. Dustin D. Davis, D.O. Galicano F. Inguito, Jr., M.D.	4/6/2010 4/6/2010 4/6/2010
Board of Nursing, Member	Mr. Robert G. Draine, Sr. Ms. Joyce E. Edwards Ms. Carolyn E. Hill	4/6/2010 4/6/2010 4/6/2010
Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration Examiners, Member	Mr. Frank H. Beebe Mr. Thomas Ciconte Ms. Shirley S. Good Ms. Carol A. Guilbert	2/26/2010 2/26/2010 2/26/2010 2/26/2010
Board of Podiatry, Member	Jeffrey C. Barton, DPM	2/26/2010
Board of Professional Land Surveyors, Member	Mr. Frank E. Szczuka, Jr.	2/26/2010
Child Placement Review Board-Kent, Member	Ms. Wilberta Lewis	2/26/2010

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Clean Water Advisory Council, Member	The Honorable Roger P. Roy	Pleasure of the Governor
	Mr. Robert L. Stickels	6/24/2007
	The Honorable Michael R. Wyatt	11/8/2008
Commission on Adult Entertainment Establishments, Member	Mr. David Cephas	2/28/2010
Commission for Women, Member	Mr. Albert H. Mills	10/12/2008
Committee on Employment of People With Disabilities, Member	Mr. William Beaston	2/26/2010
	Mr. Robert D. Davis	2/26/2010
Council on the Blind, Member	Mr. Jackie Turner	2/28/2010
Council on Forestry, Member	Mr. W. Allen Jones	2/26/2010
	Mr. Timothy Taraila	2/26/2010
Council on Manufactured Housing, Member	Ms. Nadene M. Jefferson	2/28/2009
	Ms. Gloria J. Lansin	2/28/2009
	Ms. Susan McNulty	2/28/2009
	Mr. Frank V. Trabucco	2/28/2009
Council on Real Estate Appraisers, Member	Mr. Arthur B. Cahall, III	2/26/2010
Criminal Justice Council, Member	Mr. Michael Arrington	Pleasure of the Governor
Delaware Technical and Community College Board of Trustees, Member	Ms. Sue Saliba	11/11/2008
Delaware Disabilities Council, Member	Ms. Lora M. Lewis	7/13/2012
Dover/Kent Metropolitan Planning Organization PAC, Member	Ms. Diana Welch	4/23/2009
Education Commission of the States, Member	Ms. Sally C. Coonin	Pleasure of the Governor
Enhanced Public Access Technology Task Force, Member	Mr. Ralph J. Begleiter	Pleasure of the Governor
	Mr. Mark T. Brainard	Pleasure of the Governor
	The Honorable Jennifer W. Davis	Pleasure of the Governor



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# GOVERNOR'S APPOINTMENTS

1835

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Enhanced Public Access Technology Task Force, Member	The Honorable Anthony DeLuca	Pleasure of the Governor
	Mr. Douglas L. Gramiak	Pleasure of the Governor
	The Honorable Thomas M. Jarrett	Pleasure of the Governor
	Mr. Vincent Lofink	Pleasure of the Governor
	The Honorable Judy McKinney- Cherry	Pleasure of the Governor
	Hope W. Murray, Ed.D	Pleasure of the Governor
	Daniel Rich, Ph.D.	Pleasure of the Governor
	The Honorable Theresa L. Schooley	Pleasure of the Governor
	The Honorable Liane Sorenson	Pleasure of the Governor
Mr. George C. Wright, Jr.	Pleasure of the Governor	
Gaming Control Board, Member	Mr. Brad A. Barrie	5/9/2012
	Mr. James B. Greene	5/9/2012
Governor's Consortium on Hispanic Affairs, Chair	Cpl. George L. Camacho	Pleasure of the Governor
Governor's Consortium on Hispanic Affairs, Member	Mr. Kevin Gilmore	Pleasure of the Governor
Governor's Council on Hispanic Affairs, Member	Ms. Kellie L. Cruz	2/26/2010
	Mr. Luis A. Feldstein	2/26/2010
	Ms. Michelle D. Jewell	2/26/2010
	Mr. Danny G. Perez	2/26/2010
Governor's Task Force on School Libraries, Member	Ms. Susan S. Bunting	Pleasure of the Governor
	Ms. Dorothy Shelton	Pleasure of the Governor
	Mr. James A. Wolfe	Pleasure of the Governor
Greenways and Trails Council, Member	Ms. Gail Van Gilder	2/26/2010
Harness Racing Commission, Member	Mr. Robert B. Brown	4/22/2013

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Health Care Advisory Panel, Member	Mr. Barry L. Bakst, D.O.	4/4/2008
	Mr. Douglas R. Briggs, D.C.	4/4/2010
	Mr. Glenn P. Brown, MMSC, PT, ATC, SCS	4/4/2010
	Ms. Linda Y. Cho	5/9/2008
	Mr. R. Wayne Collison	4/25/2009
	Josette P. Covington, M.D., MPH	4/4/2009
	Ms. Marcia P. Dewitt	4/25/2009
	Mr. James E. Downing, M.D.	4/4/2008
	Mr. Matthew J. Eppley, M.D.	4/4/2009
	Mr. Harry Gravell, Jr.	4/4/2009
	Mr. George B. Heckler, Jr.	4/4/2009
	Mr. A. Richard Heffron	4/4/2008
	Mr. Samuel E. Lathem	4/4/2010
	Russell B. Merrill	Pleasure of the Governor
	R. Walter Powell, M.D.	4/4/2008
	Mr. Joseph J. Rhoades	4/4/2010
Bruce J. Rudin, M.D.	4/25/2010	
The Honorable Wayne A. Smith	4/4/2010	
Health Resources Board, Member	Ms. Christine Pochomis	8/30/2008
Human Relations Commission, Chair	Mr. Calvin H. Christopher	2/26/2011
Human Relations Commission, Member	Mr. Diaz J. Bonville	2/26/2011
	Ms. Dawn S. Brown	2/26/2011
	Ms. Chok-Fun C. Chui	2/26/2011
	Mr. Wallace R. Dixon	2/26/2011
	Ms. Olga Ramirez	2/26/2011
Humanities Council, Member	Ms. Kimberly M. Grimes, Ph.D.	2/26/2010
	Ms. Catherine A. Shufelt	2/26/2010
Interscholastic Athletic Association, Member	Mr. Robert W. Long	3/22/2010
Judicial Nominating Commission, Member	Mr. Frank Balotti	3/29/2010
Justice of the Peace for Kent County	Mr. William J. Sweet	5/10/2011
Kent County Board of Elections, Member	Ms. Kay H. O'Day	6/30/2007
Merit Employees Relations Board, Member	Ms. Martha K. Austin	3/15/2010
Newark Housing Authority, Member	Ms. Susan J. Eggert	10/23/2008

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# GOVERNOR'S APPOINTMENTS

1837

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Open Space Council, Member	Mr. Paul H. Boswell	2/1/2011
	Mr. Nathan Hayward, III	3/28/2011
	The Honorable John R. Schroeder	3/28/2011
	Ms. Lynn W. Williams	2/1/2011
Parks and Recreation Council, Member	Ms. Joan P. Brown	2/26/2010
Public Service Commission, Member	Ms. Joann Conaway	5/1/2012
	Mr. Jaymes B. Lester	5/1/2012
Real Estate Commission, Member	Mr. Christopher J. Whitfield	1/15/2010
Recycling Public Advisory Council, Member	Mr. Richard A. Fleming	2/28/2008
	Mr. Wallace Kremer	2/28/2008
	Ms. Teresa E. Lunn	2/28/2009
	Mr. Brock J. Vinton, II	2/28/2010
State Emergency Response Commission, Member	Mr. Robert L. Byrd	2/26/2009
State Examining Board of Physical Therapists and Athletic Trainers, Member	Ms. Katherine L. Daniello	4/20/2010
	Mr. William F. Holland, Jr.	4/20/2010
Statewide Independent Living Council, Member	Mr. Jarrod R. Lippi	2/26/2010
	Ms. Christine E. Trincia	2/26/2010
Statewide Labor Management Committee, Member	Mr. Timothy P. Barchak	Pleasure of the Governor
	Ms. Amy J. Bonner	Pleasure of the Governor
University of Delaware Board of Trustees,	Mr. John R. Cochran	5/9/2013
	Ms. Willa M. Jordan	4/23/2010
Workforce Investment Board, Member	Mr. Harry Gravell, Jr.	Pleasure of the Governor

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# GENERAL NOTICES

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

### PUBLIC NOTICE

#### Delaware Temporary Assistance for Needy Families (TANF) Caseload Reduction Credit Report for Fiscal Year 2007

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 107, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) initiated proceedings to provide information of public interest with respect to the Delaware TANF Caseload Reduction Credit Report for fiscal year 2007.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by June 30, 2007.

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

### SUMMARY OF PROPOSAL

#### Title of Notice

Delaware TANF Caseload Reduction Credit Report - Fiscal Year 2007

#### Statutory Basis

- Section 407(b)(3) of the Social Security Act, *Pro Rata Reduction of Participation Rate Due to Caseload Reductions Not Required by Federal Law and Not Resulting from Changes in State Eligibility Criteria; and,*
- 45 CFR 261.40 et seq., *How Will We Determine the Caseload Reduction Credit?*

#### Background

Section 407(b)(3) of the Social Security Act, as amended by the Deficit Reduction Act of 2005 (DRA) requires a reduction of the State's required participation rate for a fiscal year by the number of percentage points that the average monthly number of families receiving assistance in the State in the immediately preceding fiscal year is less than the average monthly number of families that received assistance in the State in fiscal year (FY) 2005.

The statute prohibits this reduction from including any caseload declines due to requirements of Federal law or due to differences in State eligibility criteria. This reduction in the participation rate is termed the *TANF Caseload Reduction Credit*.

To receive a caseload reduction credit, a State must complete Form ACF-202, the Caseload Reduction Report, in accordance with the regulations at 45 CFR 261.40 et seq., Section 407(b)(3) of the Social Security Act and the DRA. The FY 2007 report provides the information needed to calculate a caseload reduction credit (FY 2006 versus FY 2005), and thus determine the participation standard the State must meet for the fiscal year.

For this report to be complete, an opportunity for the public to comment and assurances that DSS considered those comments is required by the Administration for Children and Families (ACF) as part of our Caseload Reduction Report.

# GENERAL NOTICES

1839

## FORM ACF-202 - TANF CASELOAD REDUCTION REPORT

State: <u>Delaware</u>		Fiscal Year to which credit applies: <u>FY 2007</u>	
Overall Report <u>xxx</u>	(check one)	Apply the overall credit to the two-parent participation rate?	<u>    </u> yes
Two-parent Report <u>    </u>			<u>xxx</u> no
<b>PART 1 –Eligibility Changes Made Since FY 2005</b> (Complete this section for EACH change)			
1. Name of eligibility change: No changes in eligibility have been made in FY 2006.			
2. Implementation date of eligibility change: N/A			
3. Description of policy, including the change from prior policy: N/A			
4. Description of the methodology used to calculate the estimated impact of this eligibility change (attach supporting materials to this form): N/A			
5. Estimated average monthly impact of this eligibility change on caseload in comparison year: <u>N/A</u>			

**GENERAL NOTICES****FORM ACF-202 - TANF CASELOAD REDUCTION REPORT**State: DelawareFiscal Year to which credit applies: FY 2007**PART 2 – Estimate of Caseload Reduction Credit**

Impact of All Changes: None

Caseload Reduction CalculationActual Caseload Decline

FY 2005 Average TANF Caseload	5,606
FY 2005 Average SSP Caseload	128
FY 2005 Average Total caseload	<b>5,734</b>
FY 2006 Average TANF Caseload	5,504
FY 2006 Average SSP Caseload	<u>105</u>
FY 2006 Average Total Caseload	<b>5,609</b>
Actual Decline	125 cases = 2.18%
Actual Decline – Net Impact	125 cases = 2.18%

Cases Funded With Excess MOE

Total FY 2006 MOE Expenditures	\$37,374,628
75% MOE Requirement	<u>\$21,771,069</u>
Excess MOE Spending	\$15,603,559 divided by
Average “assistance” spending per case	\$ 3,926 equals
Cases Funded by Excess MOE	3,974 cases
Actual Caseload Decline	<u>125 cases</u>
Adjusted Caseload Reduction	<b>4,099</b> cases = 71.49%

**Caseload Reduction Credit = 50%**

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## DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, June 21, 2007 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

#### NOTICE OF PUBLIC COMMENT PERIOD

#### **Title XIX Medicaid State Plan Attachment 4.19-D Pediatric Nursing Facility Care Reimbursement**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), and with 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding pediatric nursing facility care reimbursement.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by June 30, 2007.

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

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### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

#### NOTICE OF PUBLIC COMMENT PERIOD

#### **Long Term Care Medicaid - Annuities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) regarding the treatment of annuities provisions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by June 30, 2007.

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

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### DIVISION OF SOCIAL SERVICES NOTICE OF PUBLIC COMMENT PERIOD

#### **FOOD STAMP 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 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and

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Social Services (DHSS) / Division of Social Services is proposing to amend food stamp program policies in the Division of Social Services Manual (DSSM) regarding verification changes.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 (new fax number) by June 30, 2007.

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

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT**

**SAN # 2006-22**

**Title Of The Regulations:**

Amendment to Regulation No. **1138 Emission Standards for Hazardous Air Pollutants for Source Categories**

**Brief Synopsis Of The Subject, Substance And Issues:**

Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standards applicable to halogenated solvent degreasers (40 CFR Part 63 Subpart T) and aluminum sweat furnaces (40 CFR Part 63 Subpart RRR) into Regulation No. 38 on November 1, 2001 and June 1, 2003, respectively. When Delaware adopted these standards all sources subject to them were required to get a Title V operating permit. In December 2005, the EPA revised the Title V permitting requirements to permanently exempt the smaller area sources from having to obtain a Title V permit.

The purpose of this amendment to Subparts T and RRR of Regulation No. 38 is to be consistent with federal requirements by permanently exempting small area sources from Title V permitting requirements. These sources must still obtain air permits under Regulation 1102.

With this rulemaking, the Department will also amend Subparts T and RRR to be consistent with the Delaware Administrative Code format. The Department will also change from the adoption by reference format and provide the complete regulatory text. This latter change will eliminate the need for the public and regulated community to interpret the adopted federal standards and the changes made when the Department originally adopted these standards into Regulation No. 38.

**Notice Of Public Comment:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, June 21, 2007 beginning at 6:00PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

**Prepared By:**

James R. Snead (302) 323-4542 james.snead@state.de.us  
April 11, 2007

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**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION****3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals  
PUBLIC NOTICE**

The Delaware Board of Mental Health and Chemical Dependency Professionals, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3006(a)(1), proposes changes to its **Regulation 2.0** affecting the definition of Professional Counseling Experience. Specifically, the proposed changes clarify the definition of "Professional Counseling Experience" for the benefit of prospective applicants.

A public hearing is scheduled for Thursday, June 27, 2007 at 12:00 noon in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Timothy E. Oswell at the above address. The final date to submit written comments will be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Timothy E. Oswell at the above address or by calling (302) 744-4530.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
3800 Committee on Dietetics/Nutrition  
NOTICE OF RESCHEDULED PUBLIC HEARING**

The Delaware Committee of Dietetics/Nutrition, in accordance with 24 **Del.C.** §3805(a)(1) has proposed changes to Rules 2.0 and 3.0 of its rules and regulations to allow for online renewal of certification and online attestation of completion of the required continuing professional education (CPE). The changes also revise the Committee's audit process to provide for post-renewal audits for compliance with the CPE requirements. Finally, the proposed changes revise the two-year certification period to end on May 31 of odd-numbered years, beginning with the October 1, 2007 certification period.

A public hearing will be held on July 11, 2007, at 2:45 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Committee of Dietetics/Nutrition, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Committee at the above address. The final date to receive written comments will be at the public hearing.

The Committee will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

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**DEPARTMENT OF TRANSPORTATION  
DIVISION OF TRANSPORTATION SOLUTIONS  
PUBLIC NOTICE****Revisions to the Delaware Manual on Uniform Traffic Control Devices**

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), is seeking to adopt a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). This proposed revision includes the Department's draft changes to Part 6 of the Federal MUTCD. The remaining portions of the MUTCD (Parts 1, 7, 8, and 9) will be reviewed and revised at a later date.

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**Public Comment Period**

The Department will take written comments on the draft changes to the Delaware MUTCD from June 1, 2007 through June 3, 2007.

Copies of the Draft Delaware MUTCD can be obtained by reviewing or downloading a PDF copy at the following address:

**Manual on Uniform Traffic Control Devices (MUTCD) Part 6**

Questions or comments regarding this document should be directed to:

Donald Weber, P.E.  
Assistant Director of Transportation Engineering  
Division of Transportation Solutions  
Delaware Department of Transportation  
169 Brick Store Landing Road  
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