
Delaware Register of Regulations

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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before May 15, 2022.

Cover Photo
Rehoboth Beach, Delaware



INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 17	4:30 p.m.
December 1	November 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

Mark Brainard, Joint Legislative Oversight Sunset Committee Analyst; **Amy Burke**, Administrative Specialist II; **Mark J. Cutrona**, Director; **Deborah Gottschalk**, Sr. Legislative Attorney; **Benjamin Kowal**, Legislative Research Analyst; **Robert Lupo**, Graphics and Printing Technician IV; **Colinda Marker**, Executive Assistant; **Amanda McAtee**, Joint Legislative Oversight Sunset Committee Analyst; **Kathleen Morris**, Fiscal Administrative Officer; **Nathan Poore**, Graphics and Printing Technician III; **Joel Rudnick**, Legislative Librarian; **Erika Schrader**, Assistant Registrar of Regulations; **Don Sellers**, Print Shop Supervisor; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Vaughn Wagner**, Deputy Director; **Cara Wilson**, Legislative Attorney; **Natalie White**, Administrative Specialist III.

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1124 Control of Volatile Organic Compound Emissions: Section 33.0 Solvent Cleaning and Drying.....	25 DE Reg. 196 (Final)
1130 Title V State Operating Permit Program.....	25 DE Reg. 394 (Prop.)

Division of Climate, Coastal and Energy

2103 Regulations for the Green Energy Program.....	25 DE Reg. 63 (Prop.)
	25 DE Reg. 721 (Final)

Division of Fish and Wildlife

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.....	25 DE Reg. 103 (Final)
3541 Atlantic Sharks.....	25 DE Reg. 290 (Final)
3542 Tilefish.....	25 DE Reg. 64 (Prop.)
	25 DE Reg. 295 (Final)
3550 Cobia (<i>Rachycentron canadum</i>).....	25 DE Reg. 66 (Prop.)
	25 DE Reg. 297 (Final)

Division of Watershed Stewardship

7401 Surface Water Quality Standards.....	25 DE Reg. 837 (Prop.)
7402 Shellfish Sanitation Regulations.....	25 DE Reg. 268 (Prop.)
	25 DE Reg. 726 (Final)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**Delaware Council on Police Training**

801 Regulations of the Delaware Council on Police Training.....	25 DE Reg. 839 (Prop.)
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Delaware Sex Offender Management Board	
1100 Delaware Sex Offender Management Board.....	25 DE Reg. 301 (Final)
Office of Highway Safety	
1205 Electronic Red Light Safety Program (ERLSP).....	25 DE Reg. 1014(Prop.)
Office of the Alcoholic Beverage Control Commissioner	
Rule 705 - Expansion of Outdoor Seating: Procedures, Standards and Fees..	25 DE Reg. 940 (Prop.)
Rule 910 (Formerly Rule Number 33) A Rule Defining And Regulating The Quantities Of Sales And Methods Of Deliveries Of Certain Off-premises Sales By Licensees.....	25 DE Reg. 943 (Prop.)
Rule 1008 (Formerly 19.1) Bottle Clubs - Licensing and Operation.....	25 DE Reg. 502 (Prop.)
Rule 1201 (Formerly Rule 7) A Rule Requiring Persons Between the Ages of 16 and 18 to Secure a Work Permit to be Employed by an On-Premises Licensee.....	25 DE Reg. 960 (Final)
Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores.....	25 DE Reg. 946 (Prop.)
	25 DE Reg. 949 (Prop.)
DEPARTMENT OF STATE	
Division of Professional Regulation	
100 Board of Accountancy.....	25 DE Reg. 160 (Prop.)
1400 Board of Electrical Examiners.....	25 DE Reg. 871 (Final)
1700 Board of Medical Licensure and Discipline.....	25 DE Reg. 691 (Prop.)
1900 Board of Nursing.....	25 DE Reg. 962 (Final)
2500 Board of Pharmacy.....	25 DE Reg. 161 (Prop.)
2700 Board of Registration for Professional Land Surveyors.....	25 DE Reg. 199 (Final)
2900 Real Estate Commission.....	25 DE Reg. 318(Errata)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	25 DE Reg. 395 (Prop.)
2925 Real Estate Commission Education Committee.....	25 DE Reg. 786 (Final)
2930 Council on Real Estate Appraisers.....	25 DE Reg. 621 (Prop.)
3500 Board of Examiners of Psychologists.....	25 DE Reg. 952 (Prop.)
3800 State Board of Dietetics/Nutrition.....	25 DE Reg. 1031(Final)
4100 Board of Home Inspectors.....	25 DE Reg. 201 (Final)
5300 Board of Massage and Bodywork.....	25 DE Reg. 845 (Prop.)
Uniform Controlled Substance Act Regulations.....	25 DE Reg. 955 (Prop.)
	25 DE Reg. 506 (Prop.)
	25 DE Reg. 873 (Final)
Public Service Commission	
3001 Rules for Certification and Regulation of Electric Suppliers.....	25 DE Reg. 396 (Prop.)
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005).....	25 DE Reg. 963 (Final)
	25 DE Reg. 541 (Final)

DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

2223 Ignition Interlock Device Installation, Removal and Monthly Monitoring and
Calibration Fees.....

25 **DE Reg.** 874 (Final)

OFFICE OF THE STATE TREASURER

Cash Management Policy Board

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

25 **DE Reg.** 399 (Prop.)

25 **DE Reg.** 728 (Final)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 3001A-3005A (14 Del.C. §§3001A-3005A)
14 DE Admin. Code 933

ERRATA

933 DELACARE: Regulations for Early Care and Education and School-Age Centers

* **Please Note:** The proposed regulation for 933 DELACARE: Regulations for Early Care and Education and School-Age Centers was submitted for publication in the April 1, 2022 issue of the *Register of Regulations*.

New text in subsection 14.4.6 of the proposed regulation was inadvertently published with strike type rather than with underlining:

~~14.3.6~~ 14.4.6 The phone number of the center changes (must also notify ~~parents/guardians~~ a parent or guardian and staff members);

Subsection 14.4.6 should have been published as:

~~14.3.6~~ 14.4.6 The phone number of the center changes (must also notify ~~parents/guardians~~ a parent or guardian and staff members);

New text in subsection 23.1.9.2 of the proposed regulation was inadvertently published without underlining:

23.1.9.2 Monitoring the entrance of the center and phone, email, or other communication methods used by the center to ensure the child is released from care when requested by the parent, guardian, or authorized release person;

The new text should have been published with underlining as:

23.1.9.2 Monitoring the entrance of the center and phone, email, or other communication methods used by the center to ensure the child is released from care when requested by the parent, guardian, or authorized release person;

New text in the heading for new Part IX of the proposed regulation was inadvertently published without underlining:

PART IX EXEMPTIONS FOR PUBLIC SCHOOLS

The new text should have been published with underlining as:

PART IX EXEMPTIONS FOR PUBLIC SCHOOLS

The final regulation is published in this issue, the June 1, 2022 *Delaware Register of Regulations*. See 25 DE Reg. 1115 (06/01/2022) (Final).

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
INDUSTRIAL ACCIDENT BOARD

Statutory Authority: 19 Delaware Code, Sections 105(a)(8) and 2301A(i)
(19 **Del.C.** §§105(a)(8) & 2301A(i))
19 **DE Admin. Code** 1331

ERRATA

1331 Industrial Accident Board Regulations

* Please Note: The proposed regulation for 1331 Industrial Accident Board Regulations was originally submitted for publication in the December 1, 2021 issue of the *Register of Regulations*.

Language in subsection 21.2 of the proposed regulation was inadvertently published as text to be deleted:

21.0 Post Hearing Motions

- 21.1 The Board may permit additional testimony or argument after the close of a hearing. This may occur before the Board renders a decision or after the Board renders a decision. A party requesting that the Board permit additional testimony or argument shall do so by written motion.
- 21.2 ~~If a party's motion requests additional testimony or argument after the close of a hearing and before the Board renders a decision, the nature and purpose of the evidence shall be stated. Such evidence shall not be merely cumulative. Such motion shall be filed not later than ten days after the date of the last testimony, oral argument or the filing of any brief requested by the Board. The first day shall commence on the day following such testimony, oral argument or the filing of such brief. The date of last testimony, oral argument or the filing of any brief requested by the Board shall be stated in the motion. Such motion shall be served upon the attorney for each party and upon each unrepresented party in accordance with Rule 8.~~
- 21.3 If the motion requests additional testimony or argument after the close of a hearing and after the Board renders a decision, the matter claimed to have been erroneously decided must be specified and the alleged errors stated. Such motion must be filed with the Board not later than ten days after receipt of the Board's decision. The first day shall commence on the day following receipt of the Board's decision. The date the party received the Board's decision shall be set forth in the motion. Such motion, properly filed, will toll the period for perfecting appeals under 19 **Del.C.** §2349 and the time under §2349 will begin anew after the subsequent decision is received by the parties. Such motion shall be served upon the attorney for each party and upon each unrepresented party in accordance with Rule 8.
- 21.4 When a motion is filed under Section (B) or (C) of this Rule, the non-moving party may file an answer not later than ten days after receipt of the motion and serve a copy of the answer upon the attorney for each party and upon each unrepresented party in accordance with Rule 8. The first day shall commence on the day following receipt of the motion. The date of receipt of the motion shall be set forth in the answer.

The subsection should have been published as:

21.0 Post Hearing Motions

- 21.1 The Board may permit additional testimony or argument after the close of a hearing. This may occur before the Board renders a decision or after the Board renders a decision. A party requesting that the Board permit additional testimony or argument shall do so by written motion.
- 21.2 If a party's motion requests additional testimony or argument after the close of a hearing and before the Board renders a decision, the nature and purpose of the evidence shall be stated. Such evidence shall not be merely cumulative. Such motion shall be filed not later than ten days after the date of the last testimony, oral argument or the filing of any brief requested by the Board. The first day shall

commence on the day following such testimony, oral argument or the filing of such brief. The date of last testimony, oral argument or the filing of any brief requested by the Board shall be stated in the motion. Such motion shall be served upon the attorney for each party and upon each unrepresented party in accordance with Rule 8.

- 21.3 If the motion requests additional testimony or argument after the close of a hearing and after the Board renders a decision, the matter claimed to have been erroneously decided must be specified and the alleged errors stated. Such motion must be filed with the Board not later than ten days after receipt of the Board's decision. The first day shall commence on the day following receipt of the Board's decision. The date the party received the Board's decision shall be set forth in the motion. Such motion, properly filed, will toll the period for perfecting appeals under 19 **Del.C.** §2349 and the time under §2349 will begin anew after the subsequent decision is received by the parties. Such motion shall be served upon the attorney for each party and upon each unrepresented party in accordance with Rule 8.
- 21.4 When a motion is filed under Section (B) or (C) of this Rule, the non-moving party may file an answer not later than ten days after receipt of the motion and serve a copy of the answer upon the attorney for each party and upon each unrepresented party in accordance with Rule 8. The first day shall commence on the day following receipt of the motion. The date of receipt of the motion shall be set forth in the answer.

The final regulation is being published in this issue of the June 1, 2022 *Register of Regulations*. See 25 **DE Reg.** 1143 (06/01/2022) (Final).

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

**DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 **DE Admin. Code** 1001

In Re: EMERGENCY RULE FOR THOROUGHBRED RACING COMMISSION - Final Order

1001 Thoroughbred Racing Rules and Regulations

WHEREAS, the Thoroughbred Racing Commission (the "Commission") has been charged by the Delaware legislature pursuant to 3 Del. C. § 10103(c) with the powers and duties to regulate the conduct of all participants in any thoroughbred and/or Arabian racing meet authorized by the Commission within this State and to promulgate and prescribe such rules and regulations as it may deem proper and necessary; and

WHEREAS, the Commission is developing proposed regulations (the "Proposed Regulations") for publication in the Register of Regulations to amend Rules 15.2, 15.3, 2.6.2.5, and 1.0 ("Definitions") to clarify veterinary staff who can administer Bleeder medication (Furosemide/Salix) in light of an ongoing and nationwide shortage of veterinarians; and

WHEREAS, the Commission finds that adoption of an emergency regulation to clarify veterinary staff who can administer Furosemide/Salix Bleeder must occur on an emergency basis in order to be in effect before the next meet on May 24, 2022 and allow that meet to go forward; and

WHEREAS, the Commission will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804; and

WHEREAS, in accordance with the provisions of 29 Del. C. § 10119(3), this Order shall be effective for 120 days

from the date of execution and may be renewed once for a period not exceeding 60 days; and

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

NOW, THEREFORE, IT IS ORDERED this 6th day of May, 2022 that the following "Amendment to Thoroughbred Racing Commission Rules" shall take effect immediately.

Delaware Thoroughbred Racing Commission

Sarah A. Crane, Executive Director

1001 Thoroughbred Racing Rules and Regulations

1.0 Definitions and Interpretations

In the context of these Rules of Racing, the following words and phrases shall be construed as having the following special meanings:

(Break in Continuity Within Section)

"Veterinarian": A veterinary practitioner licensed by the State of Delaware under Title 24, Chapter 33 of the Delaware Code and authorized to practice at the race track.

"Veterinary Technician": A technician licensed by the State of Delaware under Title 24, Chapter 33 of the Delaware Code and authorized to practice at the race track. Veterinary Technicians are authorized by the Commission to administer Furosemide (Salix) and take samples of blood and urine, both under the supervision of a veterinarian.

(Break in Continuity Within Section)

2.0 Permits, Registrations and Authorizations

(Break in Continuity Within Section)

2.6 Permit Application for Participants in Racing:

2.6.1 Any person required to register or have an authorization or permit by Rule 2.2 who desires to participate in Thoroughbred Racing and/or Arabian Racing in Delaware may apply to the Commission for registration, authorization or permit to participate in racing at Licensee's racetrack. Such application shall be made in writing on application forms prescribed by the Commission and filed at the Commission's general office or with the Licensee's Registrar on or after January 2 of the calendar year in which the registration, permit, or authorization is to be in force, but not later than 24 hours after applicant has arrived on Licensee's grounds.

2.6.2 All owners and trainers shall carry workmen's compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by Owners and Trainers in the training and racing of horses. All concessionaires shall carry workmen's compensation covering all their employees.

(Break in Continuity Within Section)

2.6.2.5 Applications from persons desiring to treat, or prescribe for, or attend any horse on Licensee's grounds as a practicing Veterinarian or Veterinary Technician, shall be accompanied by evidence that such person is currently licensed as a Veterinarian or Veterinary Technician by the State of Delaware. An accredited practicing Veterinarian not holding a permit or authorization from the Licensee or a license from the State of Delaware, however, may with permission of the Stewards in an emergency be called in as a consultant, or to serve as a Veterinarian for one horse on a temporary basis, and shall not thereby be considered as participating in racing in this State.

(Break in Continuity of Sections)

15.0 Medication; Testing Procedures*(Break in Continuity Within Section)*

15.2 Bleeder Medication:

- 15.2.1 Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (Salix) to control epistaxis (bleeding) to horses under the following conditions:

(Break in Continuity Within Section)

- 15.2.1.4 Horses must be on the grounds and the Furosemide (Salix) administered, not more than four hours and 30 minutes (4 1/2 hours) nor less than four hours (4 hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined. The ~~Salix~~ Attending Veterinarian or Veterinary Technician who administers Furosemide (Salix) to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration. The written certification shall be delivered to a Commission representative designated by the Stewards within one (1) hour of the last scheduled race for that day.
- 15.2.1.5 It is the responsibility of the owner or trainer to pay the ~~Salix veterinarian~~ Attending Veterinarian at the rate approved by the Commission. No credit shall be given without approval of the ~~Salix~~ Attending Veterinarian.
- 15.2.1.6 A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.
- 15.2.1.7 Dosage. Furosemide (Salix) shall be administered intravenously, or intramuscularly as permitted under Rule 15.2.1.8, to horses in the Bleeder Program by the ~~Salix~~ Attending veterinarian or Veterinary Technician, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:
- 15.2.1.8 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.
- 15.2.1.9 Restrictions. No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (lasix) in oral or intramuscular form, except that the stewards may approve intramuscular administration for a horse based on written documentation from the Commission veterinarian and the trainer's veterinarian.
- 15.2.1.10 Post-Race Quantification. As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of furosemide (Salix) per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower.
- 15.2.1.10.1 If post-race analysis indicates that the specific gravity of a horse's urine is less than 1.010 and the concentration of Furosemide (Salix) in the blood plasma is greater than 100 nanograms per milliliter, the stewards shall take the following action (for each horse):
- 15.2.1.10.1.1 If such overage is the first violation of this rule for this horse, the trainer and/or attending veterinarian shall be issued a warning and be required to participate in a review of all pertinent Commission rules and subsequent penalties at a time scheduled by the stewards. If the trainer wishes to contest the overage, the trainer

shall follow a specific procedure under which all of the following conditions must be met:

- 15.2.1.10.1.2 the horse in question must report to the detention barn four hours prior to post time.
- 15.2.1.10.1.3 the same handler/groom must stay with the horse at all times.
- 15.2.1.10.1.4 a blood sample shall be taken by the Commission veterinarian before the administration of furosemide.
- 15.2.1.10.1.5 the ~~Salix~~ Attending veterinarian or Veterinary Technician must administer Furosemide (Salix) at a dosage not to exceed 500 milligrams.
- 15.2.1.10.1.6 the horse must return to the detention barn after the race for the taking of post-race blood and urine testing by the Commission veterinarian or ~~assistant~~ Veterinary Technician, no matter how the horse finishes in the race.

(Break in Continuity Within Section)

- 15.3 Responsibility for Prohibited Administration:

(Break in Continuity Within Section)

- 15.3.4 A licensed Veterinarian shall be responsible for any medication, drug or substance that he or his Veterinary Technician administers, prescribes or causes to be administered by his direction on a horse. If found to have made an error in type or quantity of same administered and if in reliance upon the correctness thereof a Trainer races such treated horse in violation of Rules 15.1 and 15.2, such licensed Veterinarian shall be subject to disciplinary action.

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

1001 Thoroughbred Racing Rules and Regulations

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 AGRICULTURE
THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 **DE Admin. Code** 1001

PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations**Summary

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the proposed regulations is to amend Rule 15.11 to update references to incorporate the current version of Association of Racing Commissioner's (ARCI) Rules regarding laboratory testing and standards. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the June 1, 2022 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: https://regulations.delaware.gov/register/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before July 1, 2022. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after July 1, 2022, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Thoroughbred Racing Commission, the amendments shall take effect ten days after being published as final in the Delaware Register of Regulations.

Delaware Thoroughbred Racing Commission
Sarah A. Crane, Executive Director

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1062RFA 06-01-22.pdf>

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

15.0 Medication; Testing Procedures

(Break in Continuity Within Section)

- 15.11 ~~Commission Chemist: The Commission's Chemist, who shall be a member of the Association of Official Racing Chemists, shall conduct tests on specimens provided him in order to detect and identify prohibited substances therein and report on such a manner, and according to such procedures, as the Commission from time to time may approve and/or prescribe. A testing laboratory must be accredited by an accrediting body designated by the Association of Racing Commissioners International (ARCI) to standards set forth and required by the ARCI.~~

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

[1001 Thoroughbred Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 202A (14 Del.C. §202A)
14 DE Admin. Code 903

PUBLIC NOTICE

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

903 Best Interest Determination Process for School Placement - Students in Foster Care

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §202A, the Secretary of Education intends to amend 14 DE Admin. Code 903 Best Interest Determination Process for School Placement - Students in Foster Care. This regulation has been reviewed as required by 29 Del.C. §10407 which states regulations are to be reviewed every four years. While there are no

content changes to this regulation, it is being amended to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 1, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

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

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1063RFA 06-01-22.pdf>

903 Best Interest Determination Process for School Placement - Students in Foster Care

1.0 Purpose

Under 14 **Del.C.** §202A, a student in the custody of DSCYF the Delaware Department of Services for Children, Youth and Their Families (DSCYF) who is in foster care must remain in the student's School of Origin school of origin unless a determination is made that it is not in the student's best interest to attend such school. The purpose of this regulation is to provide the process for the determination of best interest in school placement decisions for students in foster care.

2.0 Definitions

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

"Best Interest Meeting" means the convening of certain individuals as noted within this regulation to determine if the student should remain in the ~~"school of origin"~~ school of origin.

"Best Interest Meeting Determination Form (Foster Care)" means the document, which may be amended from time to time, approved by the Delaware Department of Education for use in the determination of best interest in school placement decisions for students in foster care.

"Charter School" means a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.

~~"Child in DSCYF custody" or "student in foster care"~~ **"Student in Foster Care"** means a student in the custody of the Delaware Department of Services for Children, Youth and Their Families (DSCFY) (DSCYF) pursuant to Chapter 25 of Title 13 of the Delaware Code.

"Court Appointed Special Advocate" or "CASA" means a volunteer authorized and appointed under 14 Del.C. §9010A, who is supervised by a coordinator and who works in conjunction with the child's attorney to accomplish the duties set forth in 29 Del.C. § 9007A(c).

"Department" means the Delaware Department of Education.

"DFS" means the Division of Family Services, a unit of the Delaware Department of Services for Children, Youth and Their Families.

"DFS Caseworker" means the caseworker assigned to the student in foster care.

"DSCYF" means the Delaware Department of Services for Children, Youth and Their Families.

"LEA Foster Care Liaison" means the ~~Local Educational Agency Liaison~~ local education agency liaison for students in foster care.

"Local School District" shall mean a reorganized school district or vocational technical school district established by 14 Del.C. Ch. 10.

"School of Origin" means the following:

- The school in which the student is enrolled at the time of entry into foster care;
- The school in which the student is enrolled at the time of change of placement while in foster care; or
- The school identified for the next grade level in the same local school district where the child in foster care is enrolled.

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

"State Coordinator" means the Delaware Coordinator for Education of Students in Foster Care.

~~3.0~~ **School of Origin for Students in Foster Care**

~~3.1~~ **"School of Origin"** means the following:

- ~~3.1.1~~ the school in which the student is enrolled at the time of entry into foster care;
- ~~3.1.2~~ the school in which the student is enrolled at the time of change of placement while in foster care; or
- ~~3.1.3~~ the school identified for the next grade level in the same Local School District where the child in foster care is enrolled.

~~4.0~~ **3.0 Best Interest Meeting Timeline**

~~4.1~~ **3.1** A Best Interest ~~meeting~~ Meeting must occur within five ~~(5)~~ school days based on the School of Origin's school instructional calendar or seven ~~(7)~~ business days in the event of the summer recess:

- ~~4.1.1~~ **3.1.1** ~~when~~ When a student is placed into foster care;
- ~~4.1.2~~ **3.1.2** ~~when~~ When there is a change in foster care placement; or
- ~~4.1.3~~ **3.1.3** ~~when~~ When the student leaves the custody of DSCYF.

PROPOSED REGULATIONS

- ~~4.2~~ 3.2 If it is determined a Best Interest Meeting under subsection ~~4.4~~ 3.1 cannot occur within the specified time, documentation identifying the reason for the meeting delay shall be provided to the State Coordinator within ten (~~10~~) working days. This information shall be provided annually to the chief school officer of the local school district or charter school.
- ~~4.3~~ 3.3 If subsection ~~4.4~~ 3.1 is not applicable, a Best Interest ~~meeting~~ Meeting shall be held at least once a year, preferably within the last two (~~2~~) months of the school calendar.

~~5.0~~ 4.0 Process for the Determination of Best Interest

- ~~5.4~~ 4.1 The DFS Caseworker and LEA Foster Care Liaison shall be responsible for the coordination of the date, time, and method for the Best Interest Meeting using available technology; however, in person attendance is preferred.
- ~~5.1.4~~ 4.1.1 The LEA Foster Care Liaison shall:
- ~~5.1.4.1~~ 4.1.1.1 ~~invite~~ Invite needed educationally related participants; and
- ~~5.1.4.2~~ 4.1.1.2 ~~invite~~ Invite the special education administrator or designee from the student's school of residence, based on the address of the DSCYF custody placement at the time of the meeting, and the student's ~~School of Origin~~ school of origin, and the educational surrogate parent when applicable to participate in the Best Interest ~~meeting~~ Meeting if the student is eligible for or receiving special education services.
- ~~5.1.2~~ 4.1.2 The DFS Caseworker shall:
- ~~5.1.2.1~~ 4.1.2.1 ~~invite the parent(s) or legal guardian(s) or Relative Caregiver, foster care parent(s)~~ Invite the parents, legal guardian, or relative caregiver, foster care parents, attorney for the child or CASA, and educational decision maker, as applicable; and
- ~~5.1.2.2~~ 4.1.2.2 ~~invite~~ Invite the student to attend when it is determined to be developmentally appropriate by the DFS Caseworker.
- ~~5.2~~ 4.2 The Best Interest Meeting shall be conducted in a manner that results in the Best Interest Meeting Determination Form (Foster Care) being completed.
- ~~5.3~~ 4.3 The Best Interest determination shall be made by the following individuals:
- ~~5.3.1~~ 4.3.1a A representative of DSCYF, preferably the DFS Caseworker,
- ~~5.3.2~~ 4.3.2a A representative of the student's ~~School of Origin~~ school of origin, and
- ~~5.3.3~~ 4.3.3a A representative of the student's school of residence based on the address of the DSCYF custody placement at the time of the meeting.
- ~~5.4~~ 4.4 If no agreement is reached by all of the representatives specified in subsection ~~5.3~~ 4.3 for changing the school placement from the ~~School of Origin~~ school of origin to the student's school of residence, based on the address of the DSCYF custody placement at the time of the meeting, then the student shall remain in the ~~School of Origin~~ school of origin pending finalization of any applicable dispute resolution process.
- ~~5.4.4~~ 4.4.1 Except in accordance with subsection ~~5.4.2~~ 4.4.2, a subsequent Best Interest Meeting shall not occur unless subsection ~~4.4~~ 3.1 or subsection ~~4.3~~ 3.3 applies.
- ~~5.4.2~~ 4.4.2 If exigent circumstances exist for a subsequent Best Interest Meeting to occur, an application shall be submitted on a form approved by the Department to the State Coordinator. The Secretary or designee will determine whether to approve the application for the requested subsequent Best Interest Meeting.

~~6.0~~ 5.0 Applicability

- ~~6.4~~ 5.1 Nothing in this regulation shall alter a ~~Local School District or Charter School's~~ local school district or charter school's duties under the ~~Individual~~ Individuals with Disabilities Education Act (IDEA) or 14 **DE Admin. Code** 922 through 929.
- 5.2 Nothing in this regulation shall prevent a ~~Local School District or Charter School~~ local school district or charter school from providing supportive instruction to children with disabilities in a manner consistent

with the Individuals with Disabilities Education Act (IDEA) and Delaware Department of Education regulations.

- 6-2 5.3 Nothing in this regulation shall alter a ~~Local School District or Charter School's~~ local school district or charter school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a ~~Local School District or Charter School~~ local school district or charter school from providing supportive instruction to such students.
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OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A (14 Del.C. §3003A)
14 DE Admin. Code 934

PUBLIC NOTICE

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

934 Regulations for Family and Large Family Child Care Homes

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §3003A, the Secretary of Education intends to amend 14 DE Admin. Code 934 Regulations for Family and Large Family Child Care Homes. This regulation is being amended for the following reasons, as well as to comply with the *Delaware Administrative Code Drafting and Style Manual*:

- To provide a definition of blood lead screening;
- To comply with the Child Care and Development Block Grant by requiring adult volunteers who are present for at least five days or 40 hours per year to complete OCCL's approved Health and Safety Training for Child Care Professionals (certificate required);
- To require a release of children procedure that includes monitoring the entrance of the home or phone, email, or other communication methods used by the home to ensure the child is released from care when requested by the parent, guardian, or authorized release person;
- Removing the requirement regarding completing the Department's approved developmental and social emotional screening tool until the legislation is clarified;
- To comply with Delaware's Lead Poisoning Prevention Act, to require blood lead screening for children at or around 24 months in addition to the screening at or around 12 months, and to require proof of single blood lead screening after age 24 months for all children including school-age, if blood lead tests were not conducted at or around age 12 months and at or around 24 months;
- To not allow semi-solid food to be introduced to an infant until the infant is at least 6 months old and developmentally ready, unless the infant's health care provider states otherwise; and
- To update the requirements for infant feedings to comply with recommendations of Caring for Our Children and the Centers for Disease Control and Prevention to include ready-to-feed formulas and concentrate, to require all bottles be labeled with the child's name, date, and time of preparation or opening, and to require that formula prepared using powder be discarded if not used within 24 hours of preparation.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m.

EST) on or before July 1, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable and safe education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected. The amended regulation clarifies the minimum health and safety standards for family and large family child care homes.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies. The amended regulation aligns child care regulations with more recent state and federal health and safety laws and recommendations.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

***Please Note:**

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1067RFA 06-01-22.pdf>

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

[934 Regulations for Family and Large Family Child Care Homes](#)

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 1006

PUBLIC NOTICE

1006 Delaware Interscholastic Athletic Association (DIAA)

A. TYPE OF REGULATORY ACTION REQUESTED

Repeal of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes to repeal 14 DE Admin. Code 1006 Delaware Interscholastic Athletic Association (DIAA). The regulation provides DIAA Board of Directors' procedural rules concerning conflicts of interest, committees, the executive director's responsibilities, amending regulations, reporting violations of interscholastic athletic regulations, game protests, the DIAA Board's investigative procedure, waiver requests, and appeals to the DIAA Board. In addition, the regulation sets forth the process for becoming a DIAA member school, the annual membership fees, and requirements for heads of DIAA member schools. Many of the sections of this regulation are proposed to be repealed because they will be incorporated into new regulations. Specifically, Sections 2.0 and 5.0 and subsection 7.1 will be incorporated into a new regulation, 14 DE Admin. Code 1024 Member Schools. Subsection 3.1 and 7.2, Sections 4.0, 6.0, 8.0, 9.0, and 10.0, and the last sentence of Section 11.0 will be incorporated into a new regulation, 14 DE Admin. Code 1020 DIAA Board Procedures. Subsection 3.2 will be incorporated into a new regulation, 14 DE Admin. Code 1021 DIAA Committees. Subsection 1.1 will not be incorporated into a new regulation because the DIAA Board is statutorily empowered to implement the regulations governing interscholastic regulations (14 Del.C. §§304(3)-(5)), and the language that is being repealed is not consistent with the statute and is not necessary. The first four sentences of Section 11.0 will not be incorporated into a new regulation because that language is in a statute (14 Del.C. §312) and is not necessary in a regulation.

In accordance with 14 Del.C. §122(d), the Department is required to perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued. Because this regulation is proposed to be repealed, the Department is not required to perform and issue a written educational impact analysis.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

*Please Note:

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1069RFA 06-01-22.pdf>

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

1006 Delaware Interscholastic Athletic Association (DIAA)

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 1008

PUBLIC NOTICE**1008 DIAA Junior High and Middle School Interscholastic Athletics****A. TYPE OF REGULATORY ACTION REQUESTED**

Repeal of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes to repeal certain sections of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The regulation applies to interscholastic athletics at the middle school level. The following sections of this regulation are proposed to be repealed because they will be incorporated into new regulations. Section 3.0 will be incorporated into 14 **DE Admin. Code** 1034. Section 4.0 will be incorporated into 14 **DE Admin. Code** 1035. Subsection 5.1 will be incorporated into 14 **DE Admin. Code** 1024. Subsection 5.2 will be incorporated into 14 **DE Admin. Code** 1035. Section 6.0 will be incorporated into 14 **DE Admin. Code** 1040. Subsections 7.1 through 7.4 will be incorporated into 14 **DE Admin. Code** 1042. Subsection 7.6 will be incorporated into 14 **DE Admin. Code** 1040. Subsection 8.1 will be incorporated into 14 **DE Admin. Code** 1024. Subsections 8.2 through 8.4 will be incorporated into 14 **DE Admin. Code** 1043. Subsection 7.5 will not be incorporated into a new regulation because the Board found that student teachers would fall under the requirements for certified, emergency, or volunteer coaches, so a separate subsection is not necessary.

In accordance with 14 **Del.C.** §122(d), the Department is required to perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued. Because this regulation is proposed to repeal certain sections only, the Department is not required to perform and issue a written educational impact analysis.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

***Please Note:**

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1070RFA 06-01-22.pdf>

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

1008 DIAA Junior High and Middle School Interscholastic Athletics

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 1009

PUBLIC NOTICE

1009 DIAA High School Interscholastic Athletics

A. TYPE OF REGULATORY ACTION REQUESTED

Repeal of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes to repeal certain sections of 14 DE Admin. Code 1009 DIAA High School Interscholastic Athletics. The regulation applies to interscholastic athletics at the high school level. The following sections of this regulation are proposed to be repealed because they will be incorporated into new regulations. Section 3.0 will be incorporated into 14 DE Admin. Code 1034. Section 4.0 will be incorporated into 14 DE Admin. Code 1035. Subsection 5.1 will be incorporated into 14 DE Admin. Code 1024. Subsection 5.2 will be incorporated into 14 DE Admin. Code 1035. Section 6.0 will be incorporated into 14 DE Admin. Code 1040. Subsections 7.1 through 7.4 will be incorporated into 14 DE Admin. Code 1042. Subsection 7.6 will be incorporated into 14 DE Admin. Code 1040. Subsection 8.1 will be incorporated into 14 DE Admin. Code 1024. Subsections 8.2 through 8.4 will be incorporated into 14 DE Admin. Code 1043. Subsection 7.5 will not be incorporated into a new regulation because the Board found that student teachers would fall under the requirements for certified, emergency, or volunteer coaches, so a separate subsection is not necessary.

In accordance with 14 Del.C. §122(d), the Department is required to perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued. Because this regulation is proposed to repeal certain sections only, the Department is not required to perform and issue a written educational impact analysis.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

*Please Note:

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1071RFA 06-01-22.pdf>

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

1009 DIAA High School Interscholastic Athletics

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15), 303, and 304(1) (14 Del.C. §§122(b)(15), 303 & 304(1))

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****1024 DIAA Member Schools****A. TYPE OF REGULATORY ACTION REQUESTED**

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§122(b)(15), 303(a)-(b), and 304(1), the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1024 DIAA Member Schools. The regulation concerns the requirements for DIAA Member Schools. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating defined terms from existing regulations into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1006, 14 **DE Admin. Code** 1008, and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsections 2.1 and 2.2 of 14 **DE Admin. Code** 1006; proposed Section 4.0 is formerly subsection 2.3 of 14 **DE Admin. Code** 1006 and includes a proposed new change in subsection 4.1.2; proposed Section 5.0 is formerly subsection 2.5 of 14 **DE Admin. Code** 1006; proposed Section 6.0 is formerly subsection 7.1 of 14 **DE Admin. Code** 1006; proposed Section 7.0 is formerly subsection 8.1 in 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 8.0 is formerly subsection 5.1 in 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 9.0 is formerly subsection 2.4 of 14 **DE Admin. Code** 1006; and proposed Section 10.0 is formerly Section 5.0 of 14 **DE Admin. Code** 1006.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns requirements for DIAA Member Schools and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns requirements for DIAA Member Schools and is not designed to help to ensure students in Delaware public schools receive an equitable education.

3. Will the new regulation help to ensure all students' health and safety are adequately protected? Proposed subsection 10.2 includes requirements for Heads of School that are designed to help ensure that all students' health and safety are adequately protected.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation concerns requirements for DIAA Member Schools and is not designed to help ensure students' legal rights are respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority or flexibility of decision makers at the local board and school level. By statute (14 Del.C. §303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of

all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 Del.C. §304).

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does 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 Board enforces the regulations relating to interscholastic athletics in Delaware (14 Del.C. §304).

8. Will the new 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 new regulation is consistent with, and not an impediment to, the implementation of other state educational policies.

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

10. What is the cost to the state and to the local school boards of compliance with the new regulation? In accordance with 14 Del.C. §304(1), the Board establishes annual membership fees for DIAA Member Schools. The membership fees are set forth in proposed Section 4.0, which is based on the existing fees. There is a proposed change to reduce the membership fee for high schools with enrollments of less than 200 students from \$750.00 to \$500.00.

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1072RFA 06-01-22.pdf>

1024 DIAA Member Schools

1.0 Content

In accordance with 14 Del.C. §303, this regulation sets forth requirements for DIAA Member Schools, which include all public middle and high schools and such nonpublic middle and high schools in Delaware that elect to become Member Schools.

2.0 Definitions

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

"Administrative Head" means the chief or head individual in charge of a DIAA Member School, traditionally referred to or generally known as the principal or headmaster.

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 Del.C. Ch. 3.

"Department" means the Delaware Department of Education established pursuant to 14 Del.C. §101.

"DIAA" means the Delaware Interscholastic Athletic Association established pursuant to 14 Del.C. §301.

"Member School" means a full or associate member school of the DIAA.

"Practice" means working on skills for a particular sport within a single team at a Member School as guided by coaches and includes team workouts and inner-team scrimmages.

"Unified Sports" means a co-ed program that combines an approximately equal number of students with and without autism or intellectual disabilities on a sports team for training and interscholastic competition.

3.0 Process for Becoming a DIAA Member School

3.1 Full Member Schools: Any middle and secondary school located within the boundaries of the State and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, including nonpublic, private, and public schools, authorized by Title 14 of the Delaware Code, may become a full Member School of DIAA. Membership requires the payment of dues and a signed affirmation of the obligations of membership.

PROPOSED REGULATIONS

- 3.1.1 A full Member School is a non-voting member of DIAA and does not participate in its day-to-day governance. A full Member School may, at any time, make appropriate recommendations for policy action to the Board for its consideration.
- 3.1.2 Membership shall include all middle and secondary public schools participating in interscholastic athletics and such nonpublic schools that may elect to become full or associate members.
- 3.2 Associate Member School: Any school, not a full Member School, located within the boundaries of the State and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, may apply for status as an associate Member School provided the applicant sets forth good cause and sufficient justification why such school cannot become a full Member School. The initial application may be submitted at any time but renewal applications shall be submitted to the DIAA office no later than May 1 of each year.
- 3.2.1 Associate Membership Criteria: The membership application shall contain a statement that the school will abide by the rules and regulations governing interscholastic athletics and in those cases where the school cannot comply, the application shall set forth the specific rule and regulation, and a sufficiently acceptable explanation of why the rule or regulation cannot be kept in force or why the school is incapable of compliance. Full compliance shall be made with all rules and regulations when an associate Member School competes with a full Member School of DIAA or a comparable state association; participates in DIAA sanctioned tournaments and meets in cross country, indoor track, wrestling (except dual team tournaments), outdoor track, and golf involving the aforementioned schools; or participates in a state championship event.
- 3.2.2 Such associate Member Schools, after initial approval, shall be reviewed each year by the Board for the purpose of approving, rejecting, or modifying their application for renewal of associate member status.

4.0 Annual Membership Dues

- 4.1 Pursuant to 14 Del.C. §304(1), yearly dues for full member and associate Member Schools shall be as follows:
- 4.1.1 \$500 for middle schools. If a middle school and high school are located in the same administrative unit and the combined student enrollment of grades 6th through 12th is 499 or less then the school shall pay only the high school fee and be exempt from the middle school fee.
- 4.1.2 \$500 for high schools with enrollments of 200 or less.
- 4.1.3 \$750 for high schools with enrollments of 499 or less.
- 4.1.4 \$1,000 for high schools with enrollments of 999 or less.
- 4.1.5 \$1,250 for high schools with enrollments of 1,499 or less.
- 4.1.6 \$1,500 for high schools with enrollments of 1,999 or less.
- 4.1.7 \$1,750 for high schools with enrollments of 2,000 or more.
- 4.2 Enrollment figures shall be based on the September 30 enrollment count from the prior school year as verified by the Department.
- 4.3 Membership dues shall be paid each year by October 1st. Member Schools that have not paid dues by January 1st shall be assessed a 10% late fee. Full member and associate Member Schools which fail to comply may be subject to penalties as determined by the Board.

5.0 Compliance with Regulations

Member Schools shall comply with the regulations governing interscholastic athletics. Acceptance of membership shall be construed as an agreement to that effect.

6.0 Reporting Violations of Regulations

If a Member School violates a provision of the regulations governing interscholastic athletics the Administrative Head or designee shall notify the Executive Director in writing of the violation. The Executive Director may impose immediate penalties. All violations shall be reviewed by the Board which may impose additional penalties. The

Executive Director or Board may impose additional penalties above the automatic penalties listed within the specific regulation violated as deemed necessary to assure proper conduct of interscholastic athletics or for repeat offenses.

7.0 Required Use of Approved Officials

- 7.1 Member Schools and tournament sponsors shall be required to use officials recognized and approved by DIAA for interscholastic contests. Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$100.00 fine per game per non-approved official. In the case of emergencies, such as an act of God, refusal by an association to work games, or a shortage of qualified officials, Member Schools which desire to use other than approved officials must obtain permission from the Executive Director.
- 7.2 If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

8.0 School and Team Competition

- 8.1 Sponsoring Interscholastic Teams: Interscholastic competition is defined as any athletic contest between students representing two or more schools. Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition. Students are considered to be engaged in interscholastic competition representing a school if the school does any of the following:
- 8.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).
 - 8.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.
 - 8.1.3 Permits students to compete under the name of the school.
 - 8.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications in excess of what is customarily done for "outside" organizations.
 - 8.1.5 Presents or displays individual or team awards.
- 8.2 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:
- 8.2.1 The governing body of the participating district or nonpublic school approves participation in the sport. The Administrative Head shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.
 - 8.2.2 The governing body of the participating district or nonpublic school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the Administrative Head.
 - 8.2.3 The participating schools agree to comply with all applicable DIAA rules and regulations.
- 8.3 Levels of Participation - High School
- 8.3.1 Level 1 or developmental sport, less than 12 participating schools at the varsity level. DIAA rules and regulations shall not be in effect.
 - 8.3.2 Level 2 or recognized sport, 12 or more participating schools at the varsity level.
 - 8.3.2.1 Participating schools must petition the Board for official recognition of the sport. Notwithstanding the foregoing requirement, if 10 or more participating schools offer a Unified sport at the varsity level, the schools may petition the Board for official recognition of that Unified sport.

8.3.2.2 At the time of official recognition, DIAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, establish a maximum game schedule, and form a committee to promote the continued development of the sport and prepare for a future state championship. All DIAA rules and regulations shall then be in effect.

8.3.3 Level 3 or championship sport 16 or more participating schools at the varsity level. Upon petition by the sport committee and adoption of a tournament proposal, DIAA shall establish a state championship. Notwithstanding the foregoing requirement, DIAA may establish a state championship for Unified Sports that have a minimum of 12 participating schools at the varsity level.

8.3.4 Withdrawal of level 2 or level 3 status. If, for two consecutive years, less than the required number of schools participate in a sport, DIAA may withdraw official recognition or suspend the state tournament/meet for a period of time as determined by the Board.

8.4 Levels of Participation - Middle School

8.4.1 Level 1 or developmental sport, less than seven participating schools. DIAA rules and regulations shall not be in effect.

8.4.2 Level 2 or recognized sport, seven or more participating schools.

8.4.2.1 Participating schools must petition the Board for official recognition of the sport.

8.4.2.2 At the time of official recognition, DIAA shall provide rules publications to the participating schools, designate an approved official's association, conduct an annual or biannual rules clinic for coaches and officials, and establish a maximum game schedule. DIAA rules and regulations shall then be in effect.

8.4.3 Withdrawal of level 2 status: If, for two consecutive years, less than the required number of schools participate in a sport, DIAA may withdraw official recognition for a period of time as determined by the Board.

8.5 Membership on Coed Teams

8.5.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons. Sports are considered to be the same when one set of NFHS Rules govern both genders. If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team but if a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team. Notwithstanding the restrictions herein, a transgender student, defined as a student whose gender identity differs from the student's assigned sex at birth, may be eligible to participate on a team other than their assigned sex at birth in accordance with a Member School policy that meets the minimum standards designated by the Board.

8.5.2 Coed teams at the high school level shall participate only in the boys' state championship tournament or meet.

8.5.3 Subsections 8.5.1 and 8.5.2 do not apply to Unified Sports teams, which are coed by design.

9.0 Participation in State Championship Tournaments

9.1 Member Schools must meet all the criteria in subsections 9.1.1 through 9.1.7 to be eligible to participate in the DIAA state championship tournament.

9.1.1 The Member School shall be in compliance with all regulations governing interscholastic athletics.

9.1.2 The Member School shall be a DIAA Member School in good standing, including paying all fees.

9.1.3 The Member School shall sponsor a team in the given sport.

9.1.4 The Member School shall be in compliance with and meet all requirements of the tournament manual for that sport.

9.1.5 The Member School shall sponsor one varsity sport per season. Notwithstanding the foregoing criterion, co-ed members schools shall sponsor at least one varsity sport per gender per season.

- 9.1.6 The Member School shall sponsor a minimum of two grades, one of which must be the eleventh grade.
- 9.1.7 The Member School shall have been a DIAA Member School for a minimum of two full school years.

10.0 Requirements for Administrative Heads of DIAA Member Schools

- 10.1 The Administrative Head shall be responsible for the conduct of the school's interscholastic athletic program in which representative teams participate, including the organization and scheduling of individuals and teams. The Administrative Head may delegate the Administrative Head's responsibility under subsection 10.1 to a subordinate but such delegation will not negate the Administrative Head's responsibility for a violation of the regulations governing interscholastic athletics by the Administrative Head of School's school.
- 10.2 The Administrative Head shall exercise general control over all of the interscholastic athletic matters of the Administrative Head's school, including the requirements in subsections 10.2.1 through 10.2.12.
- 10.2.1 The Administrative Head shall sanction all interscholastic athletic contests in which the Administrative Head's school participates.
- 10.2.2 The Administrative Head shall exclude from participation in interscholastic athletics any student athlete because of improper conduct or ineligibility.
- 10.2.3 The Administrative Head shall exclude from participation in interscholastic athletics any student athlete whose physical health would be jeopardized by such participation because of illness or injury suffered until such time as the student athlete is declared physically fit by the school or attending physician.
- 10.2.4 The Administrative Head shall protect the well-being of all visitors and officials attending interscholastic athletic contests conducted by the Administrative Head's school. Administrative Heads shall provide for adequate security at the school and, in the absence of such provisions, penalties may be imposed by the Board. When a contest is conducted at a neutral site, the Administrative Heads of the participating schools shall be held jointly responsible for the protection and well-being of all visitors and officials. In the absence of adequate security, penalties may be imposed upon either or both of the schools.
- 10.2.5 The Administrative Head shall protect the well-being of the school's participants by providing them with safe and suitable uniforms and equipment and conducting Practices and contests in a manner which minimizes risk to the health and safety of student athletes.
- 10.2.6 The Administrative Head shall ensure that all required contracts for athletic contests in which the school participates are in writing and bear the proper signatures.
- 10.2.7 The Administrative Head shall designate a staff member of the school as the faculty manager for the teams representing the school or to serve as the faculty manager. If no such designation is made, the coach shall serve as the faculty manager.
- 10.2.8 The Administrative Head shall ensure that an authorized representative accompanies the school's teams to all contests.
- 10.2.9 The Administrative Head shall certify in writing the eligibility of the Administrative Head's school's contestants in accordance with the regulations of the Department.
- 10.2.10 The Administrative Head shall exercise such other powers regarding the interscholastic athletic program of the school as are consistent with the needs of the school and with the provisions and spirit of the regulations of the Department.
- 10.2.11 The Administrative Head shall urge all students competing on the school's teams to obtain medical accident insurance which covers athletic participation.
- 10.2.12 The Administrative Head shall notify DIAA of any official delegation of authority.

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****1034 DIAA Health and Safety Requirements****A. TYPE OF REGULATORY ACTION REQUESTED**

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements. The regulation provides health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles in accordance with 14 **Del.C.** §301. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating defined terms from existing regulations into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing subsections from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsection 3.1 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 4.0 is formerly subsection 3.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 5.0 is formerly subsection 3.3 of 14 **DE Admin. Code** 1009; proposed Section 6.0 is formerly subsection 3.3 of 14 **DE Admin. Code** 1008; and proposed Section 7.0 is formerly subsection 3.4 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009. In addition, subsections 3.1.1 and 3.1.2, which concern physical examinations, and Section 8.0, which requires certain certifications for individuals who oversee Workouts, Conditioning Programs, Open Gym Programs, and Informal Instruction, are new.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles and is not designed to help to ensure students in Delaware public schools receive an equitable education.

3. Will the new regulation help to ensure all students' health and safety are adequately protected? The new regulation concerns health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles, so the regulation will help to ensure that all students' health and safety are adequately protected.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation concerns health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles and is not designed to help ensure students' legal rights are

respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 **Del.C.** §304).

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does 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 Board enforces the regulations relating to interscholastic athletics in Delaware (14 **Del.C.** §304).

8. Will the new 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 new regulation is consistent with, and not an impediment to, the implementation of other state educational policies.

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

10. What is the cost to the state and to the local school boards of compliance with the new regulation? There is no expected cost to the state or to the local school boards of compliance with the new regulation.

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1078RFA 06-01-22.pdf>

1034 Health and Safety Requirements

1.0 Content

In accordance with 14 **Del.C.** §§301 and 303, this regulation provides health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles, including physical examinations for student athletes at the middle and high school levels, the concussion protocol for all student athletes pursuant to 14 **Del.C.** §303(d), wrestling weight control programs, requiring medical personnel in attendance at football games, and requiring certain certifications for individuals who oversee certain interscholastic athletic activities.

2.0 Definitions

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

"**Administrative Head**" means the chief or head individual in charge of a DIAA member school, traditionally referred to or generally known as the principal or headmaster.

"**Board**" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** Ch. 3.

"**Conditioning Program**" means a voluntary conditioning program that is available to all interested, accepted and registered students at a Member School, is not restricted to members of a particular team, and in which sport-specific equipment and organized drills in the skills and techniques of a particular sport are prohibited.

"**Executive Director**" means the Executive Director of the DIAA.

"**Guardian**" or "**Legal Guardian**" means an individual who legally has responsibility for the care and management of the student during the student's minority. The relationship is a legal one and must be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

"Informal Instruction" means drills to teach sport-specific skills with only demonstration-level contact permitted. Informal instruction does not involve team competitions or contests. Intentional or direct contact is not permitted.

"Member School" means a full or associate member school of the DIAA.

"Practice" means working on skills for a particular sport within a single team at a Member School as guided by coaches and includes team workouts and inner-team scrimmages.

"Qualified Healthcare Professional" means a Doctor of Medicine (MD); a Doctor of Osteopathic Medicine (DO); or a school nurse, nurse practitioner, physician assistant, or athletic trainer. Qualified Healthcare Professionals shall be licensed by their state and in good standing with the State of Delaware.

"Qualified Physician" means a Doctor of Medicine (MD) or a Doctor of Osteopathic Medicine (DO) who is licensed by their state and in good standing with the State of Delaware.

"Relative Caregiver" means an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin or first cousin once removed but who does not have legal custody or legal guardianship of the student.

"Scrimmage" means an informal competition between schools in which a final score is not kept, the time periods are permitted to be modified, the results of the competition are not reported to the media, the coaches are permitted to interrupt the play to provide instruction, and the competition is strictly for practice purposes.

"Summer" means the period of time from the last scheduled date for DIAA spring sport championships to August 1st.

"Workout" means generic conditioning activities engaged in by individual student athletes, including aerobic, agility, balance, flexibility, and resistance training.

3.0 Physical Examinations

3.1 A student athlete shall not be eligible to try out, Practice, Scrimmage, or compete in an interscholastic contest unless a licensed physician (MD or DO), a licensed nurse practitioner, or a licensed physician's assistant verifies in writing on or after April 1 and before beginning such athletic activity for the current school year that the student athlete has been adequately examined within the last 12 months and is cleared medically to participate. However, should any conditions found in subsection 3.3 of this regulation occur since the last examination, a reexamination is required before the student athlete can be medically cleared. A student athlete who participates in a contest without a preparticipation physical evaluation shall be considered an ineligible athlete and the athlete and the student athlete's Member School shall be subject to penalties.

3.1.1 A student shall not participate in any Conditioning Programs during the Summer or school year without a current preparticipation physical evaluation.

3.1.2 Student athletes without a current preparticipation physical evaluation are required to submit an up-to-date physical and medical history form in order to participate in interscholastic athletic activities.

3.2 A DIAA approved form certifying the examination as well as the parent's, Legal Guardian's, or Relative Caregiver's consent, shall be on file with the Administrative Head prior to the student athlete participating in a Practice, Scrimmage, or game.

3.3 For any subsequent sports season in the school year, a limited reexamination shall be performed if any of the following circumstances exist: the student athlete has been treated for an injury during the preceding sports season, the student athlete has been out of school during the preceding sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset, an operation has been performed on the student athlete during the preceding sports season, or the student athlete has a remedial defect.

3.4 The medical history of the student athlete shall be available at the time of each examination.

3.5 A student athlete is temporarily ineligible to participate if the student athlete who is otherwise properly certified to participate in interscholastic athletics is physically unable to participate due to illness or

injury for five consecutive days on which a Practice, Scrimmage or contest is held. Prior to resuming participation, the student athlete shall present to the Administrative Head or the Administrative Head's designee, a statement from a licensed physician (MD or DO), a nurse practitioner, or a physician's assistant that the student athlete is again physically able to participate. If a student athlete is physically unable to participate due to a head injury, the concussion protocol in Section 4.0 shall be followed.

4.0 Concussion Protocol

- 4.1 If a student athlete is suspected of sustaining a concussion or exhibits signs or symptoms of a concussion, the student athlete shall be removed from the Practice or game immediately.
- 4.2 A Qualified Healthcare Professional shall determine whether an apparent concussion has occurred. The Qualified Healthcare Professional shall be approved by the host school to provide on-site evaluations of student athletes who are suspected of sustaining a concussion or exhibit signs or symptoms of a concussion. If a Qualified Healthcare Professional is not present or is not appointed or approved by the host school, the injury shall be treated as a concussion and the student athlete shall not return to play until the student athlete is evaluated by a Qualified Healthcare Professional in an appropriate medical setting.
- 4.3 If a Qualified Healthcare Professional determines that the student athlete did not sustain a concussion, the student athlete may return to play.
- 4.4 If a Qualified Healthcare Professional determines that the student athlete sustained a concussion or is unable to rule out a concussion, the student athlete shall be referred for further evaluation by a Qualified Physician. The student athlete shall be ineligible to participate in Practices, Scrimmages, or contests until the student athlete receives written clearance from a Qualified Physician on the DIAA Acute Concussion Evaluation (ACE) and Return to Play Form.
- 4.5 Failure to comply with the requirements of this regulation shall result in the student athlete being considered ineligible. The student athlete and Member School shall be penalized.
- 4.6 If an official observes an apparent injury, the official shall report the injury to the athlete's coach.
- 4.7 The Sports Medicine Advisory Committee may recommend amendments to the Concussion Protocol to the Rules and Regulations Committee and the Board.

5.0 High School Wrestling Weight Control Program

- 5.1 For health and safety reasons, the DIAA Wrestling Committee has recommended the Wrestling Weight Control Program which requires each student athlete to establish their minimum weight class via body composition testing. The Wrestling Weight Control Program, as recommended by the DIAA Wrestling Committee, is adopted by the Board. The DIAA Wrestling Committee may recommend amendments to the Board. The program requires hydration testing with a specific gravity not greater than 1.025, which immediately precedes the body composition assessment. A minimum weight class is determined by a body fat assessment. Male student athletes shall not compete at a weight class lower than 7% body fat and female student athletes shall not compete at a weight class lower than 12% body fat. Any student athlete's assessment that is below 7% for males and 12% for females shall require a medical release signed by a licensed physician (MD or DO). The release shall not allow a student athlete to participate at a weight class below that for which the initial assessment allows. The program restricts student athletes to an average weight loss of 1.5% a week, with descent, until the student athlete has reached the minimum weight determined by the initial body composition testing. A two-pound growth allowance shall be permitted on or after December 26th each year for student athletes who have certified at their approved minimum weight class. Student athletes shall not receive the two-pound growth allowance until they have certified at their minimum weight.
- 5.2 Student athletes shall certify at their minimum weight class on or before the last competition date for wrestling in order to be eligible to participate at their minimum weight class in the dual meet and state tournaments series, including qualifying tournaments.
- 5.3 The Wrestling Weight Control Program includes an online roster management program utilizing the National Wrestling Coaches Association weight management program. The program creates an "alpha

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master roster" which must be presented to the opposing coach or tournament director prior to weighing in. Each Member School shall have access to the alpha master roster of all Member Schools.

6.0 Middle School Wrestling Weight Control Program

- 6.1 Each year, four weeks from the first day a student athlete appears at wrestling Practice, the student athlete shall establish the student athlete's minimum weight class at a weigh in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the student athlete attends. A student athlete may recertify at a lower weight during the four weeks from the first day they appear at Practice. However, once certified at a weight, a student athlete shall not weigh in more than one class above the weight of the certification without automatically recertifying at a higher weight. Once recertified to a higher weight class the student athlete can no longer recertify lower. After four weeks from the first Practice day, a student athlete shall not compete in a weight class below the student athlete's duly established weight class.
- 6.2 By the end of four weeks of Practice, a certified team roster listing the established minimum weight class of each student athlete shall be sent to the Executive Director. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director without delay.
- 6.3 Weight classifications and length of match shall be designated by the Board.
- 6.4 A team that begins its season in October shall receive a one-pound growth allowance in November and an additional one-pound growth allowance in December. A team that begins its season in November shall receive a one-pound growth allowance in December, an additional one-pound growth allowance in January, and a third one-pound growth allowance in February.
- 6.5 Member Schools that desire to conduct their wrestling program at a time other than the specified season must request permission from the Board.
- 6.6 Except as modified by this section, the current edition of the NFHS Wrestling Rules Book shall apply.

7.0 Required Medical Personnel in Attendance at All Football Games

Provision shall be made for a Qualified Healthcare Professional to be present at all interscholastic football games in which a Member School participates. The Qualified Healthcare Professional must be approved or appointed by the Administrative Head or the Administrative Head's designee. The host school shall provide this service. Failure by the host school to provide this service shall result in a \$250.00 fine.

8.0 Required Certifications for Individuals Who Oversee Workouts, Conditioning Programs, Open Gym Programs, and Informal Instruction

All certified, emergency, and volunteer coaches, including individuals overseeing Workouts, Conditioning Programs, open gym programs, and Informal Instruction, shall maintain current certification in CPR, AED, and first aid and complete the NFHS' "Concussion in Sports" course online through [NFHSlearn.com](https://www.nfhslearn.com) every two years.

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

1035 In-Season Athletic Activities and Contact

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact. The regulation sets forth the requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating new and existing defined terms into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing subsections from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsection 4.1 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 4.0 is formerly subsection 4.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 5.0 is formerly subsection 4.3 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; and proposed Section 6.0 is formerly subsection 5.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009. In addition, subsection 5.4, which concerns student athletes participating on a nonschool team or in a nonschool event, is new.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season and is not designed to help to ensure students in Delaware public schools receive an equitable education.

3. Will the new regulation help to ensure all students' health and safety are adequately protected? The new regulation concerns requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season, which will help to ensure all students' health and safety are adequately protected.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation concerns requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season and is not designed to help ensure students' legal rights are respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 **Del.C.** §304).

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does 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 Board enforces the regulations relating to interscholastic athletics in Delaware (14 **Del.C.** §304).

8. Will the new 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 new regulation is consistent with, and not an impediment to, the implementation of other state educational policies.

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

10. What is the cost to the state and to the local school boards of compliance with the new regulation? There is no expected cost to the state or to the local school boards of compliance with the new regulation.

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1082RFA 06-01-22.pdf>

1035 In-Season Athletic Activities and Contact

1.0 Content

In accordance with 14 **Del.C.** §303(b), this regulation sets forth the requirements for athletic activities and contact In-Season.

2.0 Definitions

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

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** Ch. 3.

"Competition" means a contest between schools in which student athletes compete.

"In-Season" means the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season.

"Member School" means a full or associate member school of the DIAA.

"Practice" means working on skills for a particular sport within a single team at a Member School as guided by coaches and includes team workouts and inner-team scrimmages.

"School day" or **"School days"** means actual school attendance days during the regular academic school year including a partial day that students are in attendance at school for instructional purposes as adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.

"Scrimmage" means an informal competition between schools in which a final score is not kept, the time periods are permitted to be modified, the results of the competition are not reported to the media, the coaches are permitted to interrupt the play to provide instruction, and the competition is strictly for practice purposes.

"Unified Partner" means a student who is not identified as a Unified Athlete, is enrolled at a DIAA Member School, and does not appear on any school eligibility report submitted to DIAA for a non-Unified school team in the same sport.

3.0 Sports Seasons

3.1 Fall Sports Season

3.1.1 For the high school level, the fall sports season shall begin on the Monday 3 weeks before Labor Day and end with the start of the state championship tournament in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. A conference championship game must also be completed before the start of the state tournament in that sport. Practice for any fall sport shall not begin earlier than the Monday 3 weeks before Labor Day. The first allowable Competition date in the fall sports season shall be the first Wednesday after Labor Day.

3.1.2 For the middle school level, the fall sports season shall begin on the Monday 1 week before Labor Day and end not later than December 1. Practice for any fall sport shall not begin earlier than the

Monday 1 week before Labor Day. The first allowable Competition date for the fall sports season shall be on the first Monday 2 weeks after Labor Day.

3.1.3 For football Practices at the middle and high school levels, the first three days of Practice shall be primarily for the purpose of physical conditioning and shall be restricted to noncontact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air." Practice noncontact phases of the kicking game, and teach noncontact positional skills. Protective equipment shall be restricted to helmets, mouth guards, and shoes on the first day of Practice. Shoulder pads may be added on the second and third day of Practice. The use of dummies, hand shields, and sleds in contact drills is prohibited until the fourth day of Practice. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited until the fourth day of Practice.

3.1.4 No Member School shall participate in spring football games nor shall a Member School conduct football Practice of any type outside of the regular fall sports season except when participating in the state tournament. "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Touch football, featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

3.2 Winter Sports Season

3.2.1 For the high school level, the winter sports season shall begin with the first approved day for Practice and end with the start of the state championship tournament in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport. Practice for any winter sport shall begin on the Monday of the 19th week of the NFHS standardized calendar. Competition for the winter sports season shall begin on the Wednesday of the 22nd week of the NFHS standardized calendar.

3.2.2 For the middle school level, the winter sports season shall begin on the Monday of the 19th week of the NFHS standardized calendar and end not later than March 1. Practice for any winter sport shall not begin earlier than on the Monday of the 19th week of the NFHS standardized calendar. The first allowable Competition date in the winter sports season shall be on the Wednesday on the 22nd week of the NFHS standardized calendar.

3.3 Spring Sports Season

3.3.1 For the high school level, the spring sports season shall begin on the Monday of the 35th week of the NFHS standardized calendar and ends with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport. Practice for any spring sport shall not begin earlier than the Monday of the 35th week of the NFHS standardized calendar. Competition for the spring sports season shall begin on the Monday of the 38th week of the NFHS standardized calendar.

3.3.2 For the middle school level, the spring sports season shall begin on the Monday of the 35th week on the NFHS standardized calendar and end not later than the last School Day. Practice for any spring sport shall not begin earlier than the Monday of the 35th week on the NFHS standardized calendar. The first allowable Competition date in the spring sports season shall be on the Monday on the 38th week of the NFHS standardized calendar.

3.4 A Member School that participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$500.00 fine per each illegal contest. The school shall be referred to the DIAA Sportsmanship Committee for consideration of further action.

3.5 A Member School that conducts Practice prior to the first allowable date shall pay a fine of \$500.00 per each illegal Practice. The school shall be referred to the DIAA Sportsmanship Committee for consideration of further action.

3.6 No Member School shall participate in a post-season contest without the written approval of the Executive Director.

4.0 Practice Sessions

4.1 Member Schools shall comply with the following for all Practice sessions:

4.1.1 All Practice sessions shall be conducted under the supervision of the school's certified, emergency or approved volunteer coaching staff.

4.1.2 Member Schools may conduct Practice sessions during the approved sports seasons as defined in Section 3.0.

4.1.3 Member Schools shall conduct Practice sessions regularly during the 21 calendar days prior to the first scheduled contest.

4.1.4 There must be one day of no activity (Practice, Scrimmage, or contest) during any seven-day period.

4.1.5 A student that has not previously participated in that sports season shall be required to participate with the team for a period of at least seven calendar days prior to participating in a contest. Eligibility for participation in a contest shall begin on the eighth calendar day of participation with the team. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven calendar days before the team's first contest, student shall be exempt from this requirement.

4.1.6 Students shall have unrestricted access to drinking water and be permitted a minimum of one five-minute rest period during each hour of Practice.

4.1.7 Member Schools shall comply with the heat related Practice modifications designated by the Board.

4.1.8 Holding Practice on holidays and weekends shall be left to the discretion of the Member Schools. However, the restrictions on nonschool day Practice sessions apply and there must be one day of no activity (Practice, Scrimmage, or contest) during any seven-day period.

4.2 Member Schools shall comply with the following for all Practice sessions held on nonschool days. A nonschool day is defined as a day when, in accordance with the approved school calendar, students are not scheduled for academic instructional activities.

4.2.1 Each Practice session shall be no more than three hours in length.

4.2.2 Practice session on a nonschool day is defined as the time a participant engages in physical or instructional activity.

4.2.3 The hourly Practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

4.2.4 Students shall not participate in more than two Practice sessions totaling no more than five hours of Practice on nonschool Practice days including a one-hour walk-through session. A walk-through session shall be defined as a teaching opportunity with no protective equipment (e.g., shin guards, helmets, etc.) or equipment related to a given sport (e.g., soccer balls, field hockey sticks, etc.).

4.2.5 On days when two Practice sessions are conducted, no Practice session shall exceed three hours in length and must be separated with at least one hour of recovery time between the end of the first Practice and the beginning of the next Practice.

4.2.6 Split sessions, defined as a Practice session held for different groups of students playing the same sport, may be conducted but Practice time shall not exceed three hours per session and five hours total daily for any individual athlete.

4.3 Member Schools shall comply with the following for all Practice sessions held on official student School Days.

4.3.1 Practice sessions shall be limited to two hours.

4.3.2 The two-hour limit on Practice sessions on official School Days includes all instructional activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film

reviews, blackboard sessions, warm-up and cool-down exercises, drills or mandatory strength training.

4.3.3 The two-hour Practice session limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

4.3.4 Split sessions may be conducted but Practice time shall not exceed two hours for any individual athlete.

4.4 A Member School that fails to comply with these Practice requirements shall pay a \$500.00 fine for each day of non-compliance.

5.0 Maximum Game Schedules and Designated Sports Seasons

5.1 The maximum number of regularly scheduled interscholastic contests or Competition dates for each team and individual in the recognized sports and their sports season shall be designated by the Board.

5.2 Additional Requirements for the High School Level

5.2.1 The third contest or Competition date in a week shall be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement does not apply when a Member School is closed for the entire week such as during winter or spring vacation.

5.2.1.1 A team shall not participate in two or more different events at the same level of competition on the same day. However, a team shall be permitted a one time per season exception to participate in two different events on the same day. If a team elects to use the exception it shall count as two contests or two Competition dates as applicable toward the season team limitation.

5.2.1.2 With the exception of cross country, indoor track, outdoor track and golf, participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

5.2.1.3 Participation in any part of a quarter or half shall count as a quarter or half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

5.2.2 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday. The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the Member Schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four contests or Competition dates in a week.

5.2.3 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament or meet. Member Schools are limited to one conference championship event. In wrestling, the state meet qualifying tournaments shall count as the only permissible event in addition to the regular season and state meets. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament. Any playoffs to determine state tournament berths shall be under the control and supervision of the DIAA tournament committee.

5.2.4 A Unified Partner shall not participate on a non-Unified school team at any level in the same sport during the same school year.

5.2.5 A Member School which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a nonqualifying team, fined \$500.00 for each contest.

PROPOSED REGULATIONS

5.2.5.1 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and pay a \$250.00 fine.

5.2.5.2 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete.

5.3 Additional Requirements for the Middle School Level

5.3.1 Game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the Member Schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than three contests and Competition dates in a week.

5.3.2 A student shall participate in a particular sport for only one season during each academic year.

5.3.3 A Member School that participates in more than the allowable number of contests in a season shall be fined \$500.00 for each contest.

5.3.4 A Member School that exceeds the weekly contest limitation shall forfeit the contest and pay a \$250.00 fine. A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the middle school varsity game and end the day preceding the next middle school varsity game or the following Friday.

5.3.5 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete.

5.4 Student athletes may participate on a nonschool team or in a nonschool event In-Season provided the requirements in 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact are met.

6.0 Sanctioning of Competitions

6.1 Member Schools may participate in tournaments or meets involving four or more schools only if the event has been sanctioned by DIAA and, if applicable, by the NFHS. Tournaments or meets shall be sanctioned in accordance with the following criteria:

6.1.1 The event shall not be for determining a state, regional or national champion.

6.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

6.1.3 Nonsymbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

6.1.4 Nonschool event organizers shall submit a full financial report to the DIAA office within 90 calendar days of the completion of the event.

6.1.5 The event organizer shall submit a list of out of state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

6.1.6 Out of state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

6.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

6.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

6.2 Participation in a nonsanctioned event shall result in payment of a \$100.00 fine. A second offense shall result in a \$250.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$500.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

1040 Out-of-Season and Summer Athletic Activities and Contact

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact.

On June 28, 2018, through Senate Concurrent Resolution No. 79, the General Assembly directed the Department, with DIAA's assistance, to promulgate regulations that permit coaches to coach student athletes out-of-season with restrictions that minimize the risk of unethical activity. In October 2018, the Board voted to amend 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 to allow coaches to have instructional contact with student athletes if certain requirements were met and the amendment went into effect on June 2, 2019.

Thereafter, the Board sought recommendations from its Sports Medicine Advisory Committee and Rules and Regulations Committee as it continued to work on drafting amendments to the regulations that would allow instructional contact with student athletes out-of-season during the school year. On May 1, 2021, the Board proposed amendments to 14 **DE Admin. Code** 1009. In addition, the Board held a public hearing concerning the proposed amendments on June 17, 2021. At the public hearing, the Board heard from Trina Leclerc, Jennifer Mayer, and Bill Schultz. In addition, the Board received one written submittal from Ms. Leclerc. Ms. Leclerc commented that the parameters for out-of-season coaching in the school setting make it difficult to enforce. Ms. Leclerc also commented that she supports the implementation of the portion of the proposed regulation that allows DIAA school coaches to coach their student athletes in the private organization in any capacity and that there should be a requirement that the activity be affiliated with a national organization that monitors and regulates the activity. Ms. Leclerc further commented that she does not favor private lessons or exclusive school team events which allow coaches to be paid and that fair compensation of school coaches who choose to coach outside the school setting has the potential benefit to all student athletes from a variety of different schools and backgrounds. Jennifer Mayer, a coach and athletic director, commented about managing and enforcing the proposed requirement that school-sponsored informal instruction be limited to a maximum of four hours per week per student. Bill Schultz, an athletic director, commented that the proposed requirement that the maximum number of students participating in school-sponsored informal instruction be limited to a percentage of the traditional number of student athletes on the field of play or court at one time forces a coach or coaching staff to make decisions based on who they think are the best athletes.

On July 14, 2021, the Board considered the public comments received and voted to withdraw the proposed amendments to 14 **DE Admin. Code** 1009 and to develop further amendments to the proposed section that concerned out-of-season and summer athletic activities and contact. Since July 2021, DIAA has worked with the Public Integrity Commission to develop a regulation for out-of-season and summer athletic activities and contact that is consistent with the State's ethics law. Also, the Board sought further recommendations from the DIAA Rules and Regulations Committee.

On May 12, 2022, the Board voted to propose a new regulation that provides the requirements for athletic activities and contact out-of-season, during the period of time from the end of the season until the next official starting practice date for a particular sport, and in the summer, during the period of time from the last scheduled date for DIAA spring sport championships to August 1st for both the middle and high school levels. The proposed regulation includes specifying the content and purpose of the regulation in Section 1.0; incorporating new and

existing defined terms into Section 2.0; specifying the requirements for open gym programs in Section 3.0; specifying the requirements for individual and team workouts and conditioning programs in Section 4.0; specifying the requirements for school-sponsored informal instruction in Section 5.0; adding a section concerning noninstructional meetings in Section 6.0; specifying the requirements for school camps and clinics in Section 7.0; specifying the requirements for commercial camps and clinics in Section 8.0; specifying the requirements for nonschool athletic activities, programs, and teams in Section 9.0; and adding a section concerning violations and penalties in Section 10.0. The proposed regulation, 14 **DE Admin. Code** 1040, is intended to replace Section 6.0 and subsection 7.6 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009. As a result, the Board is simultaneously proposing to repeal Section 6.0 and subsection 7.6 from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns the requirements for athletic activities and contact out-of-season and in the summer and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns the requirements for athletic activities and contact out-of-season and in the summer and is not designed to help to ensure students in Delaware public schools receive an equitable education.

3. Will the new regulation help to ensure all students' health and safety are adequately protected? The new regulation concerns the requirements for athletic activities and contact out-of-season and in the summer, which will help to ensure all students' health and safety are adequately protected.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation concerns the requirements for athletic activities and contact out-of-season and in the summer and is not designed to help ensure students' legal rights are respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 **Del.C.** §304).

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does 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 Board enforces the regulations relating to interscholastic athletics in Delaware (14 **Del.C.** §304).

8. Will the new 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 new regulation is consistent with, and not an impediment to, the implementation of other state educational policies.

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

10. What is the cost to the state and to the local school boards of compliance with the new regulation? There is no expected cost to the state or to the local school boards of compliance with the new regulation.

***Please Note:**

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1089RFA 06-01-22.pdf>

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

[1040 Out-of-Season and Summer Athletic Activities and Contact](#)

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

1042 Coaches

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1042 Coaches. The regulation provides certain requirements for coaches at DIAA Member Schools. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating new and existing defined terms into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsection 7.1 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 4.0 is formerly subsection 7.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 5.0 is formerly subsection 7.3 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; and proposed Section 6.0 is formerly subsection 7.4 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009. In addition, the proposed regulation adds the requirement that certified and emergency coaches hold current AED and first aid certification to subsections 3.3 and 4.2; adds the requirement that volunteer coaches hold current CPR, AED, and first aid certification to subsection 5.2; and replaces "Heads Up Football Training" with "certified football" in Section 6.0.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns requirements for coaches at DIAA Member Schools and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns requirements for coaches at DIAA Member Schools and is not designed to help to ensure students in Delaware public schools receive an equitable education.

3. Will the new regulation help to ensure all students' health and safety are adequately protected? The requirements that all coaches hold current CPR, AED, and first aid certification and complete a course regarding concussion in sports are designed to help ensure that all students' health and safety are adequately protected. Similarly, the requirement that football coaches annually complete certified training is also designed to help ensure that all students' health and safety are adequately protected.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation concerns requirements for coaches at DIAA Member Schools and is not designed to help ensure students' legal rights are respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** §303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 **Del.C.** §304).

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does 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 Board enforces the regulations relating to interscholastic athletics in Delaware (14 **Del.C.** §304).

8. Will the new 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 new regulation is consistent with, and not an impediment to, the implementation of other state educational policies.

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

10. What is the cost to the state and to the local school boards of compliance with the new regulation? There is no expected cost to the state or to the local school boards of compliance with the new regulation.

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1091RFA 06-01-22.pdf>

1042 Coaches

1.0 Content

In accordance with 14 **Del.C.** §303(b), this regulation sets forth requirements for certified, emergency, and volunteer coaches at the middle and high school levels. Additional requirements for coaches are set forth in other interscholastic athletic regulations, including 14 **DE Admin. Code** 1023 Sportsmanship, 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact, and 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact.

2.0 Definitions

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

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** Ch. 3.

"Competition" means a contest between schools in which student athletes compete.

"Department" means the Delaware Department of Education.

"Member School" means a full or associate member school of the DIAA.

"School Day" or "School Days" means actual school attendance days during the regular academic school year including a partial day that students are in attendance at school for instructional purposes as

adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.

"Unified Sports" means a co-ed program that combines an approximately equal number of students with and without autism or intellectual disabilities on a sports team for training and interscholastic competition.

3.0 Certified Coaches

- 3.1 Only those professional employees certified by the Department and whose salary is paid by the State or local board of education, or in the case of charter and nonpublic schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district. The terms of employment shall be for the regular school year and the professional assignment shall be no less than half of the School Day, exclusive of coaching duties.
- 3.2 All middle school head coaches and high school varsity head coaches (or the junior varsity head coach, if the school does not sponsor a varsity team) shall be required to attend the DIAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DIAA office. A Member School shall be assessed a \$50.00 fine and the coach shall be placed on probation if the coach fails to attend the DIAA rules clinic or pass the open book rules examination in the coach's respective sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Board.
- 3.3 Certified coaches at all levels of competition shall hold a current certification in adult CPR, AED, and first aid.
- 3.4 Certified coaches at all levels of competition shall complete the NFHS' "Concussion in Sports" course online through [NFHSlearn.com](https://www.nfhslearn.com) every two years.
- 3.5 Certified coaches of Unified Sports shall complete the NFHS' "Unified Sports®" course online through [NFHSlearn.com](https://www.nfhslearn.com) every two years.

4.0 Emergency Coaches

- 4.1 An emergency coach shall be defined as an individual who is either not certified by the Department, or is certified by the Department but is not employed for the regular school year or whose professional assignment is less than half of the School Day. An individual who meets the requirements of a certified coach but whose professional assignment is located in a different school or district than their coaching assignment shall not be considered an emergency coach.
- 4.2 Emergency coaches at all levels of competition shall hold a current certification in adult CPR, AED, and first aid.
- 4.3 Emergency coaches at all levels of competition shall complete the NFHS' "Concussion in Sports" course online through [NFHSlearn.com](https://www.nfhslearn.com) every two years.
- 4.4 Emergency coaches of Unified Sports shall complete the NFHS' "Unified Sports®" course online through [NFHSlearn.com](https://www.nfhslearn.com) every two years.
- 4.5 Emergency coaches may be employed provided the local governing body adheres to the following procedures:
 - 4.5.1 The employing board of education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.
 - 4.5.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing board of education may be hired as an emergency coach.
 - 4.5.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:
 - 4.5.3.1 Emergency coaches must be officially appointed by the local board of education. The Superintendent or designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local board of education.

PROPOSED REGULATIONS

4.5.3.2 The emergency coaches' coaching salary must be paid exclusively by the local board of education.

5.0 Volunteer Coaches

- 5.1 In addition to the members of the school's regular coaching staff, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school, who have been approved by that school's local governing body, and who are supervised by a certified or emergency coach. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.
- 5.2 Volunteer coaches at all levels of competition shall hold a current certification in adult CPR, AED, and first aid.
- 5.3 Volunteer coaches at all levels of competition shall complete the NFHS' "Concussion in Sports" course online through [NFHSLearn.com](https://www.nfhslearn.com) every two years.
- 5.4 Volunteer coaches of Unified Sports shall complete the NFHS' "Unified Sports®" course online through [NFHSLearn.com](https://www.nfhslearn.com) every two years.

6.0 Football Coaches

All football coaches (including certified, emergency, and volunteer coaches) at all levels of competition shall annually complete certified football training.

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

1043 Officials

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1043 Officials. The regulation provides requirements for DIAA-recognized officials' associations, requirements for officials who officiate at DIAA Member Schools, and the fees for officiating contests and competitions. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating new and existing defined terms into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsection 8.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 4.0 is formerly subsection 8.3 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; and proposed Section 5.0 is formerly subsection 8.4 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009. In addition, the proposed regulation increases the fees for officiating contests and competitions for the 2022-23 school year, adds a travel fee, and specifies the fees for officiating scrimmages, based on a request the Board received from the Delaware Association of Athletic Directors ("DAAD") and that was presented to the Board by DAAD and Delaware Interscholastic Officials Committee.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover,

Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation pertains to officials and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation pertains to officials and is not designed to help to ensure students in Delaware public schools receive an equitable education.

3. Will the new regulation help to ensure all students' health and safety are adequately protected? The requirement that officials complete a course regarding concussion in sports is designed to help ensure that all students' health and safety are adequately protected.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation pertains to officials and is not designed to help ensure students' legal rights are respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** §303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 **Del.C.** §304).

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does 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 Board enforces the regulations relating to interscholastic athletics in Delaware (14 **Del.C.** §304).

8. Will the new 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 new regulation is consistent with, and not an impediment to, the implementation of other state educational policies.

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

10. What is the cost to the state and to the local school boards of compliance with the new regulation? In accordance with 14 **Del.C.** §304(6), the Board establishes the fees for officiating contests and competitions at DIAA Member Schools. The fees are set forth in proposed Section 5.0 and includes a proposed increase based on DAAD's request.

*Please Note:

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

<https://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1094RFA 06-01-22.pdf>

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

1043 Officials

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1551

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del.C. §122(d)****1551 Business Education Teacher****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1551 Business Education Teacher. The regulation concerns the requirements for a Business, Finance, or Marketing Education Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising the title of the regulation; clarifying Section 1.0; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Business, Finance, or Marketing Education Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Business, Finance, or Marketing Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns requests for the Secretary of Education to review standard certificate applications; adding Section 7.0, which concerns the validity of a Business, Finance, or Marketing Education Teacher Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns recognizing past certificates that were issued by the Department; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

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

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

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 Del.C. §1224), a school district or charter school may request that the

Secretary of Education review the credentials of an applicant who does not meet the requirements for a Business, Finance, or Marketing Education Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 6.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants. In addition, the requirements in Section 10.0 apply to individual applicants and Educators.

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

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

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

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

***Please Note:**

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1096RFA 06-01-22.pdf>

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

1551 Business Education Teacher

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1555

PUBLIC NOTICE

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

1555 Marketing Education Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1555 Marketing Education Teacher. The proposed amendments include revising Section 1.0 to specify that the Department will no longer issue a Marketing Education Teacher Standard Certificate and revising Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the

Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? If this proposed regulation becomes effective, the Department will no longer issue a Marketing Education Teacher Standard Certificate. Applicants who want to become certified to teach marketing education shall meet the requirements of 14 **DE Admin. Code** 1551 Business, Finance, or Marketing Education Teacher. The education, knowledge, and skill requirements in Section 4.0 of that regulation are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? If this proposed regulation becomes effective, the Department will no longer issue a Marketing Education Teacher Standard Certificate. Applicants who want to become certified to teach marketing education shall meet the requirements of 14 **DE Admin. Code** 1551 Business, Finance, or Marketing Education Teacher. The education, knowledge, and skill requirements in Section 4.0 of that regulation are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. If this proposed regulation becomes effective, the Department will no longer issue a Marketing Education Teacher Standard Certificate. Applicants who want to become certified to teach marketing education shall meet the requirements of 14 **DE Admin. Code** 1551 Business, Finance, or Marketing Education Teacher. By statute (14 **Del.C.** §1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Business, Finance, or Marketing Education Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 6.0 of 14 **DE Admin. Code** 1551 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

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

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

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1097RFA 06-01-22.pdf>

1555 Marketing Education Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for Marketing Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.

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

As of the effective date of this regulation, the Delaware Department of Education no longer issues the Marketing Education Teacher Standard Certificate. Applicants who want to become certified to teach business, finance, or marketing education in grades 5 to 12 of a Delaware public school shall meet the requirements for the issuance of a Business, Finance, or Marketing Education Teacher Standard Certificate set forth in 14 **DE Admin. Code** 1551 Business, Finance, or Marketing Education Teacher.

2.0 Definitions Past Certificate Recognized

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

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

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

The Department shall recognize a Marketing Education Teacher Standard Certificate issued prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach marketing education in grades 5 to 12 in a Delaware public school.

3.0 Standard Certificate

3.1 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Standard Certificate as a Marketing Education Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003;

3.1.2 Has met the requirements as set forth in 14 ~~DE Admin. Code~~ 1505 Standard Certificate, including any subsequent amendment or revision thereto; and

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

4.1 An educator shall have also met the following:

4.1.1 ~~achieved on the *Praxis* Subject Assessment – Marketing Education (ETS Test # 5561) a Passing Score of 166.~~

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1581

PUBLIC NOTICE

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

1581 School Reading Specialist

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1581 School Reading Specialist. The regulation concerns the requirements for a School Reading Specialist Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments that were initially published in the *Register of Regulations* on November 1, 2020 included adding defined terms to Section 2.0; clarifying the requirements for issuing a School Reading Specialist Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Reading Specialist Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a School Reading Specialist Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 10.0, which concerns recognizing past certificates that were issued by the Department.

On January 1, 2021, the Board considered the written submittals that it received concerning the proposed amendments and republished the proposed amendments that were originally published on November 1, 2020, without any additional amendments, to allow additional time for written submittals to be submitted to the Board and an opportunity for a public hearing. On February 4, 2021, the Board held a public hearing concerning the proposed amendments. On March 4, 2021, the Board deliberated on the comments made during the public hearing in addition to the written submittals received. The Board sought additional information, including information concerning school reading specialists, International Literacy Association ("ILA") standards, and International Dyslexia Association ("IDA") standards. As a result, the Board withdrew the proposed amendments that were republished on January 1, 2021.

On April 1, 2021, the Board had presentations regarding school reading specialists, ILA standards for reading/literacy specialists, and IDA standards. The Board decided to republish the proposed amendments that were published on November 1, 2020 and republished on January 1, 2021 without any additional amendments. The proposed amendments were published again in the *Register of Regulations* on May 1, 2021. The Board received written submittals from Sarah Beth Theaker and Leah Wasserman.

On June 3, 2021, the Board considered the written submittals and ultimately withdrew the regulation that was published on May 1, 2021.

The Board continued working on developing proposed amendments to the regulation. On April 1, 2022, the Board published proposed amendments to the regulation, including revising the definition of the term "Valid and Current License or Certificate" in Section 2.0 to clarify it is referring to an educator's license or certificate; revising the requirements for reciprocity in Section 3.0 and removing the section on reciprocity that was previously proposed; revising subsection 4.1.1.1 to clarify the requirements and add the IDA standards as an option; revising the course title in subsection 4.1.1.1.2.5; moving the section concerning Secretary of Education review up to Section 6.0 and renumbering the subsequent sections concerning validity and disciplinary actions; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address. The other proposed amendments are the same as the proposed amendments that were published on November 1, 2020, January 1, 2021, and May 1, 2021.

The Board received written submittals from faculty members in the University of Delaware's School of Education; Kathryn Brown, Ed.D.; Nigel A. Caplan, PhD; Oribel McFann-Mora, Ed.D.; the Governor's Advisory Council on English Learners; the State Council for Persons with Disabilities ("SCPD"); the Governor's Advisory Council for Exceptional Citizens ("GACEC"); and Casey A. Cashdollar, all of whom opposed revising the course title in subsection 4.1.1.1.2.5. In addition, SCPD and GACEC recommended the Board make the definition of the term "Valid and Current License or Certificate" consistent with prior adopted definitions and make the language in subsection 3.1.2 consistent with other proposed and adopted regulations.

On May 5, 2022, the Board considered the written submittals and voted to amend subsection 4.1.1.1.2.5 to "Teaching English as a Second Language." Pursuant to 29 **Del.C.** §10118(c), the Board's Chairperson determined the amendment to subsection 4.1.1.1.2.5 is substantive and, as a result, the Board voted to publish the regulation with the amendment to subsection 4.1.1.1.2.5. The Board found that further changes to the definition of "Valid and Current License or Certificate" and subsection 3.1.2 as a result of SCPD's and GACEC's comments were not necessary because the Board is in the process of incorporating the proposed language in all applicable regulations moving forward. Therefore, this proposed regulation includes all of the amendments that were published on April 1, 2022 as well as the change in the course title in subsection 4.1.1.1.2.5.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before July 6, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

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

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

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** §1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a School Reading Specialist Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 6.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants. In addition, the requirements in Section 10.0 apply to individual applicants and Educators.

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

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

educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.

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

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

***Please Note:**

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1100RFA 06-01-22.pdf>

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

1581 School Reading Specialist

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Chapter 30A (16 **Del.C.** Ch. 30A)
16 **DE Admin. Code** 3220

PUBLIC NOTICE

3220 Training and Qualifications for Certified Nursing Assistants

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 30A, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Training and Qualifications for Certified Nursing Assistants.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 263 Chapman Road, Cambridge Building, Suite 200, Newark, Delaware 19702, or by email to Corinna.Getchell@Delaware.gov or by fax to 302-421-7401 by 4:30 p.m. on July 1, 2022. Please identify in the subject line: Regulations Governing Training and Qualifications for Certified Nursing Assistants.

The action concerning the determination of whether to adopt the proposed regulations 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

The purpose of this notice is to advise the public that Delaware Health and Social Services / Division of Health Care Quality is proposing regulations governing Training and Qualifications for Certified Nursing Assistants.

Statutory Authority

16 **Del.C.** Ch.30A

Background

Newly enacted legislation affecting this regulation necessitates amendment.

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Training and Qualifications of Certified Nursing Assistants and hold them out for public comment per Delaware law. The amendments update the regulatory language to incorporate legislative changes and updated standards of practice.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services / Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 1, 2022.

Fiscal Impact

Not applicable

*Please Note:

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1102RFA 06-01-22.pdf>

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

[3220 Training and Qualifications for Certified Nursing Assistants](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Third Party Liability

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding third party liability.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on July 1, 2022. Please identify in the subject line: Third Party Liability.

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

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an

allowance of income to pay for guardianship costs.

Statutory Authority

Federal Budget Legislation Bipartisan Budget Act of 2018 - Third Party Liability 42 CFR 433.136

Background

Effective February 9, 2018, the Bipartisan Budget Act (BBA) of 2018 amended section 1902(a)(25)(E) of the Social Security Act to require states to use standard coordination of benefits cost avoidance instead of "pay and chase" when processing claims for prenatal services, including labor and delivery and postpartum care. Therefore, if the State Medicaid Agency (SMA) has determined that a third party is likely liable for a prenatal claim, it must reject, but not deny, the claim and return it back to the provider noting the third party that Medicaid believes to be legally responsible for payment. If, after the provider bills the liable third party and a balance remains, or the claim is denied payment for a substantive reason, the provider can submit a claim to the SMA for payment of the balance up to the maximum Medicaid payment amount established for the service in the state plan. Additionally, effective October 1, 2019, the BBA of 2018 amended section 1902(a)(25)(E) of the Act, to require a state to make payments without regard to third party liability for pediatric preventive services unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for 90 days. Additionally, because 1902(a)(25)(E) of the Act now applies to CHIP, states should follow the same policies in their CHIP programs.

Summary of Proposal*Purpose*

The purpose of this proposed regulation is to require states to use standard coordination of benefits cost avoidance instead of "pay and chase" when processing claims for prenatal and pediatric preventive services.

Summary of Proposed Changes

Effective for services provided on and after April 1, 2022 DHSS/DMMA proposes to amend Delaware Health and Social Services (DHSS)/Division of Medicaid regarding third party liability.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 1, 2022.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

There is no anticipated fiscal impact.

***Please Note:**

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1103RFA 06-01-22.pdf>

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

Third Party Liability

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 14120 and 60000

PUBLIC NOTICE

Incarcerated Individuals Medicaid Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Incarcerated Individuals Medicaid Program.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on July 1, 2022. Please identify in the subject line: Incarcerated Individuals Medicaid Program.

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

Summary of Proposal

Purpose

The purpose of this proposed regulation is to define the Incarcerated Individuals Medicaid Program.

Summary of Proposed Changes

Effective for services provided on and after August 11, 2022 DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) regarding the Incarcerated Individuals Medicaid Program.

Statutory Authority

Patient Protection and Affordable Care Act (ACA, P.L.111-148, as amended)

Background

Centers for Medicare & Medicaid Services (CMS) issued guidance to states on Medicaid eligibility for incarcerated individuals and those being released back into the community. Facilitating enrollment in Medicaid, and supporting access to services following incarceration, has the potential to make a significant difference in the health of this populations and the eligible individuals' ability to obtain health services that can promote their wellbeing.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all

stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 1, 2022.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

There is no anticipated fiscal impact.

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1105RFA 06-01-22.pdf>

14000 Medicaid General Eligibility Requirements

14120 Inmate of a Public Institution

Statutory Authority

Patient Protection and Affordable Care Act (ACA, P.L.111-148, as amended)

~~An individual who is an inmate of a public institution is not eligible.~~

Inmates of a public institution who are held involuntarily may be enrolled in Medicaid if otherwise eligible, but Medicaid may not provide coverage for most services while the individual is detained. The inmate may be eligible for Medicaid coverage of services as an inpatient in a medical institution if admitted to the medical institution for more than 24 hours.

An inmate of a public institution is a person who is living in a public institution. A public institution is a facility that is under the responsibility of a governmental unit or over which a governmental unit exercises administrative control. This control can exist when a facility is actually an organizational part of a governmental unit or when a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates. Administrative control can also exist when a governmental unit is responsible for the ongoing daily activities of a facility; for example, when facility staff members are government employees or when a government unit, board, or officer has final authority to hire and fire employees. Privately supported institutions that are not under the control of a governmental unit do not meet the definition of a public institution.

An individual is an inmate and is not eligible when he or she is serving time for a criminal offense or is confined involuntarily awaiting trial, criminal proceedings, penal dispositions, or other involuntary detention determinations and is living in:

- a. State or Federal prison

- b. jail
- c. a detention facility
- d. a wilderness camp under government control
- e. a halfway house under government control
- f. any penal facility

The following individuals are not inmates of a public institution and may be eligible:

1. An individual who is voluntarily living in a public institution after his or her case has been adjudicated and other living arrangements are being made (such as transfer to a community residence).
2. An individual who is sent to a privately supported institution as an alternative to a detention or prison sentence.
3. Infants living with the inmate in the public institution.
4. Parolees.
5. Probationers.
6. Individuals living in a halfway house that is not under governmental control.

60000 Incarcerated Individuals Medicaid Program

Statutory Authority

Patient Protection and Affordable Care Act (ACA, P.L.111-148, as amended)

Inmates of a public institution who are held involuntarily may be enrolled in Medicaid, but Medicaid may not provide coverage for most services while the individual is detained. The inmate coverage exclusion applies to all Medicaid services provided to inmates, EXCEPT inpatient services provided in a medical institution.

Medicaid regulations, 42 CFR 435.1009, limit payment for services for individuals residing in correctional institutions. Medicaid statute requires coverage of inpatient services for the incarcerated individual if he/she is admitted to a medical institution for 24 hours or more, per 42 USC § 1396d(a)(31)(A).

Incarcerated individuals who apply for Medicaid may be required to enroll with a Managed Care Organization (MCO). Enrollment with an MCO while incarcerated allows for a smooth transition to full Medicaid benefits when the inmate is released from jail or prison if the inmate remains eligible for Medicaid after released.

60100 Incarcerated Individuals Definitions

Inmate - an individual of any age who is in custody and held involuntarily in a public institution under the operation of law enforcement authorities. Regardless of the label attached to any particular custody status, an important consideration of whether an individual is an "inmate" is the individual's legal ability to exercise personal freedom.

Inmate of a Public Institution- Federal law defines an inmate of a public institution as "a person living in a public institution."

Public Institution - Federal Law defines a public institution as "an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. A public institution includes a correctional institution."

(See DSSM section 14120 for additional institution definitions)

60200 Inmate residence

An inmate is considered a resident of the state in which the crime was committed. This information will be obtained

from the Medicaid application.

For an inmate incarcerated by their home state but sent to an out of state public institution for any reason, including the home state not having capacity to house the individual, the home state remains the state of residence.

Individuals who have committed a crime outside of their home state and are placed in a correctional institution in and by the state in which the crime was committed are considered be residents of that state while incarcerated.

60300 Financial Eligibility and Household Composition

Financial Eligibility is determined based on modified adjusted gross income (MAGI) eligibility rules, or non-MAGI eligibility rules, depending on the individual's circumstances.

There are no special rules or exceptions for incarcerated individuals. Follow income eligibility rules and household composition under section 16000 of the DSSM.

Exception: Incarcerated individuals are not considered parents/caretaker relatives for Medicaid purposes. However, an incarcerated individual can still file taxes and claim dependents which would be counted in the incarcerated individual's household size for Medicaid purposes.

60400 Application and Redetermination

Regulations under DSSM Sections 14000 apply to incarcerated individuals applying for Medicaid. With the following exceptions:

1. Incarcerated Medicaid eligibility is effective the first day of the month if the individual was eligible at any time during that month provided the individual was an Incarcerated Delaware resident on the first of the month. If not a Delaware resident on the first of the month, Medicaid will be effective the date the individual became an Incarcerated Delaware resident.
2. An inmate may designate an individual as an authorized representative (see DSSM section 14100.1) to act on his or her behalf in matters related to eligibility and enrollment. An authorized representative may NOT enroll an inmate in Medicaid without his or her consent.

An annual renewal of eligibility is required for incarcerated individuals, there are no special rules or exclusions. See DSSM Section 14100.6

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20620

PUBLIC NOTICE

Guardianship Fees - Post-Eligibility Protection of Income

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on July 1, 2022. Please identify in the subject line: Guardianship Fees - Post-Eligibility Protection of Income.

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

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

Statutory Authority

§1902(a)(50)(q) of the Social Security Act

§1902(a)(14)(l) of the Social Security Act

Background

Medicaid recipients, institutionalized in long-term care facilities, are required to apply their income toward the cost of institutional care. The individual must contribute income to pay for institutional services, deducting only certain allowable amounts, such as a personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution.

Some institutionalized recipients may be appointed a guardian by the Court to make medical or financial decisions. There can be cost associated with services provided by the guardian. The services may include, but not be limited to, receiving and depositing income, paying bills, or maintaining accounts. 25 **DE Reg.** 866 (03/01/22) amended Title XIX Medicaid State Plan to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship not to exceed \$100.

Summary of Proposal

Purpose

The purpose of the proposed is to align the Division of Social Services Manual (DSSM) with the amended Title XIX Medicaid State Plan changes allowing Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship fees not to exceed \$100 and to include the establishment of a guardianship (to include attorney's fees) not to exceed \$750 to both DSSM and Title XIX Medicaid State Plan.

Summary of Proposed Changes

Effective for services provided on and after April 1, 2022, DHSS/DMMA proposes to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Post-Eligibility Treatment of Institutionalized Individuals, specifically, allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 1, 2022.

Provider Manuals and Communications Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

	Federal Fiscal Year 2022	Federal Fiscal Year 2023
Federal funds	\$0	\$284,288
General (State) funds	\$0	\$214,463

***Please Note:**

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1108RFA 06-01-22.pdf>

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

Guardianship Fees - Post-Eligibility Protection of Income

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)e and 7903 (16 Del.C. §§122(3)e and 7903)

16 DE Admin. Code 4455

PUBLIC NOTICE

4455 Delaware Regulations Governing a Detailed Plumbing Code

Pursuant to 16 Del.C. §122(3)(e) and § 7903, the Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to the Delaware Regulations Governing a Detailed Plumbing Code. On June 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Delaware Regulations Governing a Detailed Plumbing Code. The revisions include the adoption of the 2021 International Plumbing Code with amendments.

Copies of the proposed regulations are available for review in the June 1, 2022 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Friday, July 1, 2022, at:

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

***Please Note:**

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1110RFA 06-01-22.pdf>

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

[4455 Delaware Regulations Governing a Detailed Plumbing Code](#)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Section 8404(a)(14) and (c) (11 Del.C. §8404(a)(14) and (c))
1 DE Admin. Code 801

PUBLIC NOTICE

801 Regulations of the Delaware Council on Police Training

The Council on Police Training (COPT), pursuant to 11 Del. C. §8404 (a)(14) and (c), proposed to amend its regulations to add Mandatory Standards for Use of Body Worn Cameras (the "Mandatory Standards"). The proposed amendments, which were voted on during a public meeting of the COPT, on November 17, 2021, sought to add these mandatory standards to COPT's existing Regulation 801. The proposed amendments were published in the *Register Regulations* and provided for a public comment period through January 31, 2022. 25 DE Reg. 673 (01/01/22).

The COPT received public comments from the Delaware Department of Justice, the Governor's Advisory Council for Exceptional Citizens, and the State Council for Persons with Disabilities. Those comments were first considered by a COPT-appointed subcommittee and then by the full COPT at a public meeting held April 12, 2022. After considering the comments and the recommendations made by the subcommittee, COPT voted unanimously to further amend the regulations pertaining to the Mandatory Standards and to re-open a public comment period. These further amendments include (1) adding language to the definition of School Resource Officers; (2) adding additional considerations for such officers; (3) adding an additional circumstance allowing an officer not to activate a body worn camera; and (4) adding additional considerations of releasing body worn camera videos of use-of-force incidents involving death or serious bodily injury.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the COPT Attn: Susan McNatt P.O. Box 430, Dover DE 19903 or e-mail susan.a.mcnatt@delaware.gov. Any written submission in response to this notice and the relevant proposed regulations must be received by the COPT no later than 4:30 p.m. (EST) on July 1, 2022. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Council on Police Training does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Nathaniel McQueen, Jr., Chairman COPT

*Please Note:

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1111RFA 06-01-22.pdf>

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

[801 Regulations of the Delaware Council on Police Training](#)

PROPOSED REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

1900 BOARD OF NURSING

Statutory Authority: 24 Delaware Code, Section 1904(c) (24 **Del.C.** §1904(c))
24 **DE Admin. Code** 1900

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise its regulations to clarify the process for APRNs to assign medication administration to medical assistants; to create regulations pertaining to the waiver of the state e-prescribing requirement; to add regulations pertaining to the closure of a nursing school; and clean up minor errors through the regulations.

The Board will hold a public hearing on the proposed regulation changes on July 13, 2022 at 9:00 a.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 28, 2022 pursuant to 29 **Del.C.** §10118(a).

***Please Note:**

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

<http://regulations.delaware.gov/register/june2022/proposed/25 DE Reg 1112RFA 06-01-22.pdf>

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

1900 Board of Nursing

Symbol Key

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

Final Regulations

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

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

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))
1 **DE Admin. Code** 709

FINAL ORDER ADOPTING REGULATION CHANGES

709 Fire Service Standards

WHEREAS, 1 DE Admin. Code 709, Fire Service Standards ("Regulation 709") references Delaware Code sections that have been amended or otherwise moved to other sections of the Delaware Code (see House Bill No. 464 as amended by House Amendment No. 1 (145th General Assembly));

WHEREAS, pursuant to 29 Del. C. § 10113(b)(5), the Delaware State Fire Prevention Commission seeks to amend Regulation 709 to make non-substantive changes to correct for these technical errors;

NOW THEREFORE, IT IS HEREBY ORDERED as follows:

1. The statutory reference in the heading preceding Section 1.0 in Chapter 1, relating to the Office of State Fire Marshal, shall be changed from "(16 Delaware Code 6601-6612)" to "(16 Delaware Code §§ 6612-6616)".
2. The statutory reference in Section 2.0 in Chapter 1 relating to the Delaware State Fire School shall be changed from "(16 Delaware Code 6613-6618)" to "(16 Delaware Code §§ 6617-6625)".
3. The statutory reference in Section 3.0 in Chapter 1 relating to the authorization of new fire companies, resolution of boundary and other disputes, and cessation of necessary fire protection services shall be changed from "(16 Delaware Code 6619)" to "(16 Delaware Code § 6607)".
4. A copy of Regulation 709, showing the above amendments, is attached hereto as Exhibit A.

IT IS SO ORDERED, this 19th day of April, 2022, by the Commission:

Ronald H. Marvel, Chairman

Alan Robinson, Jr., Vice Chairman

Lynn Truitt

Richard Perillo

Joe Leonetti, Sr.

Bill Betts

William Kelly

709 Fire Service Standards

Chapter 1 Responsibilities of the State Fire Prevention Commission

Relative to Commission and Office of State Fire Marshal (16 Delaware Code ~~6604—6612~~ §§6612-6616).

(Break in Continuity of Sections)

2.0 Relative to Delaware State Fire School (16 Delaware Code ~~6613—6618~~ §§6617-6625).

(Break in Continuity of Sections)

3.0 Relative to authorization of new fire companies, resolution of boundary and other disputes, and cessation of necessary fire protection services (16 Delaware Code ~~6649~~ §6607).

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

709 Fire Service Standards

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapter 13 (14 Del.C. Ch. 13)
14 DE Admin. Code 733

REGULATORY IMPLEMENTING ORDER

733 Payment of Substitutes for Teachers

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. Ch. 13, the Secretary of Education intends to amend 14 DE Admin. Code 733 Payment of Substitutes for Teachers. The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be amended to clarify statutory authority and funding rates for substitute teachers who are on paid leave for the birth or adoption of a child. This regulation is also being amended to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on April 1, 2022. In addition, notice was published in *The News Journal* and the *Delaware State News* on April 1, 2022, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 733 Payment of Substitutes for Teachers in order to clarify statutory authority and funding rates for substitute teachers who are on paid leave for the birth or adoption of a child. This regulation is also being amended to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers 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** 733 Payment of Substitutes for Teachers amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers 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 26, 2022. 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 26th day of May 2022.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education
Approved this 26th day of May 2022

***Please note that no changes were made to the regulation as originally proposed and published in the April 2022 issue of the Register at page 905 (25 DE Reg. 905). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

733 Payment of Substitutes for Teachers

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 3001A-3005A (14 **Del.C.** §§3001A-3005A)
14 **DE Admin. Code** 933

REGULATORY IMPLEMENTING ORDER

933 DELACARE: Regulations for Early Care and Education and School-Age Centers

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §3003A, the Secretary of Education intends to amend 14 **DE Admin. Code** 933 DELACARE: Regulations for Early Care and Education and School-Age Centers. This regulation is being amended to address the current child care staffing crisis. The amended regulation modifies some qualifications and eliminates positions that are less vital to the safety of children and program operations. The amended regulation also provides general clarification to help protect the health, safety, and well-being of children in care. Other changes were made to ensure compliance with the *Delaware Administrative Code Drafting and Style Manual*.

The proposed changes include the following:

- Revising the definitions of applicant by adding organization and schools and aligning the youth camp definition with the current DELACARE Regulations for Youth camps;
- Requiring public and private schools serving children below kindergarten to be licensed by July 1, 2024 to comply with Delaware Code;

- Changing provisional license issuance to be time-limited;
- Requiring youth camps that receive Purchase of Care (POC) to be licensed;
- Beginning January 1, 2023, increasing the fine for unlicensed care to \$1000 or imprisoned not more than 6 months;
- Requiring OCCL to have immediate access to the center during the hours of operation;
- Requiring a State business license or verification of tax-exempt status for licensure and renewals;
- Allowing for OCCL to investigate complaints typically investigated by other entities if the complaint involves a violation of OCCL's regulations;
- Requiring notification to OCCL within one business day of accidental ingestion of a medication or drug, when the center is informed the child required medical or dental treatment other than any first aid provided at the center;
- Requiring a licensee to notify OCCL in writing within 30 days of a change in governing body and if the change in governing body creates a change in the licensee's designated representative, the new designated representative must complete a comprehensive background check.
- Allowing OCCL to seek to suspend or revoke a licensee whose governing body engages in any activity, policy, practice, or conduct that adversely affects or is deemed by OCCL to be detrimental to the education, health, safety, or well-being of children.
- Requiring a licensee who is alleged to have abused or neglected a child to not be present in the center when children are present until the completion of the Institutional Abuse Unit's investigation;
- Requiring a licensee to design effective positive behavioral supports or to make reasonable accommodations to comply with provisions in an Individualized Family Service Plan (IFSP) or Individualized Education Plan (IEP);
- Allowing individuals who work in Montessori programs to be qualified with an associate or bachelor's degree and a Montessori Full or Associate Credential from a MACTE approved training course to be qualified as an early childhood (EC) administrators;
- Removing the requirement for an early childhood curriculum coordinator (ECCC) to be hired when the center's capacity is greater than 60;
- Requiring a program director without a degree who was qualified before January 1, 2007, to have a qualified early childhood (EC) teacher with at least an associate degree creating, developing, and evaluating curriculum and monitoring its implementation;
- Allowing a qualified early childhood curriculum coordinator (ECCC) to function as an early childhood teacher;
- Requiring the EC administrator to have 15 hours of specialized training in Infant and Toddler development and curriculum, if the center serves infants and toddlers. No longer allowing the ECCC to have this training;
- Requiring the EC administrator to have 15 hours of specialized training in school-age care if the center serves school-age children. No longer allowing the ECCC to have this training;
- Requiring EC and school-age (SA) interns to complete OCCL's approved Health and Safety Training for Child Care Professionals as a part of their 15-clock-hours of quality-assured training;
- Requiring a comprehensive background check (of each required component) every 5 years of employment or volunteering at a center to comply with the Child Care and Development Block Grant;
- Requiring volunteers who are used to meet the staff-to-child ratios to have an orientation that meets the requirements of a staff member;
- Increasing the time from 30 days to 45 business days for a center to hire an EC administrator when one leaves;
- Removing the requirement to have an ECCC when 25% of the children are preschool-age and 75% are school-age children;
- Requiring supervised experience to be observed by the EC or SA administrator rather than the ECCC;
- Removing the requirement to have an OCCL approved plan for centers that have another person handling the human resources or fiscal aspect of a center rather than the administrator;
- Requiring the EC administrator to be on-site at least 50% of the hours of operation;
- Removing the 20-hour minimum requirement for an EC administrator to be on site;
- Removing the allowance for the EC administrator and ECCC to share being present 60% of hours of operation;

- Reducing the qualifications of school-age administrators to those of school-age site coordinators;
- Removing the position of school-age site coordinators from the regulations;
- Requiring infants and toddlers who are mixed with older children during certain times of the day to be in areas that are suitable for the younger age group;
- Requiring an owner who works on site at least 7 hours per week and provides direct care to have an administration of medication certificate on file;
- Requiring all staff, substitutes, and volunteers working at least 5 days or 40 hours per year to complete OCCL's approved Health and Safety Training for Child Care Professionals as part of the orientation to comply with the Child Care and Development Block Grant, rather than permitting the EC administrator to devise that training;
- Adding the approved training topic of disability non-discrimination, accommodations, or modifications;
- Requiring annual training to be completed at least 30 days before license expiration;
- Requiring staff members to be respectful by using non-threatening tones and actions when speaking and interacting with others at the center;
- Requiring when enrolling a child to inquire if the child has an IFSP or IEP and to discuss with a parent or guardian and service providers as applicable, any reasonable accommodations or modifications needed by a child with a disability to access the program or services;
- Requiring attendance records to show when classes of children are combined;
- Requiring the center to be free from illegal drugs;
- Not allowing visitors who are not touring the center or providing a service to be present in areas where children are located;
- Prohibiting the burning of candles or incense and use of air fresheners due to health concerns;
- Clarifying that all areas, furnishings, and equipment in the center must be clean, hazard-free, and in a safe condition;
- Clarifying when a food establishment permit is required based on Division of Public Health (DPH) standards. A licensee is not required to obtain a Food Establishment Permit unless the center will provide food to members of the general public. DPH will assist with reviewing satellite and food transportation operation;
- Raising the acceptable refrigerator food temperature setting to comply with DPH from 40° F to 41° F or colder;
- Clarifying when two exits are needed from a fenced in area based on guidance from the State fire marshal. A licensee shall ensure fenced areas have at least two (2) exits, with at least one (1) being remote from the building. If the fenced-off area is divided by fencing to separate age groups, each fenced-off section does not require two exits. If a larger play area contains a fenced smaller play area (to separate age groups), only one exit is required in the smaller play area if another exit remote from the building is available;
- Requiring that when a licensee cannot meet the outdoor space requirement, the licensee shall provide a minimum of 700 square feet with 75 square feet of open, accessible indoor play space for large muscle activity for each child who will use this area at one time;
- Requiring indoor play space used for large muscle activity to have a protective surface of an approved resilient material, such as rubber mats, beneath and in the fall zones of climbing equipment, slides, swings, and similar equipment to absorb falls. This material must be at a sufficient depth or thickness as required by the manufacturer's specifications or other approved entity;
- Including the additional requirements and explanations of safety hazards to children: A licensee shall take the following measures to prevent hazards to children in care:
 - To prevent cuts, abrasions, and punctures, equipment, materials, and other objects on the premises that have sharp edges, protruding nails, bolts, or other dangers must be repaired, removed, or made inaccessible to children. Sharp edges on natural wooden equipment must be sanded;
 - To prevent burns, equipment, materials, or products that may be hot enough to injure a child must be made inaccessible to children;
 - To prevent sheering, crushing, or pinching, broken or cracked equipment, materials, and objects must be repaired, removed, or made inaccessible to children;
 - To prevent entrapment, freezers, refrigerators, washers, dryers, compost bins, and other entrapment dangers must be inaccessible to children unless being actively supervised;

- To prevent tripping, uneven indoor walkways, damaged flooring or carpeting, or other tripping hazards must be removed or repaired; To prevent injuries and death, large objects that pose a risk of falling or tipping must be securely anchored. Large objects include, but are not limited to, televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units; and
- To prevent injuries, equipment in poor condition (rusty parts, flaking paint, or other dangers) must be repaired, removed, or made inaccessible to children.
- Providing clarification on the type of thermometer that needs to be cleaned and sanitized. Thermometers that contact the skin or mouth must be cleaned with a soap and water solution and then disinfected;
- Requiring written parent or guardian permission before taking a field trip or routine program outing. The permission for a field trip must state the location and date of the trip and who will provide transportation, if applicable. The permission for a routine program outing must state the location, frequency, and method of transportation which may include walking;
- Changing that semi-solid foods are required once an infant is six months old rather than 8 months unless the parent or guardian provides documentation from the infant's health care provider stating otherwise;
- Changing the breast milk regulations to comply with the Center for Disease Control's guidelines to state, "Thawed, previously frozen breast milk may be kept at room temperature for one to two (2) hours. Breast milk must be used within two hours after a feeding has finished. Expressed breast milk must be returned to the parent if it is in an unsanitary bottle, partially used, or if it has been unrefrigerated for more than four hours or within two hours after a feeding has finished. Refrigerated, unused, freshly expressed breast milk that was never frozen must be returned to the parent after four days.";
- Requiring a licensee to allow services to be provided at the center for a child with disabilities, including services through an IEP or IFSP and at the request of a parent or guardian, a licensee shall permit qualified professionals to complete an observation or assessment of the child while at the center;
- Prohibiting the use of pressure or accordion gates in any area of the center;
- Requiring that interactions are adapted to support all children's learning;
- Requiring the licensee to ensure each parent or guardian, whose child is enrolled in overnight care, is asked if there are any special preferences, habits, or disability or health related needs or accommodations regarding bedtime and waking and this information is shared with the staff member in charge of the child;
- No longer requiring the notification of OCCL when the EC coordinator or SA site coordinator leaves the program;
- Beginning January 1, 2023, requiring the licensee to receive an eligibility determination or a provisional eligibility notification before a staff member starts employment to comply with the Child Care Development Block Grant.
- Clarifying the prohibition of portable sinks in all areas, including the outdoor area;
- Aligning the regulations and study guide on what is considered a medication error. Medication errors include giving the wrong medication, giving the wrong dose, failing to give the medication at the correct time or at all, giving medication to the wrong child, giving the medication by the wrong route, or giving medication without documenting the administration;
- Clarifying when two staff are not required. A licensee shall ensure during field trips or routine program outings, a licensee maintains the following staff-to-child ratios with a minimum of two (2) staff members present at all times except when the children are school-age or riding in a buggy/stroller;
- Requiring the EC admin or SA admin to conduct annual performance appraisals;
- Clarifying when activity areas are required. A licensee shall ensure for children 24 months to school-age, indoor physical space is organized into activity areas where an identifiable space with related equipment and materials are kept in an orderly fashion;
- Changing terms of staff/child ratio to staff-to-child ratio, parent/guardian to parents and guardians or parent or guardian; DE First to DEEDS Early Learning, and Positive Behavior Management to Positive Behavior Supports;
- Removing the requirement for 30-minute visits for the SA admin and requiring the SA administrator to be present 50% of the hours of operation and to be responsible for no more than two sites;

- To comply with the Lead Poisoning Prevention Act requiring a child to have second lead screening at or around 24 months and if the child enrolls after 12 months of age, proof of a lead screening will be required at 24 months or after;
- Allowing qualified EC interns and SA interns to be alone with toddlers through school-age children after working at the center for at least one month for 25 hours per week for EC interns and 15 hours per week for SA interns, being determined eligible by the Criminal History Unit (CHU), and being at least 18 years old;
- Allowing a person to be qualified as an EC administrator with an Associate's or Bachelor's degree in Early Childhood Education from a regionally accredited college or university rather than requiring additional classes if the coursework did not include the specific coursework listed in these regulations.
- Beginning July 1, 2023, requiring a licensee to ensure for children who have not begun kindergarten, the child's parent or guardian completes the Department's approved developmental and social emotional screening tool upon within 45 days of enrollment and annually.
 - Requiring a licensee to ensure that for children younger than kindergarten and initially enrolled in child care before July 1, 2023, the child's parent or guardian completes the Department's approved developmental and social emotional screening tool by December 31, 2023.
 - Allowing the licensee or staff member may assist the parent or guardian in completing the screening or, if necessary, complete the assessment.
 - Exempting children with current IFSPs or IEPs from being screened.
- Adding exemptions for public and private schools serving children under kindergarten; and
- Changing text to comply with the Drafting Manual.

Additional changes since the proposal based on public comments, department comments, and clarification regarding HB222 and are the following:

- Removing the requirement regarding completing the Department's approved developmental and social emotional screening tool until the legislation is clarified;
- Adding the definition of blood lead screening;
- Adding a religious exemption from blood lead screening;
- Adding the words "at or around" ages 12 months and 24 months for blood lead screening. And changing the word testing to screening for blood lead levels;
- As currently in regulation, allowing for currently qualified early childhood curriculum coordinators to observe supervised experience and conduct performance appraisals and including early childhood teachers with a degree to perform these tasks because child care staff will no longer be qualified as early childhood curriculum coordinators; and
- Adding that visitors may be present with children if they are visiting children.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on April 1, 2022. In addition, notice was published in *The News Journal* and the *Delaware State News* on April 1, 2022, in the form hereto attached as *Exhibit "A"*.

Comments received which were pertinent to the proposed amendments suggested the Department consider the following:

(1) Governor's Advisory Council for Exceptional Citizens (GACEC)

Council supports the proposed amendments; however, we would like to share the following recommendations. In general, these proposed recommendations support childcare accessibility and accountability for children with disabilities and their families. The proposal to "[a]llow for OCCL to investigate complaints typically investigated by other entities if the complaint involves a violation of OCCL's regulations" is particularly beneficial to families who have experienced disability discrimination in childcare settings. Council supports this change. The proposed amendment requiring childcare centers to "inquire if the child has an IFSP or IEP and to discuss... any reasonable accommodations or modifications" may assist families and childcare centers in identifying and providing reasonable accommodations. However, it may be beneficial to requiring training to inform childcare centers about their obligations to provide reasonable accommodations. It would be counterproductive if this requirement led childcare centers to screen out children who may require accommodations or modifications. There is a proposed

amendment to "[a]dd[] the approved training topic of disability non-discrimination, accommodations, or modifications." However, from the language of this proposal, it would only add disability related training to the topics a childcare provider can choose from to meet annual training requirements. Council recommends that at least initial disability-related training be mandatory, particularly in light of the requirement that childcare centers must inquire about and discuss accommodations and modifications. Council also supports the proposed changes to IFSP/IEP service provision and special education screening as these changes will help identify children earlier who may need services and will improve access to those services. The proposed amendments on drug/medication error and medication/safety training will likely improve child safety and accountability when accidents occur; therefore, Council also supports these proposed amendments. Thank you for this opportunity to share our support of the proposed amendments and our recommendation to make initial disability-related training mandatory.

Response: The Department appreciates these comments. Based on the recommendation to require an initial disability-related training, OCCL will ensure a training is available in the future. In regard to requiring center staff to be trained on their obligation to make reasonable accommodations for children with disabilities, the Administration of Medication training that is required for all center staff includes information on the Americans with Disabilities Act and informs of the licensee's requirement to make reasonable accommodations.

(2) Angela Wilson Bowers, Owner Precious Moments

I would like to place my comment relating to the Proposed Regulation: Requiring a licensee who is alleged to have abused or neglected a child to not be present in the center when children are present until the completion of the Institutional Abuse Unit's investigation.

My center has experienced three false child abuse accusations from a disgruntle terminated employee and two unsatisfied parents. All three allegations were concluded to be false allegations. Each allegation resulted in my staff/myself being removed from the center which resulted in employment hardship, financial hardship, and stress. These false accusations attacked our character and integrity. Currently anyone can call the child abuse hotline and make whatever allegations they choose to make anonymously. There are no LAWS or regulations that I am aware of that protects the childcare workers. I understand the children must be protected, however, what about the workers? We have families, bills etc. Who and what regulations and laws are protecting us? Investigations can be lengthy and detrimental to all involved.

Let me give you a few examples:

1. A child had what appears to be bruises on their stomach. Someone calls the child abuse hotline and reports abuse. The child is removed from the parent's care, placed in foster care until completion of investigation. Conclusion: The child was born with a venereal disease. No abuse! false allegation. (True story)

2. A disgruntled terminated employee calls a parent and tells the parent their child was drugged throughout the center and head beaten against a wall. Tells the parent to call the child abuse hotline number. Staff removed from center, the child in question confirms that allegations were false they were never drugged throughout the center or had their head beaten against a wall. No abuse, false allegation. (True Story)

3. A parent reported to the child abuse hotline that her child had marks on their body from a staff member. (Parent was upset with staff) Staff member removed from center. The child states the staff member did not harm them. False allegation (True Story)

Just like that! Families have suffered due to false allegations!

I understand there are **TRUE** child abuse and neglect cases. But we, the childcare workers should not suffer unfair hardships due to false allegations. We should be innocent until proven guilty. I am asking for the current regulation to remain in place. Staff can be reassigned to work in centers without direct contact with children until investigation has been completed. There is plenty of work that can be performed without direct contact with children i.e. cleaning, organizing, yardwork , closets etc.

I pray that laws and regulations will be established to protect childcare workers.

Good morning,

I would like to add to my original comment. If an owner of an Early Learning Center duties is strictly administrative. Can there be an exemption to the proposed regulation from having an owner banned from their center while being investigated for an allegation of neglect or abuse. The owner should be able to continue to work in their office without direct contact with children. Removing an owner from their business can be detrimental to their business. We are to be INNOCENT UNTIL PROVEN GUILTY. People can be very vindictive. One phone call to the Child abuse Hotline can have you removed from your business regardless of your innocence. This IS 100% UNFAIR AND UNJUST!

Please take this into consideration while making a decision and consider the proposed from the perspective of the center being your business and lively hood.

Response: The Department has the responsibility of protecting the health, safety, and well-being of children in out-of-home care. To protect children and to prevent interference with an investigation, a licensee accused of child abuse may not be present at the facility during an active investigation. The regulation will remain as written.

(3) John Fisher-Klein, President, Delaware Head Start Association

The Delaware Head Start Association (DHSA) would like to thank the Office of Child Care Licensing for their thoughtful edits to the Delacare Regulations. We applaud your efforts to swiftly edit this set of regulations to reflect recent legislative action. We have two comments:

1) Regarding the new legislatively-mandated requirement for developmental screening of all children - it is imperative that the State of Delaware provide comprehensive training and technical assistance around the use of and follow-up to developmental screeners. While developmental screeners are a valuable tool in the early identification of children with special needs, they must be used to fidelity. Further, the State must be prepared for an influx of referrals for further analysis.

2) Regarding changes to the staffing requirements for centers and the elimination of the curriculum coordinator position requirement - it is our understanding that Delaware is adopting the Power to the Profession model, which clearly delineates the competencies, qualifications, and classifications of early learning professionals. With that in mind, it is our belief that any changes to the regulations in this area should mirror Power to the Profession. We understand and appreciate OCCL's efforts to thoughtfully respond to the current staffing crisis. However, that crisis should not cause us to change out end goal - which is a highly qualified and competent workforce. If Power to the Profession will not be adopted, we recommend a comprehensive review of the current staffing regulations by a committee representative of the diverse workforce, with the anticipated outcome of recommendations for revision to the standards that takes into account the staffing shortages, but does not diminish the professionalism of the field. In the meantime, OCCL's current variance process could be used to allow those with difficulties hiring a curriculum coordinator to receive a variance.

Response: The Department appreciates these comments. In regard to the development screening training, plans are underway outside of this Office to provide training and resources for child care providers as well as parents. This regulation is being stricken at this time. In regard to eliminating the curriculum coordinator position, OCCL is trying to support child care centers by removing a position that is hard to fill based on the very specific qualifications and requiring a staff with a degree to be present at least 50% of the hours of operation. In addition, the regulations currently allow for an early childhood teacher to develop the curriculum. This regulation will remain as written.

(4) Pat Belle Scruggs on behalf of Boys & Girls Clubs of Delaware

Comments: Changes that have been helpful:

- Changing requirement for "choice centers".
- Dropping the 30-minute per week rule for Administrators supervising more than one site.
- Allowing interns to be left alone with children (as long as they complete 15 hours of quality assured training, have HS diploma and background check.)
- Reducing the qualifications for SA Administrators.

Sometimes regulations work against current realities in this period created by the pandemic and needs of families and youth.

1. Practically speaking, perfect compliance with some regulations does not allow for current, unavoidable staffing realities and can leave children without any supervision. At the same time, it can make it even harder for providers to recruit the staff they need (e.g. penalizing providers, loss of STARS funding).

- a. Staffing realities include, but are not limited to, inadequate labor pool, increasing challenges to recruitment & retention, illness, callouts...
- b. Strict compliance to regulations governing staffing ratios and qualifications means sending children home, which is not in their best interests (esp. when supervision is not available in the home), nor is it in the best interests of parents, who cannot afford to lose pay or their employment. It also threatens providers' ability to stay in business, when parents are forced to find other answers.

- c. Also part of the reality for providers is choosing which kids to send home. Lots of luck coming up with a reasonable, caring way to do that.
- d. There is another part of the reality. At least at most Boys & Girls Clubs, there are other adults in the facility; the children are safe, safer than what they would be if they were home alone. However, those other adults don't count, because they don't have the right certification at the right time. In an emergency situation can these persons count.
- e. No expectation current, well-entrenched staffing regulations will ever change, but understanding the practical realities of some regulations and how they can actually work against the wellbeing of children may at least cause decision-makers to consider whether new or expanded regulations hurt more than they help. It may even prompt reconsideration of current regulations that wouldn't that difficult to change.
- 2. Here's an example: Those with teaching or paraprofessional certification are still required to apply for School-Age/Early Childhood certification, which adds another layer of difficulty in filling staffing gaps.**
- a. It doesn't seem like it should be all that difficult to coordinate the part of DEEDS in place for teachers with the part of DEEDS now in place for childcare providers in order to eliminate this obstacle.
- 3. Also delaying placement of teachers and other qualified school personnel is the rule requiring them to get another background check.**
- a. We understand this is probably federally mandated and not something OCCL can easily waive.
- b. Any chance consideration will be given to bring regulations more in line with that of schools?
- c. Any thoughts for how we could work to affect changes in these teacher-related issues?
- 4. There are a couple of ways DEEDS is adding more layers of difficulty:**
- a. DEEDS portal is difficult to navigate, and not living up to the promise of a 2-week turnaround. Currently takes 24 to 36 just to set up the account.
- i. According to one of our directors, who spoke with someone who works with the portal, there are only two people handling the process.
- ii. The reason this director contacted DEEDS was because it took over a week for a just to get a response from DOE in order to create the new employee's DEEDS account. The director sent several emails asking for a real person to talk to. A password was finally provided and the account set up. 12 days after that, nothing had been received. Though this new employee has fingerprint clearance, we cannot start him in the classroom.
- iii. Another new employee waited 3 weeks before receiving his certification.
- b. We learned this week that a bunch of staff took trainings that DEEDS has decided to disallow, because they won't count for those working in school-age.
- The problem is that there was no information on the website or current rules or warning that they wouldn't count.
- i. The individual is disallowing these trainings without considering the impact on the provider. It is making the onboard process harder for new staff.
- c. The new policy effective May 1 presents yet another layer of difficulty. All staff must physically possess a DEEDS certificate, with a copy in their personnel file, in order to be able to work in that position.
- i. This is a policy change. The current rule allows 30 days to qualify. Seemingly without consideration for current staffing realities, this change makes the situation even harder.
- ii. There may be a good reason for this change, but it is not clear, especially at a time when staffing shortages are such a challenge.
- d. Recommendations:
- i. **Return to allowing new staff to work with fingerprint clearance letter and proof that required information has been submitted or is ready to be submitted once access is granted to set up the DEEDS account.**
- ii. **Having a live person to talk to would also help** (according to one staff person, the email ticket system is not helpful and did not answer her questions).
- iii. **Clearly mark which trainings apply to Early Childhood, School-Age, or both.**
- iv. **Continue allowing 30 days to possess the needed DEEDS certificate.**
- 5. Another new regulation that doesn't seem to take into account current staffing realities is the 45-Day mandate for Out-of-State background check results.**
- a. Providers have no control over the cooperation and timely responses of other states.

- i. We have a Rehoboth elementary school teacher who cannot come to work now, because we cannot get her results back.
 - ii. For the same reason, we have 3 staff at Greater Dover that have to come off schedule. If we can't find a way to replace them quickly, it will force us to send some number of kids home
 - b. Different states have different systems and procedures, and links are not always easy to navigate.
 - c. We understand the state is trying to address the issue by developing some kind of arrangement with NJ, MD, and PA; and that a person has been assigned to help providers that are having problems getting the results back. That is a good start, but how much those efforts will help the situation in the required time frame.
 - d. **Our recommendation is to hold off on the 45-day mandate until the issues involving delays in out-of-state background checks can be resolved.**
 - e. **Or at least waive or extend the deadline when it can be shown that every reasonable effort has been made by the provider.**
 - f. Our understanding is this is a federal mandate attached to the Child Care Block Grant funding. We will reach out to our federal partners.
6. **Another layer of difficulty is the proposed requirement of 7 additional hours of training in Health and Safety, which adds to what already is an overwhelming list of requirements.**
- a. Clarification needed: **Will this training have to be done prior to beginning employment? Is this also a federal mandate?**
 - b. "Overwhelming" because more and more we are seeing strong applicants decide not to continue because of all the documentation and pre-hire requirements.
 - i. Background checks,
 - ii. initial required training
 - iii. physical
 - iv. DEEDS system to apply for a certificate
 - v. Required completion of 22 documents for each staff person's file, which doesn't include documents required for certifications (e.g. transcripts, HS diploma, DEEDS certificate).
 - c. Recommendation: **Look for ways to streamline onboarding process.**
 - d. Recommendation: **Consider streamlining paperwork and adjusting qualification for summer/seasonal staff, which would help at a time when staff recruitment challenges are even greater.**
7. Tighter provisional licensing regulations.
- a. Only 30-day provisional licenses will now be issued for non-compliances OCCL feels are in our control.
 - b. It appears this would include things like a parent not turning in results of a physical, and service letters for staff not being returned.
 - c. Recommendation: **Instead of requiring 100% compliance, require the most important, safety-related corrective actions and use some sort of point or percentage system to satisfy other, comparatively less important corrective actions.**
 - d. **Another option would be to establish a process for providers to request a waiver on comparatively less important requirements if there are justifiable reasons.**

Response: The Department appreciates these comments. In regard to staffing shortages, call-outs, etc., the requirement is that staff-to-child ratio is maintained at all times. When not enough staff members are present, children become more difficult to supervise and this lack of supervision increases the risk of harm to children. In regard to school personnel or paraprofessionals being required to obtain a DEEDS Early Learning certificate, there is no standard qualification for a person to become a paraprofessional, therefore OCCL has no way to determine if that person meets the qualifications in the regulations. In regard to school staff having to complete another background check, child care staff are required per the Child Care and Development Block Grant Act to complete a comprehensive background check that contains many components; school staff background checks are not required to contain the same components. Additionally, the school is not permitted to share the results of a background check with another organization and if that staff were to be arrested, the criminal history unit would not be able to report this information to a child care center because the staff was not fingerprinted for that center. In regard, to DEEDS Early Learning certificates and staffing, an additional staff was hired to answer the phone and process applications, applications are being processed within 2 weeks if applications are complete and transcripts are not pending, the courses that do not count towards a certificate have a disclaimer on the website saying they do not count. In regard to the 45-day requirement to complete the background check, this is the requirement of the

Child Care and Development Block Grant Act. In regard to the required Health and Safety training, this is a requirement of the Child Care and Development Block Grant Act. This training is required for all staff, but must be completed during a staff's orientation unless the staff previously completed this course. The hours from the course will be required for staff to become qualified as interns and staff may use these hours toward their annual training requirements. In regard to the provisional licenses being time limited, they have always been time-limited (previously this was a maximum of 3 months). However, the director of OCCL has the discretion to extend this timeframe for extenuating circumstances. In addition, OCCL has no way to ensure compliance is achieved without issuing a provisional license for non-compliance cited at annual visits that was not corrected within the required time. The regulations will remain as written.

(5) Georganne Buccine Vice President, Youth Development YMCA of Delaware

- Shortening the number of Provisional License issuances- *although I understand the need and importance of ensuring providers are in compliance at all times, and the time consuming process it takes to repeatedly issue these types of licenses, the timing of this proposal could potentially cause a hardship on providers. Providers, as well as parents, rely on community partners to provide us with the documentation needed for licensing compliance. For example, our medical community that supplies us with Children's Health Appraisals and Staff Physicals/TBs are not accepting new patients, are booked 90-120 days out for appointments, or are struggling to find staff to complete our requests for documentation in a timely manner. This staffing struggle is also evident with State agencies (background checks) and other child care providers (Service Letters) as well. Although not having staff or parents start working or attending until the documentation is received is an option, it's not a viable business strategy during these fluid times.*
- Lead Prevention Act- *This rule change holds a provider accountable for something we have no control over, and therefore, is not equitable. Physicians are not able to enforce this blood draw, and parents have the right to choose what's best for their child's health. Child Care Provider's should not be caught in the proverbial middle by having to turn away a potential family or disenrolling a family for non-compliance, thereby suffering another financial hit.*
- Increasing the fine for unlicensed care- *THANK YOU!! Hopefully with some statewide communication, this will deter those from operating illegally and encourage more to be licensed.*
- Requiring providers to make reasonable accommodations for IFPs and IFSPs- *this rule is already in effect through the American Disabilities Act (ADA), therefore, is it necessary?*
- Requiring the EC Admin to have 15 hours of Infant Toddler training, not ECCC- *this limits the flexibility afforded by the current rule and limits the already shallow candidate pool. Additionally, these required trainings should be accessible on DIECC and credential requirements need to be aligned in order to support this rule change.*
- Allowing EC Admin to be qualified with an Associate or BA in ECE rather than requiring additional coursework- *THANK YOU!! This is extremely helpful.*
- Requiring EC Admin to have 15 hours of School Age training, not ECCC.- *this limits the flexibility afforded by the current rule and limits the already shallow candidate pool. Additionally, which of the 70+ hours of the School Age Bundle would be required?*
- Allowing EC Interns and School age interns to be alone with children after working 1 month for 25 hrs per week.....- *THANK YOU!!!*
- REDUCING THE QUALS OF SCHOOL AGE ADMIN TO COORDINATOR- ***THANK YOU!!***
- Adding the approved training topic of disability non-discrimination, accommodations, or modifications- *will the expectation be that this is provider led or OCCL provided on DIECC?*
- Requiring when enrolling a child to inquire if the child has an IFSP or IEP and to discuss with a parent or guardian and service providers as applicable, any reasonable accommodations or modifications needed by a child with a disability to access the program or services- *In order to properly care for a child, most provider's will ask for this information at the time of enrollment, however, some parents refuse to provide this information. Plus, this rule is already in effect through the American Disabilities Act (ADA), therefore, is it necessary?*
- Requiring monitoring of the center's entrance and phone, email, or other communication methods used by the center to ensure the child is released from care when requested by the parent, guardian, or authorized release person- *School age staff in public schools provide direct care and supervision to children. This proposed rule is in direct violation of Rule 26G- under staffing, which states staff providing care may not be given other duties. Adding an additional staff member for this sole purpose is not reasonable.*

- Not allowing visitors who are not touring the center or providing a service to be present in areas where children are located- *School age programs in public schools do not have control over this issue as school visitors are allowed wherever including Playgrounds during operation.*
- Changing that semi-solid foods are required once an infant is six months old rather than 8 months unless the parent or guardian provides documentation from the infant's health care provider stating otherwise- *This isn't something that should be regulated by Licensing. What to feed and when to feed is a parental choice.*
- Beginning January 1, 2023, requiring the licensee to receive an eligibility determination or a provisional eligibility notification before a staff member starts employment to comply with the Child Care Development Block Grant. *Out of state checks are currently taking 45+ days. Turnaround time for a DE eligibility letter w/o all of the other checks are approx. 10 days. Will fingerprinting centers be accommodating to this new rule? Not provider friendly in this current staffing shortage.*

Response: The Department appreciates these comments. In regard to the provisional licenses being time limited, they have always been time-limited (previously this was a maximum of 3 months). However, OCCL's director has the discretion to extend this timeframe for extenuating circumstances. In addition, OCCL has no way to ensure compliance is achieved without issuing a provisional license for non-compliance cited at annual visits that was not corrected within the required time. This regulation will remain as written. In regard to the Lead Prevention Act, OCCL must comply with the legislation and the only way to ensure the screenings are performed for children enrolled or enrolling in child care is to monitor the children's files. In regard to requiring the early childhood administrator rather than the early childhood curriculum coordinator to have the 15-clock-hours of training in infant and toddler development and curriculum, if serving that age group, and 15-clock-hours of school-age care if serving that age group, the administrator is responsible for the overall program and should have this knowledge if serving these age groups. The vast majority of administrators already have completed these specialized trainings. In addition, these clock hours may be used to count toward annual training hours so this will not necessarily mean additional training hours are required above what is already required. In regard to disability/nondiscrimination training, OCCL accepts many types of trainings to count toward annual training hours including those provided by the community, an administrator or other staff, the Delaware Institute for Excellence in Early Childhood, etc. In regard to the requirement to ask if a child has an IEP or IFSP, the parent may choose not to disclose this information, but the center is required to ask to determine what, if any, reasonable accommodations may be required and whether the center can meet the child's needs. If the parent does not disclose this information, the center may be unable to meet the child's needs and may need to terminate the child's enrollment. In regard to the staff not being able to supervise children because they are required to monitor the entrance of the facility or other communication used by the center to communicate with parents, the staff are able to do this by ensuring that when parents arrive they allow parents to take their children home when requested. This should be similar to whatever process is now used. However, the regulation will be changed to, "Monitoring the entrance of the center or phone, email, or other communication methods used by the center to ensure the child is released from care when requested by the parent, guardian, or authorized release person." In regard to visitors using shared space, that visitor is not for the center. Therefore, this regulation does not apply. In regard to parental choice for beginning to feed an infant semi-solid food, best practice is to begin semi-solid food no sooner than age six months when developmentally ready. This regulation will be revised to state, "**Semi-solid** foods may be fed as requested by the parent or guardian once an infant is **six** months old and **developmentally ready** unless the parent or guardian provides documentation from the infant's health care provider stating otherwise." In regard to the comprehensive background checks for In-State taking 10 days and the out-of-state checks taking up to 45 days to complete, a new process will be implemented by the Criminal History Unit that allows for a provisional eligibility to be determined within days of the individual being fingerprinted. Walk-in fingerprinting has resumed at the SBI location in Dover.

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

The State Council for Persons with Disabilities (SCPD) has reviewed the Delaware Department of Education's ("DDOE") proposed amendments to 14 DE Admin. Code 933 DELACARE: Regulations for Early Care and Education and School-Age Care. The proposed amendments were published as 25 DE Reg. 910 in April 1, 2022, issue of the Register of Regulations. SCPD endorses the proposed amendments (with one recommendation regarding training - see comments below) and has the following observations.

The proposed amendments may impact children with disabilities in the following contexts:

- "Allowing for OCCL to investigate complaints typically investigated by other entities if the complaint involves a violation of OCCL's regulations";
- "Adding the approved training topic of disability non-discrimination, accommodations, or modifications";
- ""Requiring when enrolling a child to inquire if the child has an IFSP or IEP and to discuss with a parent or guardian and service providers as applicable, any reasonable accommodations or modifications needed by a child with a disability to access the program or services";
- "Requiring a licensee to allow services to be provided at the center for a child with disabilities, including services through an IEP or IFSP and at the request of a parent or guardian, a licensee shall permit qualified professionals to complete an observation or assessment of the child while at the center";
- "Beginning July 1, 2023, requiring a licensee to ensure for children who have not begun kindergarten, the child's parent or guardian completes the Department's approved developmental and social emotional screening tool upon within 45 days of enrollment and annually";
 - o Requiring a licensee to ensure that for children younger than kindergarten and initially enrolled in childcare before July 1, 2023, the child's parent or guardian completes the Department's approved developmental and social emotional screening tool by December 31, 2023."
 - o Allowing the licensee or staff member may assist the parent or guardian in completing the screening or, if necessary, complete the assessment";
 - o Exempting children with current IFSPs or IEPs from being screened."

Additionally, the Department of Education proposes the following amendments related to medication usage and safety, which may disproportionately impact children with disabilities:

- "Requiring notification to OCCL within one business day of accidental ingestion of a medication or drug, when the center is informed the child required medical or dental treatment other than any first aid provided at the center";
- "Aligning the regulations and study guide on what is considered a medication error. Medication errors include giving the wrong medication, giving the wrong dose, failing to give the medication at the correct time or at all, giving medication to the wrong child, giving the medication by the wrong route, or giving medication without documenting the administration";
- "Requiring all staff, substitutes, and volunteers working at least 5 days or 40 hours per year to complete OCCL's approved Health and Safety Training for Child Care Professionals as part of the orientation to comply with the Child Care and Development Block Grant, rather than permitting the EC administrator to devise that training";
- "Requiring an owner who works on site at least 7 hours per week and provides direct care to have an administration of medication certificate on file."

In general, these proposed recommendations support day care accessibility and accountability for children with disabilities and their families.

The proposal to "[a]llow for OCCL to investigate complaints typically investigated by other entities if the complaint involves a violation of OCCL's regulations" is particularly beneficial to families who have experienced disability discrimination in daycare settings. The Division of Human Relations (DHR) has historically denied having jurisdiction over cases related to disability accommodations (although proposed legislation would clarify this issue, see: <https://legis.delaware.gov/BillDetail/79173>). Additionally, USDOJ does not investigate every reported case of disability discrimination. Families who experienced disability discrimination at daycare centers were left without recourse, even if the daycare center had violated an OCCL regulation in addition to other anti-discrimination laws or policies. This proposed amendment to OCCL regulations would provide families with a practical resource if faced with discrimination and could help hold non-compliant daycares accountable.

The proposed amendment requiring daycares to "inquire if the child has an IFSP or IEP and to discuss... any reasonable accommodations or modifications" may assist families and daycare centers in identifying and providing reasonable accommodations. SCPD recommends that at least initial disability-related training be mandatory, particularly in light of the requirement that daycares must inquire about and discuss accommodations and modifications. The amendments about IFSP/IEP service provision and special education screening would help identify children earlier who many need services and would improve access to those services. The remaining amendments about drug/medication error and medication/ safety training would likely improve child safety and accountability when accidents occur.

Response: The Department appreciates these comments. Based on the recommendation to require an initial disability-related training, OCCL will ensure a training is available in the future. In regard to requiring center staff to

be trained on their obligation to make reasonable accommodations for children with disabilities, the Administration of Medication training that is required for all center staff includes information on the Americans with Disabilities Act and informs of the licensee's requirement to make reasonable accommodations.

(7) Lori Bigalow Concord Preschool and Childcare Administrator

First of all, Great job with keeping all of us updated and informed through the transition process with the Dept of Ed. It has been great! I only have a couple of concerns/comments about the proposed regulations. 1. Not allowing visitors in the classrooms. While I understand why this is proposed, I just wish there is a way to monitor visitors without making a blanket statement of not allowing any visitors in the classrooms. Maybe a policy of having a visitor log in sheet that is anyone other than a tour. We have that in our building for speech therapists, etc. Anyone who will be in the building that is not a teacher, parent or a tour must sign in and out in the office. This way we know who is in the building and for how long. I know you mentioned in the zoom meeting that one instance was the Administrators boyfriend which is a separate problem! Another thing to do is to add it to the required staff handbook items something like anyone can visit the classrooms for only 10-15 minutes after signing in, in the office. The reason I do not like the blanket statement is that we do have former employees who like to come back to visit and children love to come in to see teachers during weeks off from school. I hate to tell them that they are not allowed to be in the building, or have to worry about covering a classroom so they can visit. We are like a family here and people do like to have people come back to visit us. 2. Air fresheners. I feel this is over regulation. Just because someone doesn't like air fresheners, doesn't make it wrong for the rest of us who like them. Can we still put one on the top of the diaper pail lid, inside?? There are different scents that the centers can use. We have had them in certain classrooms here for years never have I had a complaint. My Preschool Director has an allergy to a certain scent and we choose a scent that doesn't bother her. I would rather have the center smell good and not smell like diaper pails, dirty bathrooms and sweaty kids!! ?? 3. Developmental screening for new clients. I just am hoping this goes well. I think an initial screening is good, but it is so hard to get parents to fill anything out anyway and they will have to do it annually??!! We have so much paperwork between the children and staff files already. This will be SO TIME CONSUMING to track parents down and get them to fill the forms out annually. I have trouble with getting parents to do simple things like new school year enrollment forms and updated emergency cards!! Which leads me to by big beef (non new regulation related) 4. Parents Right to know I do not have a problem with having the parents sign the right to know form at all. What I do have a big problem with is the signing a paper that they signed the first one. I feel that the majority is being punished because a few people did the wrong thing. They should be punished not all of us! In all honesty, the parents don't care and as children move up or leave it is really hard to keep track of who's 2nd signature we have or need. It is very time consuming see who's 2nd signature we have and don't have. I have a large center and it takes a day to get a list of who we need to sign the 2nd form and another 2 weeks to track parents down. Please change this back to just signing the initial form. I just want to say that I have a wonderful licensing person, Laurie Bailey, who is helpful and responsive. She was so good, especially during the last 2 years navigating us through the ever changing COVID time. As you know, it was not easy for any of us. You all did a great job too!! Thank you so much for all you do. I just thought of one more thing. I did agree with the person on the zoom call that said we should all be part of the Dept of Ed as a state employee.

Response: In regard to visitors, as mentioned above, the regulation was revised to state, "A licensee shall ensure visitors who are not touring the center, attending a special event, **visiting children**, or not providing a service to the center that requires access to children, remain outside of areas where children are located." In regard to not allowing air fresheners, this regulation was not created based on someone not liking them. Caring for Our Children prohibits the use of air fresheners due to the health concerns they may create for children such as allergic reactions, asthma, etc. This regulation will remain as written. The regulation regarding developmental screenings is being stricken until it is proposed at a later date. In regard to the Parents Right to Know Log, this regulation was put into place to ensure OCCL has a record that every parent or guardian was informed they have the ability to review the licensing history of a potential child care facility as required by Delaware Code. The regulation will remain as written.

(8) Provider Advisory Board, Pat Belle-Scruggs, Chairperson

Written Comments on Proposed OCCL Regulations 5 /2 /2022

- The required additional 7 hours of Health & Safety Training. If you have already taken this through another module can this count? Ie. TECE 1 or 2, CDA training, Fitness and Obesity etc.

- Can background checks be transferred with you to another center with written permission? If a person has two jobs which one receives the notification from criminal history?
- The rule to have two people to go off property may cause a hardship for smaller centers or those only going for a short community walk and less children than required ratio. It is not needed for school age programs where children could get help if there was an emergency.
- If there is a crib with a clear Plexiglas crib and a separate partition and the baby doesn't roll yet. Do the cribs have to be 18 inches apart?
- The proposed rule requiring illegal drugs not to be in the center is redundant if the drugs are already illegal.
- Not allowing visitors in child care is overreaching. Child Care is a private business and is up to the owner to decide who can visit. Visitors should not be left alone with children and cannot participate in their care.
- Requiring children to eat semi solid foods at 6 months is a personal infringement of parental rights and not considerate of cultural practices of all families.
- The propose rule to have OCCL investigate additional complaints previously done by other departments is a hardship on your office when like all others in this field OCCL is short staffed.
- What are the special needs of children in overnight care?
- Performance appraisals should be confidential and not open for inspection from OCCL. What is the intent of this rule? Can a documented annual meeting/coaching session be sufficient?
- Will providers receive a guide book with the new regulations?
- School Age children should be able to go to the bathroom with a hall pass and visuals as they do during the day at school. Threshold to threshold is a hardship when you have a 1:15 ratio in a classroom and 1 child has to go.
- Organized outdoor centers should not be required.
- Can a printed and or digital copy of the new regulations be sent to licensed providers?

Response: The Department appreciates these comments. In regard to the Health and Safety Training, all staff must complete this training because it contains all of the specific training topics required by the Child Care and Development Block Grant. The background check cannot be transferred to another center as the federal and state governments do not allow the sharing of confidential background check information. If a person has a job at two centers, the person is fingerprinted for both, and each center receives the eligibility determination from the Criminal History Unit as well as notifications of any subsequent arrests while employed. In regard to causing a hardship by requiring two staff to take children younger than school-age for a walk, classes could combine so that staff could take children for a walk and a single staff may take children for a stroll in a buggy if the children remain in the buggy. Because respiratory infections are transmitted by large respiratory droplets, cribs must be 18-inches apart even with plexiglass because the droplets can travel. In regard to illegal drugs being redundant, OCCL has no other regulation to cite a center for when illegal drugs are on the premises and considering this is a serious violation of health and safety it should be included. The regulation will remain as written. In regard to not allowing visitors, the subsection was amended as stated above. In regard to when to introduce semi-solid foods being an infringement on parental rights, the regulation is being revised to state, "Semi-solid foods may be fed as requested by the parent or guardian once an infant is six months old and developmentally ready unless the parent or guardian provides documentation from the infant's health care provider stating otherwise." In regard to OCCL being short-staffed, OCCL appreciates the consideration but OCCL is not currently short-staffed. In regard to what are special needs for children in overnight care, these are determined by the parent. Perhaps it is a young child wearing a pull-up at night although the child is potty-trained during the day, or a special toy that makes the child feel safe. In regard to performance appraisals, OCCL does not check the content of staff performance appraisals, but that they have been conducted by the early childhood administrator or early childhood curriculum coordinator. The regulation was clarified that since there is no longer a requirement for an early childhood curriculum coordinator, the administrator or an early childhood teacher with a degree needs to do the appraisal. In regard to a guidebook being available, a guidebook may be developed in the future to provide additional information on the regulations similar to the one created in 2016. In regard to school-age children being able to use the bathroom unattended, this would increase this risk to children because there could be multiple children in the bathroom at once and inappropriate acts could occur, children may leave the building without being noticed, and staff may lose track of where children are. In regard to organized outdoor centers, this is not a regulation. In regard to a digital or printed copy of the regulations being sent to providers, yes, this will be done.

(9) Kenna Chanoux, Teacher/Administrator

I would like to add my input for the proposed Office of Child Care Licensing or Center Regulations. Below is the proposed regulation and my thoughts in regards to it:

- Requiring a comprehensive background check (of each required component) every 5 years of employment or volunteering at a center to comply with the Child Care and Development Block Grant; As I understand this is a requirement for the grant funds. However, this has to be expedited and move much more quickly to benefit our staffing needs. I have had these checks take up to 8 weeks to get returned from other states. That is entirely too long for any person to wait regardless if they are an employee or employer. We are in a very serious staffing shortage right now. These kinds of delays will hurt centers, which in turn hurts families because their children will not be able to attend care due to staffing issues.
- "Requiring volunteers who are used to meet the staff-to-child ratios to have an orientation that meets the requirements of a staff member; This is rather confusing to me. I have a few volunteers that work in my center; however, they are never left alone with children - they are just there to support the staff and work with the kids. I have been told that any volunteer needs an almost complete staff file if they volunteer more than 40 hours per year. Those staff files do not include orientation, BUT they include all of the other paperwork including the Health Appraisal. It is HARD to get volunteers as it is and asking them to do this is just making it harder - especially, when they are not left alone with children. Would it be possible to clarify - one set for volunteers that are not left alone with kids and another set of regulations for those that are? Also, what about volunteers that don't work with kids - I have one that only works outside the classroom doing things like laminating, prepping for projects, cutting things out, etc.
- Requiring a licensee to allow services to be provided at the center for a child with disabilities, including services through an IEP or IFSP and at the request of a parent or guardian, a licensee shall permit qualified professionals to complete an observation or assessment of the child while at the center; This one may go against many of your other public commentary or I may be misunderstanding the purpose of this one. However, I am concerned that the language is a bit vague in regard to "reasonable accommodations/modifications" and I do understand where it comes from under IDEA. However, most centers are not free and are not professionally equipped to handle this. To be honest, the issue that I have with this is somewhat complex. Firstly, most Early Childhood Educators are NOT equipped and/or educated to handle children with Special Needs. We are not Speech Therapists, Occupational Therapists, Nurses, etc. Secondly, we have to be careful inserting ourselves into these kinds situations due to liabilities and other discriminatory issues. What we need are resources for families and children that are in need of services that the staff or space is capable of handling. One option to aid in staff support could be a program similar to Early Childhood Mental Health which could provide such support to educators and other staff because each center cannot afford to hire professionals to guide us through these situations. However, space is something that can't be easily fixed or modified in most cases. Additionally, we are not school districts and we have no business doing anything other than referrals for families in such need, if the center cannot "reasonably accommodate" and provide service. My concern with this is that language such as "any reasonable accommodations or modifications" will be overused to deny service and the families and children will not receive the support needed. The truth is that all providers should be doing their very best to serve families and children. To add to this, I can tell you that I have spoken with a few families that are in transition from IFSP to IEP and are confused in regards to the next steps. Normally, I refer them to our school district and await the outcome of the evaluations. To summarize, all providers, families and those that work with children need to be educated and provided resources to utilize to understand the many layers of this. It is complex and something that needs to be explored and addressed further before it becomes a regulation that many are not prepared to handle appropriately. As a side note: I hope this makes sense. I feel very strongly about issues such as these and please feel free to reach out if you need me to explain further.
- "Beginning July 1, 2023, requiring a licensee to ensure for children who have not begun kindergarten, the child's parent or guardian completes the Department's approved developmental and social emotional screening tool upon within 45 days of enrollment and annually. While I understand the purpose and the intention of this one; I must say that this process needs an overhaul to make it more efficient. As of now with the ASQ, the center distributes the links, the parent completes the screening and the school district interprets the results and takes the next steps to provide support if needed. I had a parent complete the screening and her son was flagged for an evaluation. It took 7 months for the evaluation to occur. That is so much lost time. In his case, he didn't need intervention, but if he had that is a long wait period. The truth is that parents and center staff are not educated enough to make these screenings accurate and reliable. Additionally, the school districts

are in a staff shortage and do not have the manpower to become more efficient at this time to complete all of these processes within a timely manner. While I believe in partnering with School Districts and Pediatricians for the betterment of children and families, we need to make these processes more efficient and cut down the steps as much as possible before committing to them.

- Prohibiting the burning of candles or incense and use of air fresheners due to health concerns;

While I understand the reasoning, this needs clarification. I do believe sanitizers and disinfectants should be excluded from this given COVID and FLU. I think a center using a disinfectant spray, such as Lysol, at the end of the day should be allowed.

Also, I would add that Essential Oils should be included with candles & air fresheners as something centers should NOT be using.

- Beginning January 1, 2023 requiring the licensed to receive an eligibility determination or a provisional eligibility notification before an employee starts employment. As I understand this is a requirement for the grant funds. However, this has to be expedited and move much more quickly to benefit our staffing needs. I have had these checks take up to 8 weeks to get returned from other states. That is entirely too long for any person to wait regardless if they are an employee or employer. We are in a very serious staffing shortage right now. These kinds of delays will hurt centers, which in turn hurts families because their children will not be able to attend care due to staffing issues.

I would appreciate this process being "streamlined" as was discussed in the online conversations - a place to go to get this done that will begin the process with the other state and one of these such sites in each county. However, shouldn't those be completed first and then work out all the kinks prior to making the regulation mandatory? I feel that would ease the providers' minds when it comes to this proposed regulation. In this case, the best thing might be to change that date to 2024 and get things running efficiently first.

In summary, I would like to say that most of the proposed regulations are things I would support. The ones listed above are things that I feel need more time or are just not feasible given all the circumstances that surround each one. As the state moves forward with the new regulations, I would request that everyone take into consideration the needs and the current state of the community of childcare providers. Providers are exhausted, confused and receiving very little support these days from those that used to assist us frequently. My center is in Sussex County, I have been a childcare provider for 15 years and things have changed greatly here. The center that I currently work for is full with a waiting list for the first time. There are children that we will not be able to serve on my waitlist due to their age and our building size restrictions. I just got a message from my DE Stars TA yesterday - I haven't heard from them since last summer. I am an administrator that has had to work in the classroom since the center has gotten full and this staffing shortage has started. Now I do my administrative work at every other opportunity that I can. It has been so much, but I do it because I believe in education and try to serve every family and child the best way possible. I know that Delaware Stars, OEL, OCCL, and DOE are undergoing massive changes and working through many new initiatives now and I'm happy to see that happening. My hope is that it benefits everyone and we all make it through to a better place, but it has been stressful.

Response: The Department appreciates these comments. In regard to the comprehensive background checks being required every five years, this is a federal requirement Child Care and Development Block Grant. Staff who are qualified to work alone with children who have previously been determined eligible at the center the staff member currently works at will be able to continue to work unsupervised so this will not impact staffing. Although this is not in OCCL's purview, additional fingerprint locations are being added in the fall of 2023, by the State Police to expedite this process. In regard to having volunteers complete the Health and Safety Training, this is a requirement of the Child Care and Development Block Grant and must be followed. In regard to the requirement to ask if a child has an IEP or IFSP, and making reasonable accommodations, child care centers are required by the Americans with Disabilities Act to make reasonable accommodations for a child with a disability and the center needs to determine whether the center can meet the child's needs. Centers cannot exclude children with disabilities from their programs unless their presence would pose a *direct threat* to the health or safety of others or require a *fundamental alteration* of the program. Centers have to make *reasonable modifications* to their policies and practices to integrate children, parents, and guardians with disabilities into their programs unless doing so would constitute a *fundamental alteration*. Centers must provide appropriate auxiliary aids and services needed for *effective communication* with children or adults with disabilities, when doing so would not constitute an *undue burden*. Centers must generally make their facilities accessible to persons with disabilities. Existing facilities are subject to the *readily achievable* standard for barrier removal, while newly constructed facilities and any altered portions of existing facilities must be *fully accessible*. In regard to developmental screenings, that regulation is

being stricken for now. In regard to air fresheners and spray disinfectants, air fresheners are sprayed into the air to cover smells and disinfectants are sprayed on surfaces to kill germs. Disinfectants are permitted; however, proper ventilation and sanitation should be used to keep areas, equipment, and furniture clean. In regard to the provisional employment and comprehensive background check requirements, this information was addressed above.

(10) Audrey Carey, Ed.D, Supervisor of Early Learning, Indian River School District

- Requiring public and private schools serving children below kindergarten to be licensed by July 1, 2024
A request is made that licensing will work to streamline competing regulations for school district and determine items that may already be in place to meet the needs of the licensing standard.
- Beginning January 1, 2023, increasing the fine for unlicensed care to \$1000 or imprisoned not more than 6 months
In school districts settings, it should be clearly defined the responsible party.
- Allowing for OCCL to investigate complaints typically investigated by other entities if the complaint involves a violation of OCCL's regulations;
In school districts settings that have a process for investigation and union policies, we would need to clarify how this would work within the structure.
- To comply with the Lead Prevention Act requiring a child to have second lead screening at 24 months and if the child enrolls after 12 months of age proof of a lead screening will be required at 24 months or after for all children including school-age if blood lead tests were not conducted at age 12 months and 24 months;
It would be beneficial to include a process that would support students with special needs and/or homeless students who struggle to complete prior to registration and a services is needed to implement immediately. It is also suggested to create documentation and or pathway to communicate updated physical, vaccination, and/or lead requirements to parents and pediatricians.
- Allowing a person to be qualified as an EC administrator with an Associate's or Bachelor's degree in Early Childhood Education rather than requiring additional classes if the coursework did not include the specific coursework listed in these regulations.
This reads as if an individual has a bachelor's in education, but not in early childhood education, they may not be permitted to take additional classes to become the administrator.
- Requiring EC and school-age (SA) interns to complete OCCL's approved Health and Safety Training for Child Care Professionals as a part of their 15-clock-hours of quality-assured training
Please allow these training to be linked to PDMS to allow district employees clock hours and is on record.
- Reducing the qualifications of school-age administrators to those of school-age site coordinators
By reducing the qualifications of school-age administrators to those of a coordinator appears to contradict the focus of high-quality programming.
- Requiring all staff, substitutes, and volunteers working at least 5 days or 40 hours per year to complete OCCL's approved Health and Safety Training for Child Care Professionals as part of the orientation to comply with the Child Care and Development Block Grant, rather than permitting the EC administrator to devise that training
The concern is the shortage of substitutes. Stating 40 hours a week, where a substituted may work in a building for two days and then not return for months later, a full staff file plus this additional requirement is a hardship. Our substitutes already must go through state finger printing, receive TB testing, district level training, and are vetted through a background program. Is it a possibility that this requirement is for long term substitutes verse a substitute that may only work infrequently?
- Adding the approved training topic of disability non-discrimination, accommodations, or modifications;
Unclear if this means that these topics must be required in a staff member's 18 annual hours or if these are now approved topics that may be included with in those hours.
- Requiring annual training to be completed at least 30 days before license expiration;
Professional development topics and days are designed a year in advance for a whole district and targeted for the beginning and ending of the year, for the placement of new employees. Times do not often sync with licensing renewal as we break for the summer. Hopefully, districts could possible sync licensing to reflect summer breaks.
- Requiring when enrolling a child to inquire if the child has an IFSP or IEP and to discuss with a parent or guardian and service providers as applicable, any reasonable accommodations or modifications needed by a child with a disability to access the program or services;

It is recommended that childcares work to support IFSP or IEPS when it comes to the possible dismissal of a child from a program. It is recommended within the Childcare Block Grant that each state establishes statewide policies to eliminate expulsions and develop practices to support children. We believe that dismissal of children should be addressed within the regulations to better support all students.

- Beginning July 1, 2023, requiring a licensee to ensure for children who have not begun kindergarten, the child's parent or guardian completes the Department's approved developmental and social emotional screening tool upon within 45 days of enrollment and annually.

As we are a school district with a pre-kindergarten we already process children who must complete this to be eligible for services in our programs (special education, ECAP, and tuition).

- Requiring attendance records to show when classes of children are combined
- **Clarification on when this needs to be recorded. For example, during recess and special events.**
- Adding exemptions for public and private schools serving children under kindergarten.

Please clarify what those exemptions are for public schools. It is our hope that districts will be provided an opportunity to clarify items within the current regulations that are suitable and meet licensing regulations. We would be happy to support this work.

Response: The Department appreciates these comments. In regard to streamlining the process for a school to become licensed, OCCL has included exemptions as listed in Part IX for school-districts that are included in these regulations to streamline the process. For unlicensed care, as stated in subsection 4.4, the school district is the responsible party. In regard to OCCL investigating complaints, OCCL will not be investigating any union issues. This regulation is referring to violations of DE Equal Accommodations Law, discrimination, and failure to provide reasonable accommodations, etc. In regard for additional time to complete the blood-lead screening for homeless children, the regulations allow for this under the McKinney Vento Act as stated in subsection 41.1. In regard to early childhood administrators being qualified without taking additional classes, teachers who are licensed by the State have the requirements to become an early childhood administrator without taking additional coursework. In regard to allowing the 15-clock-hours to be linked to PDMS, staff who are applying for an intern position, must submit a DEEDS Early Learning application and supply the correct documentation in order to be issued a certificate. In regard to reducing the qualifications of school-age administrator to those of a school-age site coordinator, these programs have been run by the school-age site coordinator since 2009. In the current regulations, the school-age administrator only has to be on-site 30 minutes a week and can be assigned to multiple centers. OCCL is now requiring the newly reconfigured school-age administrator to be onsite 50% of the hours of operation. In regard to the substitutes completing the health and safety training, the Child Care and Development Block Grant requires that substitutes complete this Health and Safety Training. The training only has to be completed one time. In regard to adding the training topic disability non-discrimination, accommodations, or modifications, a staff may choose to complete training in this topic; however, it is not required. In regard to training assignments not being aligned to a licensing year, the center may request a variance. In regard to child care centers working to support children with IEPs and IFSPs, yes, they do by allowing professionals to provide services to children onsite as well as reviewing the plans to see if they may assist. The regulation regarding developmental screening is being postponed. In regard to attendance records, special events, and recess requiring a separate attendance sheet, these situations do not require a separate attendance record. Subsection 43.1.2 states if classrooms are combined inside the building, one record with all the children's name and times of entry and exit need to be recorded. In regard to adding exemptions for public schools, the exemptions were added and are contained in Part IX.

(11) Jamie Schneider, President, Delaware Association for the Education of Young Children

The Delaware Association for the Education of Young Children is asking that no permanent regulatory changes that reduce quality and health and safety standards be made. We would ask that alternative methodology to support the work done by those positions be accepted as variances until a full regulations alignment is done. We also recognize the workforce catastrophe that is facing all centers across the state.

Decades of work has been done to increase professionalism, quality, and oversight in childcare centers to ensure high-quality environments in meeting licensing requirements. It would be to the detriment to the work in the field, the quality of childcare in Delaware, and continue to underscore that childcare does not take a highly trained professional workforce.

Removal of necessary roles to help ensure basic quality standards and continue to help centers on quality

improvements plans will only reduce the quality found in centers. Removal of these roles also reduces the safety of the centers. Supervision and oversight is needed now more than ever due to a dwindling qualified workforce. Most centers are facing training unskilled workers, and, without proper administrative support, we are reducing the health and safety expectations that families have. In an effort to also help support the workforce crisis, we would ask that you pause the workforce changes and create temporary variances for centers to delay hiring the necessary workforce and avoid licensing suspension or substantiated issues.

We would support long-term conversations and planning to implement regulatory changes to assist with the workforce crisis, to meet legislative initiatives, and to align with specific ideas and examples of how centers are continuing to meet necessary standards in alternative implementation to meet the required regulation. We understand that programs are having a difficult time finding administrators and curriculum coordinators.

- Early Childhood Curriculum Coordinator Alternative Route to Certification:
 - *Current regulations OR
 - *ECE Praxis OR
 - *Teacher Certification +10 years classroom experience including 150 hours of professional development including 18 hours on observation/assessment; curriculum and planning; classroom management
 - *Associates degree or Bachelor's degree; Teacher Certification +7 years classroom experience including 75 hours of professional development including 18 hours on observation/assessment; curriculum and planning; classroom management; ongoing professional development 8 hours per year in areas to support curriculum; observation/assessment
- Early Childhood Administrator Alternative Route to Certification:
 - *Current regulations OR
 - *ECE Praxis OR
 - *Teacher Certification +10 years classroom experience including 150 hours of professional development including 20 hours in management; human resources; financial; business practice; or marketing
 - *Associates degree or Bachelor's degree in non-ECE field; Teacher Certification +5 years classroom experience including 75 hours of professional development including 20 hours in management; human resources; financial; business practice; or marketing (or included in college coursework)
- Requiring a program director without a degree who was qualified before January 1, 2007, to have a qualified early childhood (EC) teacher with at least an associate degree creating, developing, and evaluating curriculum and monitoring its implementation; Why? This is someone that has been a program director
- Requiring the EC administrator to have 15 hours of specialized training in Infant and Toddler development and curriculum, if the center serves infants and toddlers. No longer allowing the ECCC to have this training; If a center has an ECCC then there should not be this requirement. If the center has qualified infant and toddler teachers they should be required to have this training but an admin should not need training in every level of care.
- Allowing qualified EC interns to be alone with toddlers through school-age children after working at the center at least 25 hours per week for at least one month, being determined eligible by the Criminal History Unit (CHU), and being at least 18 years old; We do NOT support this regulation change. It is not a safe measure. IF it must be proposed: An intern with 25 hours of PD (that includes classroom management and difficult behavior training) and 120 hours of clocked worked hours should on be alone with children 3+ years of age; for no more than 50% of the day/week. An intern should be required to have assistant teacher qualification within 6 months of hire.
- Interns should be required to be fully supervised except as currently outlined in the regulations for 45 days and 50% of the time until they receive assistant teacher qualification.
- Allowing qualified SA interns to be alone with school-age children after working at the center at least 10 hours per week for at least one month, being determined eligible by CHU, and being at least 18 years old; We do not believe 40 hours of work is enough. We believe it should 80 hours of supervised clock time.
- Allowing EC and SA interns who are 18, determined eligible by CHU, and who have worked at the center for one month (with the number of hours listed above) to supervise EC and SA aides and substitutes; Oppose. An intern should not be able to supervise any other staff members. Unskilled and untrained workers should NOT be allowed to supervise other unskilled and untrained workers. This unduly impacts the health and safety of the children. This also does not say what ages. IF they are supervising they are technically not alone so this would allow centers to use an Intern and an Aide in an infant classroom.

- Increasing the time from 30 days to 45 business days for a center to hire an EC administrator when one leaves; Oppose. 3 months to hire a replacement for non-ratio determining staff.

****If unable to hire after 3 months an OCCL approved plan for hiring and operations should be created***** After 30 days an OCCL approved alternative plan for operations and oversight and a plan of action to get a current staff member qualified as an administrator should be in place.

If a current staff member is taking course work/training to become qualified 6 months and proof of enrollment.

- Requiring supervised experience to be observed by the EC or SA administrator rather than the ECCC; Can the ECCC still do this if a center still has one?
- Requiring the EC administrator to be on-site at least 50% of the hours of operation; We believe this should be reduced to 30% of the hours of operations. ****This accounts for a 40 hours work week. Centers may be open longer hours and requiring 50% of time could well exceed 40 hours if covering multiple centers. **Teachers/staff training in center operations and other admin staff that continue oversight.**
- Removing the 20-hour minimum requirement for an EC administrator to be on site; This regulation suggestion contradicts the intent of the above requirement. Centers are in operation for far greater than 40 hours per week. If an administrator cannot be on-site due to staffing shortages, etc. a plan should be in place at each center for who at the center is able to make decisions as the admin and trained in administrative policies.
- Removing the allowance for the EC administrator and ECCC to share being present 60% of hours of operation; This should not be removed. If a center chooses to keep an ECCC this should still be able to be shared.
- Requiring the EC admin or SA admin to conduct performance appraisals; This should also be allowed to be an OR the ECCC if a center has one.

Response: In regard to adding additional pathways for qualifications, OCCL will call a task force in December to review, alter, and expand pathways. In regard to eliminating positions, a center is free to have an additional person support the administrator. The early childhood curriculum coordinator position is being eliminated along with the school-age site coordinator to help centers focus on staffing critical roles. In regard to requiring a program with an administrator without a degree to have an early childhood teacher with a degree, this is the same requirement that is currently in regulation 24.E.2 except the person with the degree does not need to be qualified as an early childhood curriculum coordinator. In regard to the proposed early childhood and school age intern positions needing more education and work experience, due to the current staffing crisis, many centers would be unable to keep classrooms open if higher requirements were resumed. In regard to interns supervising aides, an intern and aide would not be permitted to work in an infant classroom because the regulation states the youngest child an intern may supervise is a toddler. In regard to allowing 3 months to hire an administrator, that is a very long time for a center to operate without having a qualified administrator to operate the program. If a program has documentation that they are making a conscientious effort to fill the position, the program may apply for a time limited variance. In regard to allowing the early childhood administrator to only be on-site for 30 percent of the hours of operation, that is not appropriate because 70% of the time the person who is responsible for the center would not be present. OCCL does not require an early childhood administrator to work at more than one center, that is a business decision. The 20-hour minimum requirement for an administrator to be onsite was removed because the administrator will need to be onsite 50% of the hours of operation. In regard to current early childhood curriculum coordinators being able to observe supervised experience and complete staff members' performance appraisals, the subsections were revised to allow an early child teacher with a degree to complete this task.

(12) Sean Toner, Owner Beach Babies Child Care.

- Beginning July 1, 2023, within 45 days of enrollment, obtaining parent or guardian consent or denial to complete the Department's approved developmental and social emotional screening tool, or documentation giving the licensee consent to complete the screening tool, if the parent or guardian fails to do so. Screenings must be conducted annually for each child who has not begun kindergarten or a higher grade, unless the parent or guardian does not consent; Please explain what is meant by if parent fails to do so. If parent denies screening, will center still be required to complete annually? Will parents be required to sign consent or denial annually or will initial consent/denial signature carry over each year?
- Requiring a licensee to design effective positive behavioral supports or to make reasonable accommodations to comply with provisions in an Individualized Family Service Plan (IFSP) or Individualized Education Plan (IEP); Needs further clarification. Who is to determine what is reasonable vs an unreasonable accommodation?

- Requiring a licensee to ask if a child has an IFSP or IEP during the enrollment process and to discuss any reasonable accommodations or modifications needed by a child with a disability to access the program; This is crossing into a gray area and may open up child care centers to discrimination lawsuits should a family feel that they did not receive care because their child has a IFSP or IEP. I feel that this would be a violation of the American with Disability Act (ADA) and should be further discussed with state and constitutional lawyers.
- Adding information about OCCL procedures regarding suspension to explain that the license is suspended for an Institutional Abuse investigation or law enforcement investigation until the resolution of the investigation; Needs further clarification
- Requiring OCCL to be notified if a child accidentally ingests a medication or drug while at the center that results in medical attention; Any requirement where a child care facility must self-report is a violation of that child care centers Constitutional Rights, specifically the 5th Amendment of self-incrimination and any self-reporting should be removed from the OCCL regulations
- To prevent injuries and death, large objects that pose a risk of falling or tipping must be securely anchored. Large objects include, but are not limited to, televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units; and Needs further clarification as some shelving is designed to be free-standing in the center of rooms and does not support anchoring to floor or walls
- Changing provisional license issuance to be time-limited; Has the time limit of the non-permanent license changed?
- Requiring annual training to be completed at least 30 days before license expiration; This is completely unreasonable as OCCL is now limiting the amount of time that we now have to get our staff their annual training. We as providers do not control the number of trainings nor when they are offered.

Response: The developmental screenings requirement is being stricken at this time while waiting for legislative clarification. See clarification above regarding what a reasonable accommodation means. If the center denies a child services that does not meet the criteria, OCCL will investigate to determine if the center failed to make reasonable accommodations. Asking whether a child has an IEP or IFSP allows the center to determine whether the center can meet the child's specific needs and make reasonable accommodations to allow the child to attend. This is not a violation of the ADA. In regard to suspension procedures, 19.2.5 was added stating a licensee may not be present during an active Institutional Abuse investigation, if that person is alleged to have committed the abuse until the investigation is completed. In regard to reporting an accidental ingestion being a violation of the center's constitutional rights, that is not correct. In regard to free-standing furniture, this furniture does not need to be anchored unless it poses a tipping hazard. The time-limit of a provisional license has changed. In regard to staff training being completed at least 30 days before an annual license expires, this is not reducing the amount of time that staff have to complete their training because, after the initial year of implementation, the individual still has 12 months to meet the requirement. Training completed during the month a license expires simply will be attributed to the next licensing year. In regard to training not being offered, trainings are routinely offered through the Delaware Institute for Excellence in Early Childhood and OCCL accepts all types of community based or online training. These regulations will remain as written.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 933 DELACARE: Regulations for Early Care and Education and School-Age Centers in order to address the current child care staffing crisis. The amended regulation modifies some qualifications and eliminates positions that are less vital to the safety of children and program operations. The amended regulation also provides general clarification to help protect the health, safety, and well-being of children in care. Other changes were made to ensure compliance with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 933 DELACARE: Regulations for Early Care and Education and School-Age Centers. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 933 DELACARE: Regulations for Early Care and Education and School-Age Centers attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 933 DELACARE: Regulations for Early Care and Education and School-Age Centers 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** 933 DELACARE: Regulations for Early Care and Education and School-Age Centers amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 933 DELACARE: Regulations for Early Care and Education and School-Age Centers 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 13, 2022. 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 13th day of May 2022.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 13th day of May 2022

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

933 DELACARE: Regulations for Early Care and Education and School-Age Centers

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 1101

REGULATORY IMPLEMENTING ORDER

1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995). The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should only be amended in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on April 1, 2022. In addition, notice was published in *The News Journal* and the *Delaware State News* on April 1, 2022, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995) in order to comply with 29 **Del.C.** §10407 which requires

regulations to be reviewed on a recurring basis every four years and concluded that the regulation should only be amended in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995) 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** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995) 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 26, 2022. 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 26th day of May 2022.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education
Approved this 26th day of May 2022

***Please note that no changes were made to the regulation as originally proposed and published in the April 2022 issue of the *Register* at page 915 (25 DE Reg. 915). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998...

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1549

ORDER

1549 Dance Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1549 Dance Teacher. The regulation concerns the requirements for a Dance Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Dance Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Dance Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns requests for the Secretary of Education to review standard certificate applications; adding Section 7.0, which concerns the validity of a Dance Teacher Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns recognizing past certificates that were issued by the Department; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Notice of the proposed regulation was published in the *Register of Regulations* on February 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On April 7, 2022, the Professional Standards Board voted to propose 14 DE Admin. Code 1549 Dance Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 Del.C. Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 DE Admin. Code 1549 Dance Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 DE Admin. Code 1549 Dance Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 Del.C. §§1203 and 1205(b), 14 DE Admin. Code 1549 Dance Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 DE Admin. Code 1549 Dance Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 DE Admin. Code 1549 Dance Teacher in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 2nd day of May, 2022.
Department of Education
Mark A. Holodick, Ed.D., Secretary of Education

Approved this 2nd day of May, 2022.

State Board of Education

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

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

***Please note that no changes were made to the regulation as originally proposed and published in the February 2022 issue of the *Register* at page 746 (25 DE Reg. 746). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1549 Dance Teacher

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1550

ORDER

1550 AgriScience Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board, acting in and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1550 AgriScience Teacher. The regulation concerns the requirements for an Agriscience Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising the title of the regulation; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing an Agriscience Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining an Agriscience Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns requests for the Secretary of Education to review standard certificate applications; adding Section 7.0, which concerns the validity of an Agriscience Teacher Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns recognizing past certificates that were issued by the Department; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On April 7, 2022, the Professional Standards Board voted to propose 14 DE Admin. Code 1550 AgriScience Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 Del.C. Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student

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performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1550 AgriScience Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1550 AgriScience Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1550 AgriScience Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1550 AgriScience Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1550 Agriscience Teacher in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 2nd day of May, 2022.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 2nd day of May, 2022.

State Board of Education

/s/ Whitney Townsend Sweeney, President

Audrey J. Noble, Ph.D. (absent)

/s/ Shawn Brittingham, Vice President

/s/ Provey Powell, Jr.

/s/ Candice Fifer

Wali W. Rushdan, II (absent)

/s/ Vincent Lofink

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

***Please note that no changes were made to the regulation as originally proposed and published in the March 2022 issue of the *Register* at page 810 (25 DE Reg. 810). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1550 AgriScience Teacher

PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1564

ORDER

1564 Physical Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1564 Physical Education Teacher. The regulation concerns the requirements for a Physical Education Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. On November 1, 2021, the Professional Standards Board published proposed amendments, including adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Physical Education Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Physical Education Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; and adding sections that concern the validity of a Physical Education Teacher Standard Certificate, disciplinary actions, requests for the Secretary of Education to review standard certificate applications, and past certificates that were issued by the Department. The Professional Standards Board received one written submittal concerning the proposed amendments from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"). GACEC suggested adding education, knowledge, and skill requirements for adapted physical education ("APE") teachers. GACEC commented "[i]f it is not feasible at this time to require certification for all those teaching APE, Council would encourage [the Department] to ensure that teachers without the certification who are serving children in need of APE have access to training and/or technical assistance from certified individuals."

On December 2, 2021, the Professional Standards Board considered GACEC's comment and voted to withdraw the proposed amendments that were published on November 1st and to gather more data and information on adapted physical education.

On February 3, 2022, the Professional Standards Board considered presentations from Sabra Collins, the Department's Education Associate for Physical Education, Health and Wellness, and Frank Hughes who is currently a physical education teacher at the John G. Leach School. Ms. Collins reported that all physical education preparation programs in Delaware include at least one course that addresses adapted physical education. Ms. Collins further reported that physical education teachers work closely with physical and occupational therapists and that adapted physical education teacher training for all teachers is being supported through professional development opportunities shared through SHAPE America, SHAPE Delaware, and other Department resources, including a series of teacher recordings and lesson activities that include adapted physical education. In addition, the Professional Standards Board reviewed data concerning physical education teachers from the 2020-21 school year and discussed that Delaware currently does not have an educational pathway that could lead to an adapted physical education certification. The Professional Standards Board determined that further changes to 14 **DE Admin. Code** 1564 Physical Education Teacher as a result of GACEC's comment were not necessary. In addition, the Professional Standards Board clarified the definition of "Valid and Current License or Certificate" in Section 2.0; added subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history; and added Section 10.0, which concerns applicant's and license holders' contact information. The foregoing changes were not made as a result of GACEC's comment. The Professional Standards Board unanimously voted to publish the proposed amendments that it originally published on November 1st as well as the additional changes that were not made as a result of GACEC's comment.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On April 7, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1564 Physical Education Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1564 Physical Education Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1564 Physical Education Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1564 Physical Education Teacher, attached hereto as Exhibit A,

is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1564 Physical Education Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1564 Physical Education Teacher in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 2nd day of May, 2022.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 2nd day of May, 2022.

State Board of Education

/s/ Whitney Townsend Sweeney, President

Audrey J. Noble, Ph.D. (absent)

/s/ Shawn Brittingham, Vice President

/s/ Provey Powell, Jr.

/s/ Candice Fifer

Wali W. Rushdan, II (absent)

/s/ Vincent Lofink

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

***Please note that no changes were made to the regulation as originally proposed and published in the March 2022 issue of the *Register* at page 815 (25 DE Reg. 815). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1564 Physical Education Teacher

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and 18 Delaware Code, Chapter 50
(18 **Del.C.** §311 & 18 **Del.C.** Ch. 50)
18 **DE Admin. Code** 1801

REGULATORY IMPLEMENTING ORDER

1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the March 1, 2022 edition of the *Register of Regulations*, at 25 **DE Reg.** 832 (03/01/22), the Delaware Department of Insurance (Department) published a notice of its intent to amend Regulation 1801 to comport the regulation with 18 **Del.C.**, Ch. 50 (the Act).

The proposed amendments to the regulation would incorporate changes adopted by the National Association of Insurance Commissioners (NAIC) related to affiliated transactions for insurers in receivership. The adopted changes to the NAIC model law were developed to address the continuation of essential services by affiliates of insurers in receivership, as well as the receiver's access to data and records held by affiliates but belonging to the insurer.

The Department did not hold a public hearing on the proposed amendment. The Commissioner solicited

written comments from the public for thirty (30) days as mandated by 29 Del.C. § 10118(a).

A. Summary of Public Comment

The Department received one comment. The commenter requested the Department clarify the situation in which there are non-NAIC companies within an affiliated holding company who do not maintain records using statutory accounting principles (SAP), but rather report under generally accepted accounting principles (GAAP).

II. FINDINGS OF FACTS

1. The proposed amendments to 18 **DE Admin. Code** 1801 implement model law changes adopted by the National Association of Insurance Commissioners (NAIC) related to affiliated transactions for insurers in receivership.
2. The Commissioner has determined that guidance on handling non-insurer entities within a group is publicly available on the NAIC Group Capital Calculation (E) Working Group page . Persons interested in this information can refer to the link titled "Narrative Summary of the GCC" located within the [Documents](#) tab of that webpage. As such, no additional changes are required to the regulation in response to the public comment.

III. DECISION TO ADOPT THE PROPOSED AMENDMENTS

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt the amendments to 18 **DE Admin. Code** 1801, as herein described.

IV. EFFECTIVE DATE OF ORDER

The effective date of the Regulation shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*, pursuant to 29 **Del.C.** § 10118 and 29 **DE Admin. Code** 101-5.1.

IT IS SO ORDERED.

The 28 day of April, 2022.

Trinidad Navarro
Delaware Department of Insurance

***Please note that no changes were made to the regulation as originally proposed and published in the March 2022 issue of the *Register* at page 832 (25 DE Reg. 832). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

INDUSTRIAL ACCIDENT BOARD

Statutory Authority: 19 Delaware Code, Sections 105(a)(8) and 2301A(i)
(19 **Del.C.** §§105(a)(8) & 2301A(i))
19 **DE Admin. Code** 1331

ORDER

1331 Industrial Accident Board Regulations

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 19 **Del. C.** § 105(a)(8) and 19 **Del. C.** §2301A(i), the Industrial Accident Board (herein "the IAB") proposed to amend its regulations to ensure that respondents represented by counsel will receive a copy of a Petition when it is filed with the IAB. The amendments also require a party challenging a Utilization Review Determination to attach a copy of the determination in dispute when filing the petition.

Notice of a public comment period of thirty (30) days on the IAB's proposed amended regulations was published in the Delaware Register of Regulations for December 1, 2021 in accordance with 29 *Del.C.* §10118(a). This is the IAB's Decision and Order adopting the proposed amended regulations.

II. FINDINGS AND CONCLUSIONS

1. The public was given the required notice of the IAB's intention to adopt the proposed amended regulations and was given ample opportunity to provide the IAB with comments opposing the IAB's plan.
2. There was one public comment in support of the changes provided to the IAB during the written public comment period.
3. There were no public comments at the Public Hearing, held on December 22, 2021.
4. Pursuant to 19 *Del.C.* § 105(a)(8), 19 *Del.C.* §2301A(i), and 19 *DE Admin. Code* 1331, the IAB has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
5. The proposed changes seek to ensure that respondents represented by counsel will receive a copy of a Petition when it is filed with the IAB. The amendments also require a party challenging a Utilization Review Determination to attach a copy of the determination in dispute when filing the petition.
6. Thus, the IAB concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulation.

III. DECISION AND ORDER CONCERNING THE REGULATIONS

AND NOW on this 28th day of April, 2022, it is hereby ordered that:

1. The proposed amendments to the IAB's regulations are adopted;
2. The text of the final regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 *Del.C.* §10118(e); and
4. The IAB reserves to itself the authority to issue such other and further orders concerning its Regulations as it deems appropriate.

BY ORDER OF THE INDUSTRIAL ACCIDENT BOARD:

/s/ Mark Murowany, IAB Chair

/s/ Robert Mitchell

/s/ John Mitchell

/s/ Pat Maul

/s/ Vince D'Anna

/s/ Bill Hare

/s/ Peter Hartranft

/s/ Valencia Hayes

/s/ Mary Dantzer

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

***Please note that no changes were made to the regulation as originally proposed and published in the December 2021 issue of the *Register* at page 620 (25 DE Reg. 620). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1331 Industrial Accident Board Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1 (7 Del.C. §§901(c) & d) & 903(e)(2)a.1)

7 DE Admin. Code 3507

Secretary's Order No.: 2022-F-0005

RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3507: Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

Date of Issuance: April 29, 2022

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del. C. §903(e)(2)a.1, and all other relevant statutory authority, the following findings of fact based on the reasons and conclusions are entered as an order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 Del.C. Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 Del. C. §903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 Del.C. Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission ("ASMFC"), the *Atlantic Coastal Fisheries Cooperative Management Act*, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 Del. C. §903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the Delaware *Register of Regulations*. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 Del. C. §903(e)(2)a.2.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas* as part of an effort to reduce Black Sea Bass mortality in the recreational fishery by adopting specified management measures approved by the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its March 24, 2022 meeting. Specifically, this amendment increases the recreational minimum size limit for Black Sea Bass by one half inch, from 12.5 to 13 inches and reduces the open season by 20 days, closing on December 11 instead of December 31.

The estimated 2021 recreational Black Sea Bass harvest exceeded the Recreational Harvest Limit (RHL) by 28%, thus the Board was required to take action to constrain the 2022 recreational Black Sea Bass harvest to the 2022 RHL. The Board has required all regions in the management unit to develop management measures that are expected to reduce the 2022 recreational harvest by at least 20.7% in their region and thus constrain harvest to the RHL for the management unit. The Southern Black Sea Bass Region, to which Delaware belongs, proposed and had approved by the Board the aforementioned measures that increase the minimum size limit and shorten the season.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas* pursuant to 7 Del. C. §§901 (c & d) and 903(e)(2)a.1. This specific management measure is required by the ASMFC Summer Flounder, Scup, and Black Sea Bass Board to keep Delaware compliant with the ASMFC Addendum XXXII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan: Summer Flounder and Black Sea Bass Recreational Management.

ORDER

In accordance with 7 Del. C. §903(e)(2)a.1, it is hereby ordered, this 29th day of April, 2022 that the above referenced amendments to 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 Del. C. §903(e)(2)a.2.

Shawn M. Garvin
Secretary

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven ~~(11)~~ inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than ~~twelve and one-half (12.5)~~ thirteen inches total length excluding any caudal filament.
- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred to an eligible transferee as defined in 7 Del.C. §2903, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.
- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC Atlantic States Marine Fisheries Commission, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 pertaining to black sea bass and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the pot fishery in any year will not exceed six.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the commercial hook and line fishery in any year will not exceed thirteen.
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.

- Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned an equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
- 9.1 A maximum of one transfer per year per person.
- 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
- 10.1 A maximum of one transfer per year per person.
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 a.m. ~~January 4~~ December 12, and ending midnight May 14.
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 15 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period May 15 through December ~~34~~ 11.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1 (7 **Del.C.** §§901(c) & d) & 903(e)(2)a.1)
7 DE Admin. Code 3511

Secretary's Order No.: 2022-F-0006

**RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3511:
*Summer Flounder Size Limits; Possession Limits; Season***

Date of Issuance: April 29, 2022

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website

3511 Summer Flounder Size Limits; Possession Limits; Season

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del. C. §903(e)(2)a.1, and all other relevant statutory authority, the following findings of fact based on the reasons and conclusions are entered as an order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 Del.C. Ch. 101 (which sets forth the standardized procedures whereby a state agency shall

promulgate regulations), the Department also has the statutory authority under 7 *Del. C.* §903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 *Del.C.* Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission ("ASMFC"), the *Atlantic Coastal Fisheries Cooperative Management Act*, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 *Del. C.* §903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the Delaware *Register of Regulations*. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 *Del. C.* §903(e)(2)a.2.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Season* as part of an effort to allow increased harvest in the Summer Flounder recreational fishery by adopting specified management measures approved by the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its March 24, 2022 meeting. Specifically, this amendment decreases the recreational minimum size limit for Summer Flounder by one half inch, from 16.5 to 16 inches.

The estimated 2021 recreational Summer Flounder harvest was 16% below the Recreational Harvest Limit (RHL), thus the Board took action to allow a modest increase in the 2022 recreational Summer Flounder harvest while still constraining harvest to the 2022 RHL. The Board allowed all regions in the management unit to develop management measures that may increase 2022 recreational harvest by up to 16% in their region and still constrain harvest to the RHL for the management unit. The Delmarva Summer Flounder Management Region, to which Delaware belongs, proposed and had approved by the Board, the measure decreasing the minimum size.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Season* pursuant to 7 *Del. C.* §§901 (c & d) and 903(e)(2)a.1. This specific management measure is required by the ASMFC Summer Flounder, Scup, and Black Sea Bass Board to keep Delaware compliant with the ASMFC Addendum XXXII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan: Summer Flounder and Black Sea Bass Recreational Management.

ORDER

In accordance with 7 *Del. C.* §903(e)(2)a.1, it is hereby ordered, this 29th day of April, 2022 that the above referenced amendments to 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Season*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 *Del. C.* §903(e)(2)a.2.

Shawn M. Garvin
Secretary

3511 Summer Flounder Size Limits; Possession Limits; Season

3511 Summer Flounder Size Limits; Possession Limits; Season

(Penalty Section 7 *Del.C.* §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

-
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than sixteen ~~and one half (16.5)~~ inches between the tip of the snout and the furthest tip of the tail.
- 3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than sixteen ~~and one half (16.5)~~ inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.
- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen ~~(14)~~ inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:
- 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;
 - 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or
 - 4.3 A bill of lading while transporting fresh or frozen summer flounder.
 - 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.
- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.
- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than four ~~(4)~~ summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.
-

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1 (7 Del.C. §§901(c & d) & 903(e)(2)a.1)

7 DE Admin. Code 3526

Secretary's Order No.: 2022-F-0007

RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3526:
Scup

Date of Issuance: April 29, 2022

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website

3526 Scup Size Limit

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del. C. §903(e)(2)a.1, and all other relevant statutory authority, the following findings of fact based on the reasons and conclusions are entered as an order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 Del.C. Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 Del. C. §903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 Del.C. Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission ("ASMFC"), the *Atlantic Coastal Fisheries Cooperative Management Act*, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 Del. C. §903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the Delaware *Register of Regulations*. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 Del. C. §903(e)(2)a.2.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3526: *Scup* as part of an effort to reduce *Scup* mortality in the recreational fishery by adopting specified management measures approved by the ASMFC's Summer Flounder, *Scup*, and Black Sea Bass Board ("Board") at its December 14, 2021 meeting. Specifically, this amendment increases the recreational minimum size limit for *Scup* by one inch, from 8 to 9 inches.

The estimated 2021 recreational *Scup* harvest exceeded the Recreational Harvest Limit (RHL) by 56%, thus the Board was required to take action to constrain the 2022 recreational *Scup* harvest to the 2022 RHL. The action taken by the Board and the Mid-Atlantic Fishery Management Council, requires all states in the management unit to increase their recreational minimum size limit by one inch. To meet the federal waters recreational size limit increase, the size limit is increased from 8 to 9 inches. This action is expected to reduce 2022 recreational harvest by at least 33% and constrain harvest to the RHL.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3526: *Scup* pursuant to 7 Del. C. §§901 (c & d) and 903(e)(2)a.1. This specific management measure is required by the ASMFC Summer Flounder, *Scup*, and Black Sea Bass Board to keep Delaware compliant with the ASMFC Fishery Management Plan and Addendum I for *Scup*.

ORDER

In accordance with 7 *Del. C.* §903(e)(2)a.1, it is hereby ordered, this 29th day of April, 2022 that the above referenced amendments to 7 DE Admin. Code 3526: *Scup*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 *Del. C.* §903(e)(2)a.2.

Shawn M. Garvin
Secretary

3526 Scup Size Limit

3526 Scup Size Limit.

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession any scup, *Stenotomus chrysops*, that measures less than ~~eight (8)~~ nine inches, total length
- 2.0 It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to possess any scup that measures less than nine ~~(9)~~ inches, total length.
- 3.0 It shall be unlawful for any commercial finfisherman to sell, trade or barter or attempt to sell, trade or barter any scup or part thereof that is landed in this State by said commercial finfisherman after a date when the de minimis amount of commercial landings of scup is determined to have been landed in this State by the Department. The de minimis amount of scup shall be 0.1% of the coastwide commercial quota as set forth in the Scup Fishery Management Plan approved by the Atlantic State Marine Fisheries Commission.
- 4.0 It shall be unlawful for any recreational fisherman to have in possession more than 50 scup at or between the place where said scup were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 2900 REAL ESTATE COMMISSION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))
24 **DE Admin. Code** 2900

ORDER

2900 Real Estate Commission

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on April 14, 2022 at a scheduled meeting of the Delaware Real Estate Commission ("the Commission") to receive comments regarding proposed amendments to the Commission's Regulations. The Commission proposed revisions to the regulations pertaining to advertising and posting of permanent office signs.

The proposed changes to the Guidelines were published in the *Register of Regulations*, Volume 25, Issue 9, on March 1, 2022. Notice of the April 14, 2022 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was April 29, 2022, 15 days following the public hearing. The Commission deliberated on the proposed revisions at its regularly scheduled meeting on May 12, 2022.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

There was no verbal testimony given at the public hearing on April 14, 2022. Further, no written comments were received by the Commission.

Findings of Fact and Conclusions

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

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

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

Decision and Effective Date

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

IT IS SO ORDERED this 12th day of May 2022.

DELAWARE REAL ESTATE COMMISSION

/s/ Nora Martin, Professional Member, Chairperson

/s/ Lynn Rogers, Public Member

/s/ Randy Marvel, Professional Member

/s/ Beverly Zimmerman, Public Member

/s/ Deborah Cottrell, Public Member, Secretary

/s/ Jeff Olmstead, Professional Member

/s/ Lynette Scott, Professional Member

/s/ Robert Director, Public Member

/s/ Nikki Lane, Professional Member

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

***Please note that no changes were made to the regulation as originally proposed and published in the March 2022 issue of the *Register* at page 842 (25 DE Reg. 842). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2900 Real Estate Commission

DEPARTMENT OF TRANSPORTATION TRAFFIC ENGINEERING SECTION

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Clarks Corner Road (N378)

May 19, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on Clarks Corner Road (N378)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

GENERAL NOTICES

TRAFFIC ENGINEERING SECTION

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 Del.C. §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Colton Meadows

May 19, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on the local roadways in the Colton Meadows Subdivision

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

TRAFFIC ENGINEERING SECTION

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1

April 27, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

- "No Trucks Over 2 Axles Except Local Services" on Lore Avenue (N100380) between Marsh Road (N023) and Governor Printz Boulevard (N050)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

GENERAL NOTICES

TRAFFIC ENGINEERING SECTION

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 Del.C. §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - St. George's Community

May 19, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on Broad Street (N034D)

"No Trucks Over 2 Axles Except Local Services" on Church Street (N034F)

"No Trucks Over 2 Axles Except Local Services" on Main Street (N034E) between Kirkwood St Georges Road (N409) and the Chesapeake and Delaware Canal

"No Trucks Over 2 Axles Except Local Services" on Delaware Street (N378)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

TRAFFIC ENGINEERING SECTION

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - St. George's Heights

May 19, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on the local roadways in the St. George's Heights Subdivision

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold its quarterly business meeting on Wednesday, June 8, 2022 commencing at 10:30 a.m. The business meeting will be conducted both remotely and in person at the Chase Center on the Riverfront located at 815 Justison Street, Wilmington, DE, in the Center's Dravo Auditorium. Details about the remote platform, any Covid protocols for the in-person business meeting venue, and an agenda will be posted on the Commission's website, www.drbc.gov, at least ten (10) days prior to the meeting date.

For additional information, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION
PUBLIC NOTICE
1001 Thoroughbred Racing Rules and RegulationsSummary

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the proposed regulations is to amend Rule 15.11 to update references to incorporate the current version of Association of Racing Commissioner's (ARCI) Rules regarding laboratory testing and standards. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the June 1, 2022 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: https://regulations.delaware.gov/register/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before July 1, 2022. Written materials submitted will be available for inspection at the above address.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education meets monthly. These meetings are open to the public. The Board rotates locations of regular meetings among the three counties.

Meeting information can be accessed via the public meeting calendar.

Meeting materials available on the State Board of Education's eBoard site (https://simbli.eboardsolutions.com/SB_Meetings/SB_MeetingListing.aspx?S=190001). (If you are having technical difficulties accessing the site, please try a different browser.)

The next meeting is scheduled for June 16, 2022.

Information regarding special meetings or Committee meetings of the State Board will be posted on the public meeting calendar.

Minutes from recent State Board of Education meetings can be found on the public meeting calendar. Audio recordings are available after every Board meeting (<https://www.doe.k12.de.us/domain/225>).
Public meeting calendar: <https://publicmeetings.delaware.gov/#/search?anyall=any&agencyid=22&startdateinclusive=2019-01-01>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF HEALTH CARE QUALITY

PUBLIC NOTICE

3220 Training and Qualifications for Certified Nursing Assistants

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 30A, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Training and Qualifications for Certified Nursing Assistants.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 263 Chapman Road, Cambridge Building, Suite 200, Newark, Delaware 19702, or by email to Corinna.Getchell@Delaware.gov or by fax to 302-421-7401 by 4:30 p.m. on July 1, 2022. Please identify in the subject line: Regulations Governing Training and Qualifications for Certified Nursing Assistants.

The action concerning the determination of whether to adopt the proposed regulations 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.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Third Party Liability

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding third party liability.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on July 1, 2022. Please identify in the subject line: Third Party Liability.

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.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Incarcerated Individuals Medicaid Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual

(DSSM) regarding the Incarcerated Individuals Medicaid Program.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on July 1, 2022. Please identify in the subject line: Incarcerated Individuals Medicaid Program.

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.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Guardianship Fees - Post-Eligibility Protection of Income

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on July 1, 2022. Please identify in the subject line: Guardianship Fees - Post-Eligibility Protection of Income.

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.

DIVISION OF PUBLIC HEALTH

PUBLIC NOTICE

4455 Delaware Regulations Governing a Detailed Plumbing Code

Pursuant to 16 **Del.C.** §122(3)(e) and § 7903, the Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to the Delaware Regulations Governing a Detailed Plumbing Code. On June 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Delaware Regulations Governing a Detailed Plumbing Code. The revisions include the adoption of the 2021 International Plumbing Code with amendments.

Copies of the proposed regulations are available for review in the June 1, 2022 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Friday, July 1, 2022, at:

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

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DELAWARE COUNCIL ON POLICE TRAINING****PUBLIC NOTICE****801 Regulations of the Delaware Council on Police Training**

The Council on Police Training (COPT), pursuant to 11 Del. C. 8404 (a)(14) and (c), proposed to amend its regulations to add Mandatory Standards for Use of Body Worn Cameras (the "Mandatory Standards"). The proposed amendments, which were voted on during a public meeting of the COPT, on November 17, 2021, sought to add these mandatory standards to COPT's existing Regulation 801. The proposed amendments were published in the *Register Regulations* and provided for a public comment period through January 31, 2022. 25 **DE Reg.** 673 (01/01/22).

The COPT received public comments from the Delaware Department of Justice, the Governor's Advisory Council for Exceptional Citizens, and the State Council for Persons with Disabilities. Those comments were first considered by a COPT-appointed subcommittee and then by the full COPT at a public meeting held April 12, 2022. After considering the comments and the recommendations made by the subcommittee, COPT voted unanimously to further amend the regulations pertaining to the Mandatory Standards and to re-open a public comment period. These further amendments include (1) adding language to the definition of School Resource Officers; (2) adding additional considerations for such officers; (3) adding an additional circumstance allowing an officer not to activate a body worn camera; and (4) adding additional considerations of releasing body worn camera videos of use-of-force incidents involving death or serious bodily injury.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the COPT Attn: Susan McNatt P.O. Box 430, Dover DE 19903 or e-mail susan.a.mcnatt@delaware.gov. Any written submission in response to this notice and the relevant proposed regulations must be received by the COPT no later than 4:30 p.m. (EST) on July 1, 2022. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION****PUBLIC NOTICE****1900 Board of Nursing**

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise its regulations to clarify the process for APRNs to assign medication administration to medical assistants; to create regulations pertaining to the waiver of the state e-prescribing requirement; to add regulations pertaining to the closure of a nursing school; and clean up minor errors through the regulations.

The Board will hold a public hearing on the proposed regulation changes on July 13, 2022 at 9:00 a.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 28, 2022 pursuant to 29 **Del.C.** §10118(a).