
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 February 15, 2008.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

9 **DE Reg.** 1036-1040 (01/01/06)

Refers to Volume 9, pages 1036-1040 of the *Delaware Register* issued on January 1, 2006.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
April 1	March 17	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 16	4:30 p.m.
August 1	July 15	4:30 p.m.

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Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

School-Based Wellness Center Services

Nature of the Proceedings:

This emergency regulation is being promulgated to amend the Title XIX Medicaid State Plan to add specific reimbursement methodology language for School-Based Wellness Center Services. Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) must take this action on an emergency basis to ensure access to quality healthcare. The Department has determined that a threat to the public welfare exists if it is not implemented without prior notice or hearing.

Nature of Proposed Amendment:

The Delaware Medical Assistance Program (DMAP) reimburses providers for school-based wellness center services. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. Although, the reimbursement methodology for these services is in effect, there is no method and standard for reimbursement of this covered service in the Title XIX Medicaid State Plan. Agency state plan pages are being revised to add specific reimbursement methodology language for School-Based Wellness Center Services.

Summary of the Proposed Amendment:

School-Based Wellness Center Clinic Services provide primary prevention and early intervention services, including physical examinations, treatment of acute medical problems, community referrals, counseling and other supportive services to children in school or educational settings.

The Centers for Medicare and Medicaid Services (CMS) advised the State Agency to revise the Title XIX

Medicaid State Plan to add specific reimbursement methodology language for School-Based Wellness Center Services.

School-Based Wellness Center Services, operated by the Division of Public Health in Delaware schools, are reimbursed a single rate once each benefit year for any client served in one of the school-based clinics. The single rate is based on prior year statewide costs of all School-Based Wellness Centers.

No change will be made to the services provided under the school-based wellness services benefit.

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

This emergency regulation is also published concurrently herein under "Proposed Regulations" to allow for public comment.

Findings of Fact:

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of this state plan amendment to add specific reimbursement methodology language for School-Based Wellness Center Services. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, to assure compliance with relevant Federal Medicaid rules, that the proposed revisions to the Title XIX Medicaid State Plan regarding School-Based Wellness Center Clinic Services be adopted on an emergency basis without prior notice or hearing.

Vincent P. Meconi, Secretary, DHSS, January 31, 2008

**DMMA EMERGENCY ORDER REGULATIONS #08-03
REVISIONS:**

ATTACHMENT 3.1-A
Page 4

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: DELAWARE

AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE
CATEGORICALLY NEEDY

9. Clinic Services

Clinic services are limited to the following:

- ~~Medical~~ Medical or rehabilitation clinics (including Mental Health clinics which require certification by the Division of Substance Abuse and Mental Health (DSAMH) as part of the Single State Agency for Medicaid) and
- State Licensed Free Standing Surgical Centers (FSSCs) which equate to Federally defined Ambulatory ~~Surgical Centers (ACs)~~ Surgical Centers (ACs) using related policies for ACSs described in Sections 2265 and 2266 of the Medicare Carriers Manual.
- School-Based Wellness Center Clinic Services that provide primary prevention and early intervention services, including physical examinations, treatment of acute medical problems, community referrals, counseling and other supportive services to children in school or educational settings.

(Break In Continuity of Sections)

Medical/Dental free-Standing Clinics are paid either a negotiated flat rate or as physicians are paid (see above). School-Based Wellness Center Services, operated by the Division of Public Health in Delaware schools, are reimbursed a single rate once each benefit year for any client served in one of the school-based clinics. The single rate is based on prior year statewide costs of all School-Based Wellness Centers.

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 877

Educational Impact Analysis Pursuant To 14 Del.C. Section 122(d)**877 Tobacco Policy****A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 877 Tobacco Policy by adding a provision that an electronic copy of the current regulation is on file at the Department of Education.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 4, 2007 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 FEDERAL STREET, SUITE 2, DOVER, DELAWARE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to a requirement that districts and charter schools have a policy on the prohibition of the use or distribution of tobacco products and not directly related to improving student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to a requirement that districts and charter schools have a policy on the prohibition of the use or distribution of tobacco products and not directly related to students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to a requirement that districts and charter schools have a policy on the prohibition of the use or distribution of tobacco products and continues to ensure that all students' health and safety

are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to a requirement that districts and charter schools have a policy on the prohibition of the use or distribution of tobacco products and continues to 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? This regulation is related to a requirement that districts and charter schools have a policy on the prohibition of the use or distribution of tobacco products and continues to ensure the necessary authority and flexibility 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? This regulation is related to a requirement that districts and charter schools have a policy on the prohibition of the use or distribution of tobacco products and does not place unnecessary reporting or administrative requirements on local districts or schools.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is related to a requirement that districts and charter schools have a policy on the prohibition of the use or distribution of tobacco products and continues to ensure the decision making is at the local district and school level.

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? This regulation is related to a requirement that districts and charter schools have a policy on the prohibition of the use or distribution of tobacco products and does not affect other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is related to a requirement that districts and charter schools have a policy on the prohibition of the use or distribution of tobacco products and there is not a less burdensome method of addressing the purpose of this regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost for compliance with this amended regulation.

877 Tobacco Policy

1.0 Required Policy

In order to improve the health of students and school personnel, each school district and charter school in Delaware shall have a policy which at a minimum:

1.1 Prohibits the use of or distribution of tobacco products in school buildings, on school grounds, in school leased or owned vehicles, even when they are not used for student purposes, and at all school affiliated functions.

1.2 Includes procedures for communicating the policy to students, school staff, parents, guardians or Relative Caregivers, families, visitors and the community at large.

1.3 Makes provisions for or refers individuals to voluntary cessation education and support programs that address the physical and social issues associated with nicotine addiction.

2.0 The Tobacco Policy Shall Apply to

2.1 Any building, property or vehicle leased, owned or operated by a school district, charter school or assigned contractor.

2.1.1 School bus operators under contract shall be considered staff for the purpose of this policy.

2.2 Any private building or other property including automobiles or other vehicles used for school activities when students and staff are present.

2.3 Any non educational groups utilizing school buildings or other educational assets.

2.4 Any individual or a volunteer who supervises students off school grounds.

3.0 No School or School District Property May Be Used for the Advertising of any Tobacco Product

4.0 Reporting Requirements and Timelines

4.1 Each public school district and charter school shall have an electronic copy of its current tobacco policy on file with the Department of Education.

4.2 Each public school district and charter school shall provide an electronic copy of any tobacco policy within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.

1 DE Reg. 1807 (05/01/98)

6 DE Reg. 1504 (05/01/03)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 3110 (14 **Del.C.** §§122(b) & 3310)
14 **DE Admin. Code** 923

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

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. The amendments include a delay of Response to Intervention (Rtl) implementation for elementary mathematics and reading and mathematics in secondary schools, clarifies the screening tool utilization, allows for greater flexibility for implementing interventions, and allows schools to use the same procedures for identifying students with disabilities for Tier 2 interventions as students without disabilities.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. There will a public hearing on April 1, 2008 at the John W. Collette Education Resource Center, 35 Commerce Way, Dover, DE 19904 from 6:00-8:00 p.m. in the large conference room. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation should help to ensure improvement of student achievement against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation should help to ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation should help to ensure that 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 should help to ensure 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 any current authority or flexibility of 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 additional reporting requirements or mandates upon decision makers at the local board and school levels.

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 make any changes to the where the decision making or accountability is.

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 other state educational policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments do not increase any current costs to the State or to local school boards or charter schools for compliance.

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

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

(Break in Continuity of Sections)

11.0 Child Find and Identification of Eligible Individuals

11.1 General: As used in these regulations, identification has two (2) purposes: to identify those individuals who require special education; and to identify individuals who need general education interventions. Each LEA and any other public agency responsible for the education of children with disabilities shall establish and implement ongoing evaluation procedures consistent with this section to identify, locate and evaluate all children residing within the confines of the LEA or other public agency, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services.

11.2 Children with developmental delay: The following provisions apply with respect to implementing the child find requirements of this section:

11.3 The definition of developmental delay adopted by the State under 14 **DE Admin. Code** 925.6.7 applies to children aged three (3) through nine (9).

11.4 An LEA is not required to adopt and use the term developmental delay for children within its boundaries.

11.5 If an LEA uses the term developmental delay for children, the LEA shall conform to both the State's definition of that term and to the age range that has been adopted by the State (i.e., ages three (3) through nine (9)).

11.6 Other children in child find: Child find also shall include children who are suspected of being a child with a disability as defined in 14 **DE Admin. Code** 922.3.0 and in need of special education, even though they are advancing from grade to grade; and highly mobile children, including migrant children.

11.7 Health, hearing, vision and orthopedic screening shall be conducted as specified in 14 **DE Admin. Code** 815.

11.8 Rule of Construction. Nothing in these regulations requires that children be classified by their disability so long as each child who has a disability that is listed in 14 **DE Admin. Code** 922.3.0 (in the definition of child with a disability) and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

11.9 Problem Solving in General Education and ~~Intervention~~ Instructional Support Teams

11.9.1 ~~Problem solving in general education classroom and Intervention Support Teams~~ instructional support teams: *The identification and child find procedures required in 11.0, shall include a systematic problem solving process to examine the nature and severity of an educationally related problem. These procedures shall primarily focus on variables related to developing effective educationally related interventions. Active parent participation is an integral aspect of the process and is solicited throughout. At a minimum, the*

process shall include:

11.9.1.1 *Description of problem: The presenting problem or behavioral concern is described in objective, measurable terms that focus on alterable characteristics of the individual and the environment. The individual and environment are examined through systematic data collection. The presenting problem or behavioral concern are defined in a problem statement that describes the differences between the demands of the educational setting and the individual's performance.*

11.9.1.2 *Data collection and problem analysis: A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern is used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern are used to plan and monitor interventions. Data collected are relevant to the presenting problem or behaviors of concern and are collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures are individually tailored, valid for the concern addressed, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.*

11.9.1.3 *Intervention design and implementation: Interventions are designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions are described in an intervention plan that includes goals and strategies, a progress monitoring plan, a decision making plan for summarizing and analyzing progress monitoring data, and responsible parties. Interventions are implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.*

11.9.1.4 *Progress monitoring: Systematic progress monitoring is conducted which includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.*

11.9.1.5 *Evaluation of intervention effects: The effectiveness of interventions is evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized. Decisions regarding the effectiveness of interventions focus on comparisons with initial levels of performance and rate of progress toward meeting grade level expectations.*

11.9.2 *The identification and child find procedures required in 11.0, shall also include procedures to establish, and to refer students to, school or program based ~~intervention~~ instructional support teams. The agency's procedures shall include the following requirements:*

11.9.2.1 *The ~~intervention~~ instructional support team shall include members collectively qualified to assist in the identification of instructional and behavioral intervention strategies for learning and behavioral problems and needs.*

11.9.2.2 *The ~~intervention~~ instructional support team process shall ensure that a student's learning and behavioral needs are comprehensively assessed. It shall include consideration, as appropriate, of curriculum based assessment measures, analyses of instructional variables, systematic observations, functional assessments and current health information.*

11.9.2.3 *Baseline and ~~outcome~~ progress monitoring data shall be collected and used to inform intervention strategies.*

11.9.2.4 *All initial referrals to the ~~intervention~~ instructional support team shall be in writing. Written documentation of the ~~intervention~~ instructional support team process shall be maintained for each student.*

11.9.2.5 *The ~~intervention~~ instructional support team process may or may not lead to referral for initial evaluation to determine eligibility for special education services.*

11.9.2.5.1 *When the ~~intervention~~ instructional support team determines the student should be evaluated to determine eligibility for special education services, the team shall forward a written recommendation to an appropriate, designated staff member within ten (10) school days.*

11.9.2.5.2 *Within ten (10) school days of the recommendation, the student's parents shall be notified in writing of the team's recommendation that the student be evaluated for special education services. The notification shall include a request for parental consent for initial evaluation.*

11.9.2.5.3 *Referrals for an individual student that do not contain all required information and documentation, including the data and other evidence described in 11.9.2.2 and 11.9.2.3, may be returned to the ~~intervention~~ instructional support team with a request that they be supplemented. Parental notification of the team's recommendation, and the request for consent for initial evaluation, shall still occur within ten (10) school days of the initial team recommendation.*

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3); 14 Del.C. §3110)

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

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §§122(b) & 3310)
14 DE Admin. Code 925

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

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

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. The amendments include a delay of Response to Intervention (RtI) implementation for elementary mathematics and reading and mathematics in secondary schools; clarifies the screening tool utilization; allows for greater flexibility for implementing interventions; and allows schools to use the same procedures for identifying students with disabilities for Tier 2 interventions as students without disabilities.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. There will a public hearing on April 1, 2008 at the John W. Collette Education Resource Center, 35 Commerce Way, Dover, DE 19904 from 6:00-8:00 p.m. in the large conference room. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation should help to ensure improvement of student achievement against state standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation should help to ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation should help to ensure that 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 should help to ensure 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 any current authority or flexibility of 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 additional reporting requirements or mandates upon decision makers at the local board and school levels.

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 make any changes to the where the decision making or accountability is.

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 other state educational policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments do not increase any current costs to the State or to local school boards or charter schools for compliance.

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

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

(Break in Continuity of Sections)

6.0 Determination of Eligibility

6.1 General: Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child shall determine whether the child is a child with a disability, as defined in 14 **DE Admin. Code** 922.3.0, in accordance with 6.2 and the educational needs of the child; and the public agency shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. *The evaluation report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.*

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

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

6.2.2 Lack of appropriate instruction in math; or

6.2.3 Limited English proficiency; and

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

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

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

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

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

shall apply the eligibility requirements of 6.11 and 7.0 through 12.0 as appropriate to the child's grade level as of the date of the reevaluation.

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

6.5 Other Eligibility requirements and exit criteria.

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

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

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

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

6.5.4.1 the child reaches his or her 21st birthday. *A child with a disability who reaches his or her 21st birthday after August 31 may continue to receive special education and related services until the end of the school year, including appropriate summer services through August 31; or*

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

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

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

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

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

6.6.1.1.1 Use of multiple nonverbal behaviors to regulate social interactions;

6.6.1.1.2 Development of peer relationships;

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

6.6.1.1.4 Social or emotional reciprocity.

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

6.6.1.2.1 A qualitative impairment in communication, as manifested by:

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

6.6.1.2.1.2 Relative failure to initiate or sustain a conversation with

others;

6.6.1.2.1.3 Stereotyped, idiosyncratic, or repetitive speech; or

- imitative play.
- 6.6.1.2.1.4 A lack of varied, spontaneous make believe play or social
- manifested by:
- 6.6.1.2.2 Restricted, repetitive, and stereotyped patterns of behavior, as
- restricted patterns of interest;
- 6.6.1.2.2.1 Encompassing preoccupation or circumscribed and
- nonfunctional routines and rituals;
- 6.6.1.2.2.2 Apparently compulsive adherence to specific,
- 6.6.1.2.2.3 Stereotyped and repetitive motor mannerisms; or
- 6.6.1.2.2.4 Persistent preoccupation with parts and sensory qualities
- of objects.
- 6.6.1.3 All students with an educational classification of autism have impairments
- that:
- 6.6.1.3.1 Are inconsistent with the student's overall developmental and
- functional level; and
- 6.6.1.3.2 Result in an educationally significant impairment in important
- areas of functioning; and
- 6.6.1.3.3 Are a part of a clear pattern of behavior that is consistently
- manifested across a variety of people, tasks and settings, and that persists across a significant period of time; and
- 6.6.1.3.4 Are not primarily accounted for by an emotional disorder.
- 6.6.2 An educational classification of autism is established:
- 6.6.2.1 Using specialized, validated assessment tools that provide specific
- evidence of the features of ASD described above;
- 6.6.2.2 By individuals who have specific training in the assessment of students
- with ASD in general, and in the use of the assessment procedures referred to in 6.6.2.1; and
- 6.6.2.3 Based upon an observation of the student in a natural education
- environment, an observation under more structured conditions, and information regarding the student's behavior at
- home.
- 6.6.3 Age of Eligibility: The age of eligibility for children with autism shall be from birth through
- age 20, inclusive.
- 6.7 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young
- child who exhibits a significant delay in one or more of the following developmental domains: cognition,
- communication (expressive and receptive), physical (gross motor and fine motor) social emotional functioning and
- adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing
- impairment.
- 6.7.1 In order for an IEP team to determine eligibility for special education services under the
- Developmental Delay category, the following is required:
- 6.7.1.1 Standardized test scores of 1.5 or more standard deviations below the
- mean in two or more of the following developmental domains: cognition, communication (expressive and/or
- receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior; or
- 6.7.1.2 Standardized test scores of 2.0 or more standard deviations below the
- mean in any one of the developmental domains listed above; or
- 6.7.1.3 Professional judgment of the IEP team that is based on multiple sources
- of information used in the assessment process and with justification documented in writing in the evaluation report
- of a significant difference between the child's chronological age and his or her current level of functioning. A
- significant difference is defined as a minimum of a 25% delay in comparison to same aged peers.
- 6.7.2 Multiple sources and methods of information shall be used in the determination of
- eligibility for service provision. An assessment shall include, but not be limited to, the following sources of
- information:
- 6.7.2.1 Developmental and medical history;
- 6.7.2.2 Interview with the child's parent or primary caregiver;
- 6.7.2.3 Behavioral observations;
- 6.7.2.4 Standardized norm referenced instruments; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.11 Eligibility Criteria for Learning Disability:

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

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

6.11.3 Phase in of response to intervention procedures:

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

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

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

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

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

6.12.1 A level of intellectual functioning, as indicated below:

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

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

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

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

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

6.12.3.1 This requirement shall apply no later than the beginning of the 2008-2009 school year for children in elementary school (as elementary school is defined by the public agency), ~~and no later than the beginning of the 2009-2010 school year for all other children.~~ In the case of mathematics for elementary school and all other students, implementation shall be on a timeline and scheduled as defined by the DOE.

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

6.12.4 Age of Eligibility: The age of eligibility for children identified as Trainable Mental Disability and Severe Mental Disability shall be from the third birthday through 20 years, inclusive. Children identified as Educable Mental Disability shall be from the fourth birthday through 20 years, inclusive. These children may be served at age 3, as having a Developmental Delay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.14.2.1.5 Often has difficulty organizing tasks and activities;

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

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

6.14.2.1.8 Is often easily distracted by extraneous stimuli;

6.14.2.1.9 Is often forgetful in daily activities; or

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

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

6.14.2.2.2 Often leaves seat in classroom or in other situations in which remaining seated is expected;

6.14.2.2.3 Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);

6.14.2.2.4 Often has difficulty laying or engaging in leisure activities quietly;

6.14.2.2.5 Is often "on the go" or often acts as if "driven by a motor";

6.14.2.2.6 Often talks excessively;

- 6.14.2.2.7 Often blurts out answers before questions have been completed;
- 6.14.2.2.8 Often has difficulty waiting turn;
- 6.14.2.2.9 Often interrupts or intrudes into conversations or games; and
- 6.14.2.3 Some hyperactive impulsive or inattentive symptoms that caused impairment were present before seven years of age;
- 6.14.2.4 A clear pattern that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time;
- 6.14.2.5 Clear evidence of clinically significant impairment in social, academic or occupational functioning; and
- 6.14.2.6 The symptoms do not occur exclusively during the course of a pervasive developmental disorder, schizophrenia, or other psychotic disorder, and are not better accounted for by another mental disorder (e.g. mood disorder, anxiety disorder, dissociative disorder, or personality disorder).
- 6.14.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:
- 6.14.3.1 Written documentation from the formative intervention process used with the student under 14 **DE Admin. Code** 923.11.9 (relating to referral to ~~Intervention Support Team~~ Instructional support team). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected, and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and
- 6.14.3.2 Medical records documenting the health impairment or, in the case of students with ADD and ADHD, medical or or psychological records documenting that a child has such health impairment and determination by a school team of qualified evaluators, or, in the case of re evaluation, the IEP team, including the school psychologist, that the child exhibits the criteria listed in 4.11.2.
- 6.14.4 For purposes of initial eligibility or continued eligibility determination, the school psychologist and the school nurse shall be members of the IEP team.
- 6.14.5 Age of Eligibility: The age of eligibility for children with Other Health Impairments shall be from the third birthday through 20 years, inclusive.
- 6.15 Eligibility Criteria for Speech and/or Language Impairment: In determining eligibility under the Speech and Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech and Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; or a voice disorder.
- 6.15.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.
- 6.16 Eligibility Criteria for Traumatic Brain Injury. A qualified physician shall document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.
- 6.16.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.
- 6.16.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.
- 6.17 Eligibility Criteria for Visual Impairment including Blindness:
- 6.17.1 Blindness shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.
- 6.17.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease, condition or impairment of the eye or visual system that seriously affects visual function directly, not perceptually. Partially sighted shall also include a degenerative eye disease, which in the opinion of a licensed ophthalmologist or optometrist, is expected to reduce, in the future, either visual acuity or visual field, resulting in partial sight or blindness. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual perceptual or visual motor dysfunction resulting solely from a learning disability.
- 6.17.3 A licensed ophthalmologist or optometrist shall document that a child has a best,

corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees (for blindness), legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, (for partially sighted), or a degenerative eye disease, or has a disease, condition or impairment of the eye or visual system that seriously affects visual function directly, not perceptually.

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

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

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

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

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

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

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

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

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

6.18.2.1.4 Speech fluency, or

6.18.2.1.5 Voice quality

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

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

(Authority: 14 **Del.C.** §3110)

11 DE Reg. 184 (08/01/07)

7.0 Learning Disabilities

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

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

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

11 DE Reg. 184 (08/01/07)

(Break in Continuity of Sections)

12.0 Response to Intervention Procedures.

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

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

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

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

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

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

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

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

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

12.6.1 Universal Tier 1 instructional screenings for reading and mathematics at the elementary level shall be conducted at least 3 times each regular school year at routine and fairly spaced intervals. For students at risk of academic failure, the first screening shall be conducted within 2 weeks of the beginning of the regular school year, or within 2 weeks of the child's entry into school. Tier 1 instructional screenings for reading and mathematics at the secondary level shall be conducted for students at risk of academic failure at least three (3) times each regular school year at routine and fairly spaced intervals. The first screening shall be conducted with two (2) weeks of the beginning of the regular school year, or within two (2) weeks of the child's entry into school.

12.6.2 Children who score at or below the 25th percentile on a norm referenced test or the designated cut point on a curriculum based measure for any instructional screening, ~~and children with disabilities already receiving special education and related services,~~ shall be provided Tier 2 interventions.

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

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

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

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

12.7.1 Tier 2 intervention shall be in addition to regularly scheduled core instruction in the general education curriculum, and shall be delivered in small group, ~~at least 3 times each school week for at least 30 minutes per session at a minimum of ninety (90) minutes per week in session periods appropriate to age and development, but not less than two (2) sessions per week. In the case of a student identified in need of intervention in both reading and math, the intervention shall be designed by the instructional support team proportionate to student need, but not less than one hundred twenty (120) minutes per week.~~

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

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

12.7.4 If, after an additional 6 school weeks of Tier 2 intervention (or up to a total of 12 school weeks of intervention) a child has made no progress toward benchmarks, or has made progress, but is not on a trajectory to meet end-of-year benchmarks, the child shall begin receiving Tier 3 intervention as outlined by the ~~IST~~ instructional support team.

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

12.8.1 Tier 3 intervention shall be in addition to regularly scheduled core instruction in the general education curriculum, and shall be delivered in groups ~~settings~~ smaller than those for intervention delivered in Tier 2, ~~at least 5 times each school week for at least 30 minutes per session~~ at a minimum of one hundred and fifty (150) minutes per week in session periods appropriate to age and development, but not less than four (4) sessions per week. In the case of a student identified in need of intervention in both reading and math, the intervention shall be designed by the instructional support team proportionate to student need, but not less than one hundred eighty (180) minutes per week.

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

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

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

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

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

12.10 ~~If 80% or more of children in a classroom score below 20% of students are not meeting~~ benchmark on any instructional screening, a school-based team, including a building level administrator, shall meet to consider the need for additional classroom supports and strategies.

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

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

11 DE Reg. 184 (08/01/07)

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

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 303 (14 **Del.C.** §§122(b) & 303)
14 DE Admin. Code 1006

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

1006 Delaware Interscholastic Athletic Association (DIAA)

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). The amendments include a new definitions sections; increase in membership dues to address rising insurance costs; added a due date of October 1st; increase in fines; an addition of a late fee for dues that have not been paid by January 1st; and added clarifications such as indicating "calendar days" rather than simply "days."

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 FEDERAL STREET, SUITE 2, DOVER, DELAWARE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to students' ability to receive and equitable education.

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protected? The regulation is related to the Delaware Interscholastic Athletic Association and continues to ensure all students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Delaware Interscholastic Athletic Association and continues to ensure 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 regulation is related to the Delaware Interscholastic Athletic Association and continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

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7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is related to the Delaware Interscholastic Athletic Association and continues to locate the decision making authority and accountability in the same entity.

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 regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any other state educational policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? Because of the increase in membership dues and fines, there are increased costs to member schools. The increases were discussed January 17, 2008 at the DIAA Annual Membership Meeting with the member schools. Adjustments based on comment were made subsequent to that meeting.

1006 Delaware Interscholastic Athletic Association (DIAA)

1.0 Organization Name, and Purpose, and Definitions

1.1 The organization shall be known as the Delaware Interscholastic Athletic Association (DIAA) and shall function as the official designee of the Secretary of Education with the authority to implement the Department of Education's Rules and Regulations governing the conduct of interscholastic athletics.

1.2 Definitions

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

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

"Department" means the Delaware Department of Education.

"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 shall be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

"Individualized Education Program" or "IEP" means a written statement for a child with a disability as defined in 14 DE Admin. Code 922.

"Legally in attendance" means present at school as determined by a pre-established written policy adopted by the local school board or governing body of the school.

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

"School day(s)" shall mean actual school attendance days during the regular academic school year including a partial day that children 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.

"State Board" means the State Board of Education of the State pursuant to 14 Del.C. §104.

2.0 Membership in DIAA

2.1 Full Member Schools: Any secondary school including private, public, career technical, and charter schools, as authorized by 14 Del.C. Ch. 5, may become a full member school of DIAA by payment of dues

and a signed affirmation of the obligations of membership.

2.1.1 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 DIAA Board of Directors for its consideration.

2.2 Associate Member School: Any school, not a full member school, located within the boundaries of the state of Delaware 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.

2.2.1 The membership application shall contain a statement that the school will abide by the Rules and Regulations of the Department of Education and the Delaware Interscholastic Athletic Association and in those cases wherein 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 full member schools; or participates in a state championship event.

2.2.2 Such associate member schools, after initial approval, shall be reviewed each year by the DIAA Board of Directors for the purpose of approving, rejecting, or modifying their application for renewal of associate member status.

2.3 Membership Dues Schedule: Yearly dues for full member and associate member schools shall be as follows:

2.3.1 ~~\$400~~ \$500 for middle schools.

2.3.1.1 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.

2.3.2 ~~\$600~~ \$750 for high schools with enrollments of 499 or less.

2.3.3 ~~\$800~~ \$1,000 for high schools with enrollments of 999 or less.

2.3.4 ~~\$1,000~~ \$1,250 for high schools with enrollments of 1,499 or less.

2.3.5 ~~\$1,200~~ \$1,500 for high schools with enrollments of 1,999 or less.

2.3.6 ~~\$1,400~~ \$1,750 for high schools with enrollments of 2,000 or more.

2.3.7 Membership dues shall be paid each year by ~~August 4~~ October 1st. Member schools which 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 DIAA Board of Directors.

2.4 Participation in State Championship Tournaments and Meets: Any member high school in good standing, is sponsoring a team in a given sport, and is in compliance with all applicable DIAA Rules and Regulations shall be eligible for the DIAA approved state championship tournament and meet in that sport.

2.5 Compliance with Regulations: Member schools shall comply with the regulations of the Delaware Interscholastic Association and acceptance of membership shall be construed as an agreement to that effect.

(Break in Continuity of Sections)

9.0 Waiver of DIAA Rules and Regulations

9.1 General

9.1.1 The DIAA Board has the authority to set aside the effect of any athletic rule or regulation, subject to any limitations set forth in the specific rule or regulation, when the affected party establishes by the preponderance of the evidence, all of the following conditions:

9.1.1.1 In the case of eligibility waiver requests, there exists a ~~hard-ship~~ hardship as defined by 9.2.1;

9.1.1.2 Strict enforcement of the rule in the particular case will not serve to accomplish the purpose of the Rule;

9.1.1.3 The spirit of the rule being waived will not be offended or compromised;

9.1.1.4 The principle of educational balance over athletics will not be offended or compromised; and

9.1.1.5 The waiver will not result in a safety risk to teammates or competitors.

9.1.2 Waivers are exceptional and extraordinary relief from the athletic rules and regulations. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The burden of proof rests on the applicant (the student, his/her parents or guardians, principal, headmaster or other affected party) to show extenuating circumstances warranting waiver.

9.1.3 The waiver request shall contain all facts pertaining to the case, including sufficient data to make it possible to reach a decision without further investigation. It is not the duty of the Executive Director or the DIAA Board to produce or collect information.

9.1.4 Waiver requests would be filed promptly when it becomes apparent to the student, principal, headmaster or other affected party, that a waiver will be required. In any event, all requests for a waiver of the rules, with all documentation complete, must be received by the Executive Director at least 21 calendar days before the next regularly scheduled meeting of the DIAA Board in order to be placed on the agenda for that meeting.

9.1.4.1 Notwithstanding this requirement, the Chairperson of the DIAA Board may at his/her discretion add a waiver request to an agenda in an emergency situation. Failure to file a waiver request in a timely manner when all information is available shall not be considered an emergency situation.

9.1.5 The applicant is entitled to a hearing on his/her waiver request. Waiver hearings shall be conducted in an informal manner that affords all parties the opportunity to present all information and all relevant arguments.

9.1.5.1 The DIAA Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

9.1.5.2 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.

9.1.5.3 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

9.1.5.4 Any document introduced into evidence at the hearing shall be marked by the Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the Board members present for the hearing unless otherwise directed.

9.1.5.5 Any request by the DIAA Board for additional information pertaining to a waiver request shall be promptly supplied by the affected students, coaches, and member schools.

9.1.5.6 DIAA shall provide a stenographic reporter at a hearing at its own expense.

9.1.6 The DIAA Board shall consider the entire record of the case in reaching its final decision. Unless otherwise provided, a decision made on a waiver request shall be effective immediately.

9.1.7 The DIAA Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) days of the hearing.

9.2 Eligibility Rule Waiver Request

9.2.1 Unless specifically defined in the eligibility rule in question, "hardship" means a hardship peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school, which deprive him or her of all or part of one of his or her opportunities to participate in a particular sports season. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

9.2.2 All eligibility hardship waiver requests shall be processed on forms approved by the DIAA Board and in accordance with the following procedures:

9.2.2.1 A request for a waiver of the eligibility rules must be directed by the student to the involved member school's principal, headmaster or their designee who shall then file a written request stating the full particulars of the case and the reasons felt by the student or the administrator, or both, for granting the waiver.

9.2.2.1.1 All requests for eligibility rule waivers must be signed by the Principal or Headmaster of the school requesting the waiver and must include a letter from the Principle or Headmaster indicating whether the school supports the waiver request.

9.2.2.1.2 The school shall submit a waiver request form when requested by individual student athletes. The DIAA Board, however, may take into consideration the school's position on the waiver request when rendering its decision.

9.2.2.2 To aid the DIAA Board in making an informed decision, the waiver request shall include the student's:

9.2.2.2.1 Official transcripts from the sixth grade through the current school year and semester grades for the current school year;

9.2.2.2.2 Attendance records for the last two (2) years;

9.2.2.2.3 A letter from the Principal or Headmaster either supporting or not supporting the waiver request;

9.2.2.2.4 Medical records (if applicable);

9.2.2.2.5 Legal documentation (if applicable);

9.2.2.2.6 IEP's (if applicable); and

9.2.2.2.7 Any documentation or evidence to substantiate a hardship or extenuating circumstance exists.

9.2.3 An appearance by the student and his or her parent, guardian or Relative Caregiver before the DIAA Board is mandatory on requests for an eligibility waiver. An appearance by a school representative is strongly encouraged.

9.3 Waiver Requests of Non eligibility Rules

9.3.1 The Principal or Headmaster of a member school, or any other individual may request a waiver of a rule, regulation, guideline, policy or procedure of DIAA not directly related to student eligibility when special circumstances arise that, in the Principal or Headmaster's opinion, or in the opinion of the individual, call for relief from, or modification of the effects of the rule.

9.3.2 All requests for non eligibility waivers must be in writing, signed by the Principal or Headmaster.

9.3.3 An appearance by the Principal or Headmaster or his/her designee or other individual requesting the non eligibility waiver is optional. If the Principal or Headmaster or his/her designee or other individual requesting the non eligibility waiver choose to appear before the DIAA Board he/she must notify the Executive Director of his/her intent to do so at the time the request for waiver is filed. Otherwise, the principal or his/her designee, or other individual, may attend the meeting but may not be permitted to address the DIAA Board.

9.3.4 If the waiver requested would affect more than one member school, the waiver applicant shall provide the position of the other affected member schools on the waiver request in their written application. The failure to provide this information may result in a delay in the Board's consideration of the waiver request.

10.0 Appeal Procedure to the DIAA Board of Directors

10.1 Decisions of the Executive Director, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed de novo to the DIAA Board of Directors. The Board of Directors has been designated by the Secretary of Education to conduct fact finding hearings or conferences in matters regarding interscholastic athletics.

10.1.1 Initiation of an Appeal to the DIAA Board

10.1.1.1 Whenever a right of appeal of a decision to the DIAA Board of Directors is provided, an aggrieved person who is under the regulatory authority of DIAA and who has, in fact, suffered a direct injury due to the decision, may initiate an appeal by filing a Notice of Appeal with the Executive Director. The notice shall be in writing, shall be signed by the person making the request (or by the party's authorized representative), and shall be delivered to the Executive Director by certified mail.

10.1.1.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

10.1.1.3 The notice of appeal shall be filed within a reasonable time after the controversy arises, but in no event shall a notice be filed more than thirty (30) calendar days after the appellant's receipt of written notice that official action has been taken by the Executive Director or other authorized person or

body.

10.1.1.3.1 Notwithstanding the above, the notice of appeal shall be served ten (10) calendar days after appellant's receipt of written notice that official action has been taken by the Executive Director or the Sportsmanship Committee pursuant to 14 **DE Admin. Code** 1007.

10.1.1.4 A copy of the notice of appeal shall be delivered to all other parties to the proceeding at the same time it is sent to the Executive Director. A copy of any other paper or document filed with DIAA shall also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

10.1.1.5 Upon receipt of an adequately detailed notice of appeal, the Executive Director shall place the appeal on the on the next meeting agenda of DIAA.

10.1.1.6 An appeal shall not stay the decision of the Executive Director.

10.1.2 Record of Prior Proceedings

10.1.2.1 If proceedings were previously held on the matters complained of in the notice, the committee which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Director.

10.1.2.2 The record shall contain any written decision, a copy of the rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a verbatim transcript of the hearing conducted by the party below, and all exhibits presented at the agency.

10.1.2.3 The record shall be filed with the Executive Director within ten (10) calendar days of the date the Executive Director notifies the committee that the notice was filed, unless directed otherwise. A copy of the record shall be sent to the appellant when it is submitted to the Executive Director.

10.1.3 DIAA Board Hearing Procedures for Appeals

10.1.3.1 Record Review

10.1.3.1.1 If a hearing was previously held on the matters complained of in the notice, the parties to the proceeding before the DIAA Board may agree to submit the matter to the Board on the existing record without the presentation of additional evidence. The parties shall inform the Executive Director in writing of their agreement to submit the matter to the Board on the existing record no later than ten (10) calendar days after the notice was filed.

10.1.3.1.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The written statements shall be filed no later than ten (10) calendar days before the consideration date, unless otherwise directed.

10.1.3.1.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

10.1.3.1.4 If the parties agree to submit the matter for decision on the existing record, the DIAA Board's decision shall be based on the existing record, the written statements and oral argument, if any.

10.1.3.2 Evidentiary Hearings

10.1.3.2.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the DIAA Board otherwise decides to receive additional evidence.

10.1.3.2.2 The Chairperson or his/her designated representative shall be the hearing officer. The hearing officer shall conduct the hearing and make rulings on the admissibility of evidence.

10.1.3.2.3 The DIAA Board of Directors may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.

10.1.3.2.4 Objections to the admission of evidence shall be brief and shall state the grounds for such objections. Objections with regard to the form of question will not be considered.

10.1.3.2.5 The hearing will proceed with the appellant first presenting its evidence and case. The responding party may then present its case. The appellant will have an opportunity to present rebuttal evidence.

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10.1.3.2.6 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the DIAA Board.

10.1.3.2.7 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the DIAA Board.

10.1.3.2.8 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

10.1.3.2.9 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.

10.1.3.2.10 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

10.1.3.2.11 Any document introduced into evidence at the hearing shall be marked by the DIAA Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the DIAA Board members present for the hearing unless otherwise directed.

10.1.3.2.12 DIAA shall provide a stenographic reporter at a hearing at its own expense.

10.1.3.2.13 The Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) calendar days of the hearing.

11.0 Appeal to the State Board of Education

11.1 Any party to a controversy involving the athletic rules and regulations, including a waiver thereof, may appeal to the State Board of Education by setting forth such grievance in a petition. The petition or notice of appeal shall be served on the Secretary of Education no later than thirty (30) calendar days after receipt of the decision. In addition, a copy of the petition or notice of appeal shall be served on the Executive Director of DIAA by certified or registered mail. Any decision shall otherwise be final. All appeals to the State Board of Education shall be on the basis of the record. (See 14 Del.C. §312 and the State Board of Education Manual for the Conduct of Hearings Before the State Board of Education). An appeal shall not stay the decision of the DIAA Board of Directors.

1 DE Reg. 725 (12/1/97)

6 DE Reg. 280 (9/1/02)

7 DE Reg. 1692 (6/1/05)

9 DE Reg. 117 (7/1/05)

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

[1006 Delaware Interscholastic Athletic Association \(DIAA\)](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 303 (14 Del.C. §§122(b) & 303)
14 DE Admin. Code 1007

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

1007 DIAA Sportsmanship

A. **Type of Regulatory Action Required**
Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1007 DIAA Sportsmanship. The amendments include a new definitions section; increase in fines; and added clarifications such as inserting language to recognize the different administrative heads of school.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 FEDERAL STREET, SUITE 2, DOVER, DELAWARE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to students' ability to receive and equitable education.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? Because of the increase fines, there may be an increase in costs to member schools. The increases were discussed January 17, 2008 at the DIAA Annual Membership Meeting with the member schools.

1007 DIAA Sportsmanship

1.0 Definitions and Sportsmanship

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PROPOSED REGULATIONS

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"State Board" means the State Board of Education of the State pursuant to 14 Del.C.

§104.

1.2 Sportsmanship

1.2.1 Member schools are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

1.2.1.1 Failure to provide for proper control of spectators at a contest. When the number of spectators is expected to be large in relation to the seating capacity of the facility, uniformed state, county, or local police shall be provided for crowd control. The host school is expected to take reasonable and proper steps to assure crowd control under any foreseeable conditions.

1.2.1.2 Failure of a team or competitor to stay in a contest until its normal end when failure to do so is related to dissatisfaction with the officiating of the contest, unless the physical safety of the team or competitor would have been endangered by continuing the contest.

1.2.1.3 Harassment of game officials by a coach. Going onto the playing surface to interrupt a contest in protest of a decision by an official; conduct by a coach, team member, or any individual in the official party which invokes a penalty against the team; continued and visible actions by a coach which indicate to the team and to the spectators that the coach believes the game is being improperly officiated; public demonstrations with game officials which indicate to others extreme dissatisfaction with the officiating; and such related actions when exhibited in aggravated form are evidence of poor sportsmanship.

1.2.1.4 Failure of a school to use every means at its disposal to impress upon its faculty, student body, team members, coaching staff, and spectators the importance of good sportsmanship before, during, and after athletic contests. The host school is encouraged to read a brief statement concerning sportsmanship prior to the start of each athletic contest.

1.2.1.5 Failure of an administrator, athletic director, coach, athlete, official, or spectator to comply with the directions stipulated in the following Code of Interscholastic Athletics:

1.2.1.5.1 The School Administrator and Athletic Director shall:

1.2.1.5.1.1 Encourage and promote friendly relations and good sportsmanship throughout the school by requiring courtesy and proper decorum at all times, by familiarizing students and others in the community with the ideals of good sportsmanship, and by publicizing these concepts and attitudes so that all members of the school community understand and appreciate their meaning.

1.2.1.5.1.2 Review the Sportsmanship Rule with all athletic staff.

1.2.1.5.1.3 Insist upon strict compliance with all DIAA rules and regulations.

1.2.1.5.1.4 Insist upon adequate safety provisions for both participants and spectators in all activities.

1.2.1.5.1.5 Encourage all to judge the success of the interscholastic athletic program based on the attitude of the participants and spectators rather than on the number of games won or lost.

1.2.1.5.1.6 Insist that all participants adhere to the highest standards of good sportsmanship as a means of ensuring desirable spectator attitudes.

1.2.1.5.1.7 Provide sanitary and attractive facilities for the dressing and housing of visiting teams and officials.

- ~~4.5.2~~ 1.2.1.5.2 The Coach shall:
- ~~4.5.2.1~~ 1.2.1.5.2.1 Demonstrate high ideals, good habits, and desirable attitudes in his/ her personal and professional behavior and demand the same of his/her players.
- ~~4.5.2.2~~ 1.2.1.5.2.2 Recognize that the purpose of competition is to promote the physical, mental, social, and emotional well being of the individual players and that the most important values of competition are derived from playing the game fairly.
- ~~4.5.2.3~~ 1.2.1.5.2.3 Be a modest winner and a gracious loser.
- ~~4.5.2.4~~ 1.2.1.5.2.4 Maintain self control at all times and accept adverse decisions without public display of emotion or dissatisfaction with the officials. Register disagreement through proper channels.
- ~~4.5.2.5~~ 1.2.1.5.2.5 Employ accepted educational methods in coaching and give his/her players an opportunity to develop and use initiative, leadership, and judgement.
- ~~4.5.2.6~~ 1.2.1.5.2.6 Pay close attention to the physical well being of his/her players, refusing to jeopardize the health of an individual for the sake of improving his/her team's chances to win.
- ~~4.5.2.7~~ 1.2.1.5.2.7 Teach athletes that it is better to lose fairly than to win unfairly.
- ~~4.5.2.8~~ 1.2.1.5.2.8 Discourage gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code.
- ~~4.5.2.9~~ 1.2.1.5.2.9 Refuse to disparage an opponent, an official, or others associated with interscholastic athletics and discourage gossip and rumors about them.
- ~~4.5.2.10~~ 1.2.1.5.2.10 Properly supervise the athletes under his/her immediate care.
- ~~4.5.3~~ 1.2.1.5.3 The Participant (athletes and cheerleaders) shall:
- ~~4.5.3.1~~ 1.2.1.5.3.1 Be responsible for the perpetuation of interscholastic athletics. Strive to enhance the image of athletics not only as a member of a team but also as a member of your school and community.
- ~~4.5.3.2~~ 1.2.1.5.3.2 Be courteous to the visiting team. Your opponents wish to excel as much as you do. Respect their efforts.
- ~~4.5.3.3~~ 1.2.1.5.3.3 Play hard to the limit of your ability regardless of discouragement. The true athlete does not give up, quarrel, cheat, bet, or grandstand.
- ~~4.5.3.4~~ 1.2.1.5.3.4 Be modest when successful and be gracious in defeat. A true sportsman or sportswoman does not offer excuses for failure.
- ~~4.5.3.5~~ 1.2.1.5.3.5 Understand and observe the playing rules of the game and the standards of eligibility.
- ~~4.5.3.6~~ 1.2.1.5.3.6 Respect the integrity and ~~judgement~~ judgment of the officials and accept their decisions without complaint.
- ~~4.5.3.7~~ 1.2.1.5.3.7 Respect the facilities of the host school and do not violate the trust entailed in being a guest.
- ~~4.5.4~~ 1.2.1.5.4 The Official shall:
- ~~4.5.4.1~~ 1.2.1.5.4.1 Know the rules and interpretations and be thoroughly trained to administer them.
- ~~4.5.4.2~~ 1.2.1.5.4.2 Maintain self control in all situations.
- ~~4.5.4.3~~ 1.2.1.5.4.3 When enforcing the rules, do not make gestures or comments that will embarrass the players or coaches.
- ~~4.5.4.4~~ 1.2.1.5.4.4 Be impartial and fair, yet firm, in all decisions. A good official will not attempt to compensate later for an unpopular decision.
- ~~4.5.4.5~~ 1.2.1.5.4.5 Refrain from commenting upon or discussing a team, player, or game situation with those not immediately concerned.
- ~~4.5.4.6~~ 1.2.1.5.4.6 Conduct the game so as to enlist the cooperation of the players, coaches, and spectators in promoting good sportsmanship.
- ~~4.5.5~~ 1.2.1.5.5 The Spectator shall:
- ~~4.5.5.1~~ 1.2.1.5.5.1 Realize that he/she represents the school just as definitely as does a member of the team, and that he/she has an obligation to be a true sportsman or sportswoman

and to encourage through his/her behavior the practice of good sportsmanship by others.

~~4.5.5.2~~ 1.2.1.5.5.2 Recognize that good sportsmanship is more important than victory by approving and applauding good team play, individual skill, and outstanding examples of sportsmanship and fair play exhibited by either team. The following are some examples of poor sportsmanship which shall not be tolerated:

~~4.5.5.2.1~~ 1.2.1.5.5.2.1 Profanity, vulgarity, obscene gestures, abusive language, or derogatory remarks.

~~4.5.5.2.2~~ 1.2.1.5.5.2.2 Throwing objects.

~~4.5.5.2.3~~ 1.2.1.5.5.2.3 Going onto the playing surface and interrupting a contest.

~~4.5.5.2.4~~ 1.2.1.5.5.2.4 Use of alcohol or other controlled substances.

~~4.5.5.3~~ 1.2.1.5.5.3 Respect the judgement and integrity of the officials, recognizing that their decisions are based upon game conditions as they observe them.

~~4.5.5.4~~ 1.2.1.5.5.4 Treat visiting teams and officials as guests extending to them every courtesy.

~~4.5.5.5~~ 1.2.1.5.5.5 Be modest in victory and gracious in defeat.

2.0 Processing Violations

2.1 Procedures

2.1.1 The Executive Director is specifically authorized to pursue any matter which, on the surface, has indications of being a sportsmanship violation.

2.1.2 Within twenty (20) calendar days of the incident, an alleged sportsmanship violation must be reported in writing to the Executive Director by the administrative head of a member school or by the Executive Board of an officials' association.

2.1.3 The Executive Director shall transmit a copy of the report to the principal or headmaster of the school(s) involved.

2.1.4 Each principal or headmaster concerned shall investigate and provide such information or answers to the report as are appropriate.

2.1.5 The Executive Director shall provide member schools and officials' associations with a specially designed form to facilitate the proper reporting of sportsmanship related incidents.

2.1.6 Upon receipt of all reports, the Executive Director shall review the documents and inform the school(s) involved of his/her disposition of the matter. The Executive Director may, in turn, refer the matter to the Sportsmanship Committee to investigate and adjudicate what appears to be a violation of the Sportsmanship Rule.

2.1.7 The Sportsmanship Committee shall review such available evidence as it deems necessary to reach a conclusion. Actions such as requesting reports and conducting interviews should not be interpreted as casting aspersions on a school adhering to DIAA regulations, but as an effort to keep all parties properly informed. Penalties up to and including suspensions of member schools may be imposed by the Sportsmanship Committee.

2.1.8 A copy of the Sportsmanship Committee's action shall be filed with the Executive Director and the administrative head of the school(s) involved.

2.2 Policies

2.2.1 The basis for the following policy statement is that a member school shall not be represented by individuals whose conduct reflects discredit upon the school. Insofar as unsportsmanlike actions by participants and spectators are concerned, the Sportsmanship Committee shall refer to the items previously identified in the Code of Interscholastic Athletics as well as the following guidelines:

2.2.1.1 The school whose administrator or athletic director behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.1.1 Reprimanding its administrator or athletic director and providing written documentation to the Executive Director, or

2.2.1.1.2 Suspending its administrator or athletic director from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.1.3 Having the entire school disciplined by DIAA.

2.2.1.2 An athlete shall not strike an official, opponent, coach, or spectator or display gross misconduct before, during, or after an athletic event. The athlete, depending on the seriousness of the act, may be declared ineligible by the principal, headmaster, Executive Director, or Sportsmanship Committee for a specified period of time not to exceed 180 school days.

2.2.1.3 In the case of spectators physically assaulting an official, coach, or player, the school may be given the option of either taking punitive action against the offender or accepting discipline from DIAA.

2.2.1.4 Schools that do not fully cooperate in promoting the spirit of the Sportsmanship Rule may be disciplined by DIAA.

2.2.1.5 The school whose coach behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.5.1 Reprimanding its coach and providing written documentation to the Executive Director, or

2.2.1.5.2 Suspending its coach from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.5.3 Having the entire school disciplined by DIAA.

2.2.1.6 An administrator, athletic director, or coach may be considered as having committed an unsportsmanlike act if:

2.2.1.6.1 He/she makes disparaging remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or

2.2.1.6.2 He/she argues with the official or indicates with gestures or other physical actions his/her dislike for a decision, or

2.2.1.6.3 He/she detains the official on the field of play following a game to request a ruling or explanation of some phase of the game, or

2.2.1.6.4 He/she makes disparaging or unprofessional remarks about another school's personnel.

2.2.1.7 All actions by a member school resulting from an investigation relative to the above policies shall be subject to approval by the Executive Director or the Sportsmanship Committee.

2.3 Penalties

2.3.1 Game Ejection

2.3.1.1 A player or coach disqualified before, during, or after a contest for unsportsmanlike and flagrant verbal or physical misconduct shall be suspended from the next complete (a winner is determined or a tie is declared) contest at that level of competition and all other complete or suspended contests in the interim at any level of competition in addition to any other penalties which DIAA or a conference may impose.

2.3.1.1.1 A player who leaves the team bench area and enters the playing field, court, or mat during a fight or other physical confrontation shall be ejected from the contest. A player who commits such an offense and is ejected by the game officials shall also be suspended from the next complete contest at that level of competition and all other complete or suspended contests at any level of competition in the interim. Additional penalties may be imposed if a player leaving the bench area becomes involved in the altercation.

2.3.1.2 A disqualified player or coach may not be physically present at any contest in that sport during his/her suspension.

2.3.1.3 If a coach is disqualified from the final contest of the season, his/her suspension shall carry over to the next year in that sport. In the case of an athlete, the same penalty shall apply if said athlete retains eligibility in that sport.

2.3.1.3.1 Coaches who do not fulfill their penalty in the same sport shall be disqualified for the appropriate length of time in their subsequent coaching assignment.

2.3.1.3.2 Seniors shall fulfill their penalty in the post season all star game in that sport. If not chosen to participate in the all star game, they shall fulfill their penalty in another sport during the same season or another sport during a subsequent season. When a senior is disqualified from the last game of his/her high school career, the member school is requested to take appropriate administrative action to discipline the offending student.

2.3.1.4 A player or coach ejected for a second time during the same season shall be subjected to a two game suspension and meet, in a timely fashion, with the Sportsmanship Committee

accompanied by his/her principal or designee and, in the case of an athlete, by his/her coach.

2.3.2 The following penalties represent degrees of discipline in enforcing the Sportsmanship Rule:

2.3.2.1 Reprimand: a reprimand may be given by the Executive Director or the Sportsmanship Committee. It is official notice that an unethical or unsportsmanlike action has occurred, is a matter of record and that such an occurrence must not be repeated.

2.3.2.2 Probation: probation is a more severe penalty and may be imposed by the Executive Director or the Sportsmanship Committee on a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official. Probation may be expressed in one of the following ways:

2.3.2.2.1 Conditional probation wherein the offending party may participate in regular season contests, sanctioned events, and conference and state championships provided he or she or the school files with DIAA a plan indicating the measures that shall be taken to alleviate the problem which caused him or her or the school to be placed on probation, or

2.3.2.2.2 Restrictive probation wherein a member school or a particular team of a member school may engage in its regular season schedule but may not enter any sanctioned events, participate in any playoff toward a conference or state championship, or be awarded a conference or state championship.

2.3.2.3 Suspension, a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official may not participate in any DIAA sanctioned interscholastic competition.

2.4 Appeals

2.4.1 Decisions of the Executive Director or Sportsmanship Committee may be appealed to the DIAA Board of Directors in accordance with the procedure found in 14 **DE Admin. Code** 1006.10. In accordance with subsection 1006.10.1.1.3.1, the notice of appeal shall be served by certified mail within ten (10) calendar days after the appellant's receipt of the written notice that official action has been taken by the Executive Director or Sportsmanship Committee.

3 DE Reg. 436 (9/1/99)

6 DE Reg. 285 (9/1/02)

7 DE Reg. 1692 (6/1/04)

OFFICE OF THE SECRETARY

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

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

1008 DIAA Junior High and Middle School Interscholastic Athletics

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The amendments include a new definitions section; increase in fines; additions and clarifications to the circumstances when a student must have a physician's note to resume participation after an injury; changed the out-of season coaching rule and the period of time a coach was able to coach over the summer; increased the maximum value of recognition awards given by schools including booster clubs from \$150.00 to \$250.00; added language to clarify the standards and process for the application of a new officials' association; and added clarifications such as that a student must be legally in attendance on the school day to participate in athletics, a student must have a medical physical in order to try out as well as practice, scrimmage, and compete, and inserting language to recognize the different administrative

heads of school.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 FEDERAL STREET, SUITE 2, DOVER, DELAWARE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to students' ability to receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the Delaware Interscholastic Athletic Association and continues to ensure all students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Delaware Interscholastic Athletic Association and continues to ensure 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 regulation is related to the Delaware Interscholastic Athletic Association and continues to preserve the necessary authority and flexibility of 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 regulation is related to the Delaware Interscholastic Athletic Association and continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is related to the Delaware Interscholastic Athletic Association and continues to locate the decision making authority and accountability in the same entity.

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 regulation is related to the Delaware Interscholastic Athletic Association and the amendments do not directly affect any other state educational policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? Because of the increase fines, there may be an increase in costs to member schools. The increases were discussed January 17, 2008 at the DIAA Annual Membership Meeting with the member schools.

1008 DIAA Junior High and Middle School Interscholastic Athletics

1.0 National Federation of State High Schools, Conferences, Contracts, and Equivalency Rules and Definitions

1.1 National Federation of High School Associations

1.1.1 DIAA is affiliated with the National Federation of State High School Associations (NFHS).

The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DIAA Board of Directors.

1.1.1.1 The playing rules of the United States Tennis Association, the United States Golf Association and the United States Lacrosse Association are adopted for the sports of tennis, golf and girls' lacrosse respectively except as modified by the DIAA Board of Directors.

1.2 Conferences

1.2.1 Member schools may establish voluntary conference organizations that may be composed

of public and nonpublic schools. When established they must submit its proposed membership and its constitution and bylaws to the DIAA Board of Directors and must be approved by the DIAA Board of Directors before the schools may enter into any contractual agreements.

1.2.1.1 All subsequent amendments to the constitution and bylaws of the conference must be compatible with all provisions of the DIAA Regulations; interpretations and rulings of the Executive Director, Sportsmanship Committee, and Board of Directors; state tournament regulations; and DIAA approved playing codes.

1.3 Contracts

1.3.1 Contracts between DIAA member schools or between DIAA member schools and full member schools of comparable state associations are encouraged but not required.

1.3.1.1 Conference master contracts are approved substitutes for individual contracts.

1.3.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question, appeal may be made to the Executive Director or the DIAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

1.3.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors.

1.3.2 Contracts between DIAA member schools and nonmember or associate member schools of comparable state associations are required.

1.3.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DIAA member school being assessed a ~~\$15.00~~ \$50.00 fine.

1.3.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors unless a signed individual contract is in place.

1.3.3 Contracts shall be interchanged according to the following provisions:

1.3.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

1.3.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier contest.

1.3.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

1.3.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DIAA Board of Directors.

1.4 ~~Equivalent~~ Equivalency Rules

1.4.1 A full member school shall not participate in a scrimmage or contest with an instate school that is not a member in good standing of DIAA.

1.4.1.1 Scrimmage is defined as: an informal competition between schools in which officials are not compensated, a score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt the play to provide instruction and the competition is strictly for practice purposes.

1.4.2 A full member school shall not participate in a scrimmage or contest with an associate or nonmember school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

1.4.3 An associate member school shall not participate in a scrimmage or contest with an ~~in~~ ~~state~~ school that is not a member in good standing of DIAA unless the opposing school complies with the conditions specified in 1.4.2. However, the opposing school shall be exempt from those rules which DIAA has waived for its associate member school.

1.4.4 Member schools shall not participate in a practice, scrimmage, or contest with a non school sponsored team.

1.4.5 Member schools shall not participate in a practice, scrimmage, or contest with college students. This provision shall not apply to games played against the alumni or faculty of the school when the game

is sponsored by school authorities.

1.4.6 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a ~~\$100.00~~ \$500.00 fine.

1.5 Definitions

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

“Board” means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 Del.C. Chapter 3.

“Department” means the Delaware Department of Education.

“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 shall be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

“Individualized Education Program” or “IEP” means a written statement for a child with a disability as defined in 14 DE Admin. Code 922.

“Legally in attendance” means present at school as determined by a pre-established written policy adopted by the local school board or governing body of the school.

“Member school” means a full or associate member school of the DIAA.

“School day(s)” 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.

“State Board” means the State Board of Education of the State pursuant to 14 Del.C. §104.

2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if He/She Does Not Meet the Following Requirements

2.1 Eligibility, Grades and Age

2.1.1 The junior high and middle school interscholastic program shall include grades 6 to 8, inclusive. No junior high or middle school student who has completed a season at the junior high or middle school level shall compete in the same sport at the senior high school level during the same school year. A junior high or middle school student who participates in a varsity or sub varsity game at the high school level shall be ineligible to participate at the junior high or middle school level in the same sport.

2.1.1.1 Eighth grade students who become 15 years of age on or after June 15 immediately preceding the school year in a school terminating in the eighth grade shall be eligible for all sports during the current school year provided all other eligibility requirements are met.

2.1.1.2 Permission shall be granted for 15 year old eighth grade students in a school terminating in the eighth grade who are ineligible for junior high or middle school competition to participate in the district high school athletic program provided they meet all other eligibility requirements. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

2.1.2 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non scoring basis in non contact sports.

2.2 Eligibility, Residence

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s) legal guardian(s) or Relative Caregiver in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligible. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 **Del.C.**, Ch.4.

2.2.1.4 A student who is a non resident of Delaware shall be eligible to attend a public school, charter school or career technical school if, in accordance with 14 **Del.C.** §607, his/her custodial parent, legal guardian or Relative Caregiver is a full time employee of that district.

2.2.1.5 Notwithstanding 2.2.1, a student shall be eligible at a public school, charter school or career technical school if he/she is enrolled in accordance with 14 **Del.C.** §202(f), the Relative Caregivers School Authorization.

2.2.1.5.1 An exception would be a student whose Relative Caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.2.1.6 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

2.3 Eligibility, Enrollment and Attendance

2.3.1 A student must be legally enrolled in the junior high or middle school which he/she represents in order to participate in a practice, scrimmage, or contest.

2.3.2 Students with disabilities who are placed in special schools or programs administered by a school district or charter school which sponsors junior high or middle school interscholastic athletics.

2.3.2.1 Definitions:

“**Campus**” means a contiguous land area containing one or more school buildings.

“**Special School or Program**” means a school or program approved by the Department of Education with the approval of the State Board of Education to serve students with disabilities, but does not include alternative schools.

“**Student With a Disability**” means a “child with a disability” as that term is defined in the Administrative Manual for Special Education Services (AMSES), 14 **DE Admin. Code** 925 922.

2.3.2.2 A student with a disability who is placed in a special school or program administered by a school district or charter school which sponsors junior high or middle school interscholastic athletics shall be eligible to participate in interscholastic athletics as follows:

2.3.2.2.1 If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.

2.3.2.2.2 If the special school or program does not sponsor the interscholastic sport in question and the student is served in a regular junior high or middle school for all or part of the school day, the student shall be eligible only at that regular junior high or middle school.

2.3.2.2.3 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is located on the campus of a regular junior high or middle school, the student shall be eligible only at the regular junior high or middle school on the same campus.

2.3.2.2.4 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is not located on the campus of a regular junior high or middle school the student shall be eligible only at the regular junior high or middle school designated to serve the special school's or program's students.

2.3.2.2.4.1 School districts or charter schools which administer special schools or programs and have multiple middle schools or junior high schools shall decide which of its

regular middle schools or junior high schools shall be designated to serve special school or program students in these circumstances.

2.3.3 A student who is participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the student's custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the choice district in order to legally enroll at his/her home school. Without a release, the student would not be legally enrolled and consequently would be ineligible to participate in interscholastic athletics.

2.3.4 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in school or out of school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

2.3.5 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities in accordance with pre-established written school policy.

2.3.5.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

2.3.6 A Student who fails to complete a semester or absence for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from his/her reentry to school.

2.3.7 An eligible student who practices in violation of 2.2.2 through 2.2.5 shall. When he/she regains her eligibility, be prohibited from practicing, scrimmaging or competing for an equivalent number of days.

2.4 Eligibility, Transfers

2.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged or competed in grades 6 through 8), is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

2.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (~~4.4.6.4~~ 2.4.6.1).

2.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship or custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship or custody, an affidavit, (except as permitted by 2.4.2.3) or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

2.4.2.3 The transfer is in accordance with 14 **Del.C.** §202(f), the Caregivers School Authorization.

2.4.2.3.1 An exception would be a student whose Relative Caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence

has ended. A student who transfers shall be eligible in the receiving school immediately when the custodial parent(s) legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

2.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

2.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

2.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

2.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

2.4.2.5.4 All other DIAA eligibility requirements have been met.

2.4.2.6 The transfer is the result of the student being homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2).

2.4.2.6.1 Notwithstanding the above, the student shall be ineligible under the ninety (90) school day ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

2.4.2.6.1.1 Seeking a superior team;

2.4.2.6.1.2 Seeking a team more compatible with the student's abilities; or

2.4.2.6.1.3 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

2.4.2.6.1.4 Avoiding disciplinary action imposed by the school of origin related to affecting interscholastic athletic participation.

2.4.3 Transfer Because of a Change in the Program of Study or Financial Hardship. If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s), legal guardian(s) or Relative Caregiver's responsible for providing documentation to the DIAA Board of Directors to support the request.

2.4.3.1 Documentation for Change in Program of Study: Documentation for change in program of study (a multi year hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

2.4.3.1.1 The student's schedule;

2.4.3.1.2 The student's transcript;

2.4.3.1.3 Current course descriptions from both the sending and receiving schools;

2.4.3.1.4 A statement from the principal or headmaster of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

2.4.3.1.5 A statement from the principals or headmasters of both the sending and receiving school that the student is not transferring for athletic advantage (2.4.5).

2.4.3.2 Documentation for Financial Hardship: Documentation for financial hardship shall include:

2.4.3.2.1 Proof of extreme financial hardship caused by significant loss of income and increased expenses; and

2.4.3.2.2 A statement from the principal or headmasters of both the sending and receiving schools that the student is not transferring for athletic advantage (2.4.5).

2.4.4 Transfer Because of a Custody Change: In cases of joint or shared custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

2.4.5 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the reason for his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics, or to avoid

disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

2.4.6 A student who transfers from a public, private, career technical school or charter school to a school of choice, as authorized by 14 **Del.C.**, Ch. 4 shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.6.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport only.

2.4.7 A student who transfers from a school of choice to either a private school, public school, career technical school or, after completing his/her two year commitment, to a public charter school, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year.

2.4.8 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/ she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services.

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in the first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal or headmaster of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp or clinic. Accepting an event program or a complimentary item(s) (T shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/ her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least four (4) courses. Two (2) of those courses must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded

from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal or headmaster if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education ~~plan~~ program (IEP).

2.6.2 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.2.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

2.6.2.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.2.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.3 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.4 Local school boards and nonpublic schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.5 An ineligible student who practices in violation of 2.6.1, 2.6.2 or 2.6.3, shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive semesters from the date of his/her first entrance into the seventh grade in schools which restrict participation in interscholastic athletics to students in grades 7 and 8 unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than two (2) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.1.2 **“Hardship”** shall be defined as extenuating circumstances peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver shall not be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA’s minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of his/ her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or ~~court-appointed~~ legal guardian(s) or Relative Caregiver sought assistance to ameliorate the effects of the hardship condition.

2.7.2 No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the sixth grade in schools which permit students in grades 6, 7 and 8 to participate in interscholastic athletics unless a waiver is granted for hardship reasons as defined in section 2.7.1.

2.7.2.1 No student shall have more than three (3) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.2.2 Participation on the part of a sixth grade student shall be at the discretion of the individual school.

2.7.2.3 Sixth grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DIAA Board of Directors.

2.7.3 Students below the sixth grade shall not be permitted to practice, scrimmage, or compete on junior high or middle school interscholastic teams.

2.7.4 Participation shall be defined as taking part in a school sponsored practice, scrimmage, or contest on or after the first allowable date for practice in that sport.

2.7.5 In the event of a student that transfers between the types of schools described in 2.7.1 and 2.7.2, no student shall represent a school in athletics after six (6) consecutive semesters from the date of student's first entrance into sixth grade unless a waiver is granted for hardship reasons as defined in section 2.7.1.

2.8 Student Eligibility Report Forms

2.8.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a ~~\$15.00~~ \$50.00 fine against the school.

2.8.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a ~~\$40.00~~ \$25.00 fine.

2.9 Use of an ~~Eligible~~ Ineligible Athlete:

2.9.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es) or point(s) won.

2.9.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.9.2.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament. Team and individual awards shall be returned to the event sponsor and team and individual records and performances shall be nullified.

2.9.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined ~~\$200.00~~ a minimum of \$200.00 but no more than \$1,000.00 and referred to the DIAA Sportsmanship Committee for consideration of further action unless the athlete or his/her parent(s) or ~~court-appointed~~ legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings. A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

2.9.3 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as any affected placements will be adjusted according to the rules of that sport.

2.9.3.1 If the infraction occurs during a tournament, the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.9.3.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.9.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school or DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties as stipulated in 2.9.1 and 2.9.2 shall be imposed.

2.9.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the number of days up to the length of the school year from the date the charge is substantiated.

2.9.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for up to the number of days up to the length of the school year from the date the charge is substantiated.

2.9.7 If an athlete or his/her parent(s), legal guardian(s), or Relative Caregiver knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the number of days up to the length of the school year from the date the charge is substantiated.

2.10 Determination of Student Eligibility and the Appeal Procedures

2.10.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

2.10.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.10.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 14 DE Admin. Code 1006.10.1.3.

9 DE Reg. 1954 (06/01/06)

3.0 Physical Examinations, Weight Control Programs for Wrestling and Required Medical Personnel in Attendance at All Football Games

3.1 Physical Examinations

3.1.1 A student shall not be eligible to try out, practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after May 1 and before beginning such athletic activity for the current school year.

3.1.2 A certificate to that effect, as well as the parent's, legal guardian's or Relative Caregiver's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

3.1.3 For any subsequent sports season in the school year, a limited reexamination shall be performed if any of the following circumstances exist: the athlete has been treated for an injury during the preceding sports season, the 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 athlete during the preceding term, or the athlete has a remedial defect.

3.1.4 The medical history of the student should be available at the time of each examination.

3.1.5 ~~A player who is properly certified to participate in interscholastic athletics but is physically unable to participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school or designee, a statement from a qualified physician that he/she is again physically able to participate. Prior to resuming participation, a player who is otherwise properly certified to participate in interscholastic athletics must present to the administrative head of school or designee, a statement from a qualified physician that the player is physically able to participate if one of the following conditions has occurred:~~

3.1.5.1 The player is physically unable to compete due to illness or injury for five(5) consecutive days on which a practice scrimmage or contest is held:

3.1.5.2 The player was apparently unconscious;

3.1.5.3 The player suffered a concussion.

3.2 Wrestling Weight Control Program

3.2.1 Each year, four (4) weeks from the first day he/she appears at practice, a wrestler must establish his/ her 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 wrestler attends. A wrestler may recertify at a lower weight during the 4 weeks from the first day he/she appears at practice. However, once certified at a weight, a wrestler may 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 wrestler can no longer recertify lower. After 4 weeks from the first practice day a wrestler may not compete in a weight class below his duly established weight class.

3.2.2 The weight classifications shall be as follows:

76 lbs.	100 lbs.	124 lbs.	148 lbs.
82 lbs.	106 lbs.	130 lbs.	155 lbs.
88 lbs.	112 lbs.	136 lbs.	165 lbs.
94 lbs.	118 lbs.	142 lbs.	250 lbs.

(minimum weight 164 lbs.)

3.2.3 With the exception of the above weight classifications, the current edition of the NFHS Wrestling Rules Book shall apply.

3.2.4 By the end of four (4) weeks of practice, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the Executive Director of DIAA. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director without delay.

3.2.5 Schools which desire to conduct their wrestling program at a time other than the specified season must request permission from the Executive Director.

3.2.5.1 A team which begins its season in October shall receive a one pound growth allowance in November and an additional pound in December. A team which begins its season in November shall receive a one pound growth allowance in December, an additional pound in January, and a third pound in February.

3.3 Required Medical Personnel In Attendance at All Football Games

3.3.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service. Failure by the host school to provide this service shall result in a ~~\$100.00~~ \$250.00 fine.

4.0 Sports Seasons, Practice Sessions and Maximum Game Schedules and designated Sports Seasons

4.1 Sports Seasons

4.1.1 The fall sports season shall begin on August 25 and end not later than December 1. Practice for any fall sport shall not begin earlier than August 25.

4.1.1.1 The first three (3) days of football 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. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

4.1.1.2 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

4.1.2 The winter sports season shall begin 21 days before the first Friday in December and end not later than March 1. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December

4.1.3 The spring sports season shall begin on March 1 and end not later than the last school day. Practice for any spring sport shall not begin earlier than March 1.

4.1.4 A school which conducts practice prior to the first allowable date shall pay a ~~\$100.00~~

~~\$500.00~~ fine per each illegal practice day and a school which participates in a game prior to the first allowable date shall be required to forfeit the contest and pay a ~~\$100.00~~ \$500.00 fine. In both cases the school shall be referred to the DIAA Sportsmanship Committee for consideration of further action.

4.1.5 No member school shall participate in a post season contest without the written approval of the Executive Director.

4.2 Practice Sessions

4.2.1 A practice session shall be defined as any instructional or conditioning activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, chalkboard sessions, warm up and cool down exercises, drills, and mandatory strength training, etc. Member schools shall conduct a minimum of 21 calendar days of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

4.2.2 Practice sessions shall be limited to two (2) hours on official school days. Split sessions may be conducted, but practice time shall not exceed two (2) hours for any individual athlete. The two hour practice limitation does not include time for noninstructional activities such as dressing, showering, transportation, or training room care.

4.2.3 Practicing on holidays and weekends shall be left to the individual schools and conferences. However, there shall be one day of no activity (practice, scrimmage or contests) during any seven day period.

4.2.4 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if an eighth grade student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

4.2.5 A school which exceeds the two hour practice limitation shall pay a ~~\$100.00~~ \$500.00 fine.

4.3 Maximum Game Schedules and Designated Sports Seasons:

4.3.1 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 DIAA Board of Directors.

4.3.2 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 (3) contests and competition dates in a week.

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

4.3.4 A school which participates in more than the allowable number of contests in a season shall be fined ~~\$200.00~~ \$500.00.

4.3.5 A school which exceeds the weekly contest limitation shall forfeit the contest and pay a ~~\$100.00~~ \$250.00 fine.

4.3.6 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 2.10.

9 DE Reg. 124 (7/1/05)

5.0 School and Team Competition, Sanctioning of Competitions and All Star Contests

5.1 School and Team Competition

5.1.1 Sponsoring Interscholastic Teams: Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Member of school clubs who participate in noncompetitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition. Students are considered to be representing a school if the school does any of the following:

5.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

5.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

5.1.1.3 Permits the students to compete under the name of the school.

5.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications in excess of what is customarily done for "outside" organizations.

5.1.1.5 Presents or displays individual or team awards.

5.1.2 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

5.1.2.1 The governing body of the participating district or nonpublic school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

5.1.2.2 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 of the school.

5.1.2.3 The participating schools agree to comply with all applicable DIAA rules and regulations as stated in the current DIAA Official Handbook.

5.1.3 Levels of Participation

5.1.3.1 Level 1 or developmental sport, less than seven (7) participating schools. DIAA rules and regulations shall not be in effect.

5.1.3.2 Level 2 or recognized sport, seven (7) or more participating schools. Participating schools must petition the DIAA Board of Directors for official recognition of the sport.

5.1.3.2.1 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.

5.1.3.2.2 Withdrawal of level 2 status: If, for two (2) 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 of Directors.

5.1.4 Membership on Coed Teams

5.1.4.1 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. 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.

5.2 Sanctioning of Competitions

5.2.1 Member schools may participate in tournaments and meets involving four (4) or more schools only if the event has been sanctioned by DIAA and, if applicable, by the NFHS. Tournaments and meets shall be sanctioned in accordance with the following criteria:

5.2.1.1 The event shall not be for determining a regional or national champion.

5.2.1.2 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.

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

5.2.1.4 Non school event organizers shall submit a full financial report to the DIAA office within ninety (90) calendar days of the completion of the event.

5.2.1.5 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.

5.2.1.6 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.

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

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

5.2.2 Participation in a non sanctioned event shall result in payment of a ~~\$25.00~~ \$100.00 fine. A second offense shall result in a ~~\$50.00~~ \$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 ~~\$100.00~~ \$500.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

5.3 All Star Contests: Junior high and middle school students shall not participate in an all-star event until they have completed their high school eligibility in that sport.

6.0 Athletic Camps and Clinic Sponsorship, Commercial Camps and Clinics and Open Gyms, Conditioning Programs and Non School Competition

6.1 Out of Season Athletic Camps and Clinic Sponsorship

6.1.1 DIAA does not restrict a student's decision to attend an out of season athletic camp or clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp, tournament, league or clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp or clinic may only instruct their own athletes in accordance with 7.5.

6.2 Team Attendance at Out of Season Commercial Camps and Clinics

6.2.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp or clinic, may do so with the approval of the local school board or governing body. School funds shall not be used for this purpose. The disbursement of funds to pay for camp or clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or headmaster or his/her designee and the funds shall be allocated according to the following guidelines:

6.2.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.2.1.2 All applicants shall share equally in the funds provided.

6.2.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.2.1.4 All applicants shall have one year of prior participation in the sport for which the camp or clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp or clinic.

6.3 Individual Attendance at Commercial Camps and Clinics

6.3.1 Commercial camps and clinics are defined as a camp or clinic operated for profit which provides coaching or other sports training for a fee.

6.3.2 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

6.3.2.1 The student must participate unattached and may not wear school uniforms.

6.3.2.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.3.2.3 The school may not provide transportation or pay fees.

6.3.2.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic except as in accordance with 7.5.

6.4 Open Gym Programs

6.4.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

6.4.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.4.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

6.4.1.3 The activities must be unstructured and student generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

6.4.1.4 A coach may not predetermine that the open gym will include only his/her

sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

6.4.1.5 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/ her assigned sport.

6.4.1.6 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

6.4.1.7 The participants must provide their own workout clothing.

6.5 Conditioning Programs

6.5.1 A member school may conduct a conditioning program in accordance with the following provisions:

6.5.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.5.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

6.5.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

6.5.1.4 A coach may not provide instruction in sport specific skills or techniques.

6.5.1.5 Sport specific equipment is prohibited.

6.5.1.6 The participants must provide their own workout clothing.

6.6 Non School Competition in which Participants are Competing Unattached and are Not Representing Their Schools

6.6.1 A student may participate on a nonschool team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

6.6.2 Participation on a non school team or in a non school individual event shall be subject to the following conditions:

6.6.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

6.6.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.6.2.3 The school or a school affiliated support group may not provide transportation.

6.6.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

6.6.2.5 The school coach may not require his/her athletes to participate in non school competition or provide instruction to his/her athletes in non school competition except as in 7.5.

6.6.3 14 **Del.C.** §122(b)(14) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools. Similar teams shall include organized intramural teams as well as non school teams in that sport.

9 DE Reg. 1954 (06/01/06)

7.0 Certified and Emergency and Volunteer Coaches, Student Teaching and Coaching Out of Season

7.1 Certified Coaches

7.1.1 Only those professional employees certified by the Department of Education 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 must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

7.1.2 All head coaches 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 school shall pay a \$50.00 fine and the head coach shall be placed on probation if he/she fails to attend the DIAA rules clinic or pass the open book

rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school paying a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

7.1.2.1 Certified coaches at all levels of competition shall be required to hold a current certification in adult CPR.

7.2 Emergency Coaches

7.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the school year or whose professional assignment is less than 1/2 of the school day. An individual who meets the requirements of a certified coach as specified in 21.1, but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DIAA.

7.2.1.1 Emergency coaches at all levels of competition shall be required to hold a current certification in adult CPR.

7.2.2 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

7.2.3 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

7.2.3.1 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.

7.2.3.2 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.

7.2.3.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

7.2.3.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her 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.

7.2.3.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

7.3 Student Teaching and Coaching

7.3.1 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

7.4 Volunteer Coaches

7.4.1 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 and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

7.5 Coaching Out of Season

7.5.1 From August 2nd through ~~June 14th~~ the first day after the last spring sport DIAA state tournament event, a certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the teams of the school at which he/she coaches or transfer students from other schools who play the coach's sport.

7.5.1.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

7.5.1.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

~~7.5.1.3~~ 7.5.1.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

~~7.5.1.4~~ 7.5.1.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

~~7.5.1.5~~ 7.5.1.2.3 The league shall have registration and entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

~~7.5.1.6~~ 7.5.1.3 A certified, emergency, or volunteer coach shall not be allowed to provide instruction or coach during the designated season in his/her assigned sport to current members of the teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

~~7.5.1.7~~ 7.5.1.4 A coach who is in violation of this section shall be suspended from coaching in the specified sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

7.5.2 From ~~June 15th~~ the first day after the last spring sport DIAA state tournament event through August 1st, a certified, emergency or volunteer coach shall be allowed to provide instruction in his/her assigned sport to returning members of the varsity or subvarsity teams of the school at which he/she coaches. Instructional contact with the aforementioned returning school team members shall be subject to the following conditions:

7.5.2.1 A coach may provide instruction to an unlimited number of his/her returning school team members in formal league or tournament competition or in formal instructional camps or clinics provided the league or tournament or instructional camp or clinic is insured, organized and conducted by a nonschool affiliated organization.

7.5.2.2 A coaching staff may provide instruction to a maximum of two returning school team members in an informal setting where the student has initiated the contact and it was not scheduled. A coaching staff may have multiple two hour sessions on any given day. Returning school team members shall not receive more than two hours of sports instruction per day.

7.5.2.3 A coach shall not receive any compensation, from any source, for the instruction of his/her returning school team members. Reimbursement for out of pocket expenses (e.g. gas, food, lodging) incurred by returning school team members and coaches to attend leagues or tournaments or instructional camps or clinics are not prohibited provided that no local school or state educational funds are used.

7.5.2.4 Participation in the formal league or tournament or instructional camp or clinic, or informal instruction shall be open, voluntary and equally available to all returning school team members as well as to members of the student body.

7.5.2.5 A coach in violation of this section shall be suspended from coaching in the specific sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

8.0 Recognition of Officials' Associations, Required Use of Officials and Attendance at Rules Clinics

8.1 Recognition of Officials' Associations

8.1.1 The officiating of interscholastic contests in the state of Delaware which involve one (1) or more member schools shall be under the control of the DIAA and such control may include, but not be restricted to, giving examinations, evaluating officials, setting game fees, determining the number of officials per game, and assigning officials.

8.1.2 An official's association which desires to officiate middle school and high school contests shall request recognition and approval from DIAA by submitting the following documents to the DIAA Officials' Committee:

8.1.2.1 A letter of request to be recognized by DIAA and indicating the association's willingness to abide by DIAA rules and regulations. The president of the requesting officials' association or his/her designee shall petition the DIAA Board of Directors to render a decision.

8.1.2.2 A brief history of the association including but not limited to the officiating experience (if any) of the members and if a new association is being formed, the purpose for which the Association is being formed.

8.1.2.3 A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.

8.1.2.4 A description of the association's evaluation and rating system.

8.1.2.5 A description of the association's recruiting and training programs for new members.

8.1.2.6 A membership roster indicating the number of years of experience at the subvarsity, varsity, and state tournament levels for each member and also his/her most recent rating in a previous association. This information must be documented and is subject to verification.

PROPOSED REGULATIONS

8.1.2.7 ~~If applicable, letters~~ Letters of recommendation or names of references from leagues which the association has serviced during ~~the past year~~ their existence.

8.1.3 The Officials' Committee shall review the aforementioned documents and, ~~if necessary,~~ meet with the officers of the association to discuss their petition.

8.1.4 The Officials' Committee shall reserve the right to consult with any other interested parties during the evaluation process.

8.1.5 The Officials' Committee shall report its findings to the DIAA Board of Directors and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.

8.1.6 ~~The president of the officials' association or his/her designee shall petition the DIAA Board of Directors and the Board shall render a decision. The Board of Directors shall consider the petition for recognition and the Official's Committee recommendation and make a decision to approve or deny the request. The petitioner may request an evidentiary hearing be held before the Board pursuant to the procedures in 1006.10.1.3.2. The Board shall decide if the petitioning officials association shall be granted recognition, granted recognition with conditions, or denied recognition.~~

8.1.7 An approved Association shall serve a minimum two year probationary period during which time the association shall be evaluated. An Association designated as probationary is ineligible to provide officials to work the applicable DIAA State Tournament.

8.1.7.1 Members of the Officials' Committee and the applicable Sport Committee shall comprise the Officials Association Evaluation Committee (Evaluation Committee). The new officials association shall be evaluated according to the following criteria:

8.1.7.1.1 Total number of games worked at the Varsity level.

8.1.7.1.2 Total number of officials who worked games at the Varsity level.

8.1.7.1.3 Total number of member schools who contracted the services of

the Association.

8.1.7.1.4 A comparison of the percentage of games the Association worked against the percentage of games worked by other DIAA recognized officials associations in that sport.

8.1.7.1.5 A comparison of the percentage of the Association's registered officials against the number who worked Varsity level games.

8.1.7.1.6 A comparison of the ratio from 8.1.7.1.5 against any existing Association(s)' same ratio.

8.1.7.1.7 In addition, the evaluation may be based on any other available information which may include but is not limited to: the associations ability to work a minimum of 25 percent of all varsity contests played by DIAA member schools in that sport; written complaints by contracted schools; evaluations by member schools; input from member schools; or any other relevant information.

8.1.7.2 The results of all evaluations shall be shared with the probationary Association at the end of each season. The association shall have the opportunity to add comments to the final evaluation.

8.1.8 At the end of the minimum two-year probationary period the Evaluation Committee shall recommend to the Board one of the following options based on the evaluations and the Probationary Association's ability to work Varsity contests equal to or greater than twenty-five (25) percent of all Varsity contests played by member schools:

8.1.8.1 Re-approve conditionally for another year on probationary status.

8.1.8.2 Disapprove so as to no longer remain as an approved Association.

8.1.8.3 Re-approve conditionally with State Tournament consideration based upon the Sport worked.

8.1.8.4 Completely approve the Association with full State Tournament consideration equal to any existing Associations(s).

8.1.9 The Board of Directors shall consider the petition for recognition and the Official's Committee recommendation and make a decision. The probationary officials association may request an evidentiary hearing be held before the Board pursuant to the procedures in 1006.10.1.3.2. The Board shall decide if the petitioning officials association shall be:

8.1.9.1 Re-approved conditionally for another year on probationary status.

8.1.9.2 Disapproved so as to no longer remain as an approved Association.

8.1.9.3 Re-approved conditionally with State Tournament consideration based upon the Sport worked.

8.1.9.4 Completely approved with full State Tournament consideration equal to any existing Associations(s).

~~8.1.7~~ 8.1.10 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.

8.2 Required Use of Officials

8.2.1 Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests. Use of nonapproved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a ~~\$50.00~~ \$100.00 fine per game per nonapproved official.

8.2.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

8.3 Attendance at Rules Clinics

8.3.1 Officials shall be required each year to both attend the DIAA rules interpretation clinic and to pass the rules examination provided by the DIAA office for the sport(s) they officiate.

8.3.2 Failure on the part of an official to attend the DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest during that season.

8.3.3 Failure to satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

8.3.4 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

8.3.5 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DIAA rules interpretation clinic, he/she may view a videotape of the DIAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

8.3.5.1 No later than the day of the DIAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

8.3.5.2 The out of state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

8.3.5.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

9.0 Awards

9.1 Awards

9.1.1 Member schools and support groups affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and individual accomplishments. The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic, not more than ~~\$150.00~~ \$250.00. Member schools and support groups affiliated with member schools are also permitted to sponsor banquets.

9.1.2 A non profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and individual accomplishments with the approval of the administrative head of the school. Non profit groups shall also be permitted to sponsor banquets.

9.1.3 Commercial organizations shall be allowed to present recognition awards for team and individual accomplishments with the approval of the administrative head of the school.

9.1.4 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed

(reference to the team or individual athletic accomplishment) are also acceptable. The awards shall have symbolic value only, awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed ~~\$150.00~~ \$250.00 per team or per recipient and shall require prior approval of the Executive Director.

10.0 Use of Influence for Athletic Purposes

10.1 Definition: The use of influence for athletic purposes shall include, but not be limited to, the following:

10.1.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or ~~court-appointed~~ legal guardian(s) or a Relative Caregiver.

10.1.2 Offer of waiver or reduction of tuition or financial aid if based, even partially, on athletic considerations.

10.1.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

10.1.4 Offer of special privileges not accorded to other students.

10.1.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s), legal guardian(s) or Relative Caregiver to change residence.

10.2 Illegal Contact with Students, Student's Parent(s), Legal guardians, or a Relative Caregiver

10.2.1 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s), legal guardian(s) or a Relative Caregiver in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

10.2.2 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s), legal guardian(s) or Relative Caregiver, the former must refer the individual(s) to the principal or headmaster or school personnel responsible for admissions.

10.3 Permitted Activities

10.3.1 A school employee or Board approved volunteer may do the following:

10.3.1.1 Discuss the athletic program with a prospective student or his/her parent(s), legal guardian(s) or Relative Caregiver during an open house or approved visit initiated by the parent(s), legal guardian(s) or Relative Caregiver.

10.3.1.2 Provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

10.3.1.3 Conduct an informational presentation at a feeder school.

10.4 School Choice

10.4.1 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

10.5 Penalties

10.5.1 The use of influence or illegal contact but not limited to violations of 10.1 and 10.2 by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes may render the student ineligible for up to 1 full school year from the date the charge is substantiated. In addition, the offending school may be placed on probation, as determined by the DIAA Board of Directors, and the offending employee, if a coach, may be suspended for up to one (1) full school year from the date the charge is substantiated.

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

9 DE Reg. 1954 (06/01/06)

OFFICE OF THE SECRETARY

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

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

1009 DIAA Senior High School Interscholastic Athletics

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1009 DIAA Senior High School Interscholastic Athletics. The amendments include a new definitions section; increase in fines; additions and clarifications to the circumstances when a student must have a physician's note to resume participation after an injury; changed the out-of season coaching rule and the period of time a coach is able to coach over the summer; increased the maximum value of recognition awards given by schools including booster clubs from \$150.00 to \$250.00; added language to clarify the standards and process for the application of a new officials' association; expanded the prohibition of splitting teams between different competitions on the same day to all sports and added a one time per season exception per team; changed outdated language related to shared-time students to reflect current practice with all day vocational schools and clarify that a student may only represent the school where the student is receiving the majority of academic credits including core academic credits; revised the current transfer rule to reflect changes in eligibility standards for transfers occurring after the first day of school of the 2008-09 school year, and added clarifications such as that a student must be in legally in attendance on the school day to participate in athletics, a student must have a medical physical in order to try out as well as practice, scrimmage, and compete, and inserting language to recognize the different administrative heads of school.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 FEDERAL STREET, SUITE 2, DOVER, DELAWARE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Delaware Interscholastic Athletic Association and does not directly affect any changes to students' ability to receive and equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the Delaware Interscholastic Athletic Association and continues to ensure all students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Delaware Interscholastic Athletic Association and continues to ensure 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 regulation is related to the Delaware Interscholastic Athletic Association and continues to preserve the necessary authority and flexibility of 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 regulation is related to the Delaware Interscholastic Athletic Association and continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is related to the Delaware Interscholastic Athletic Association and

continues to locate the decision making authority and accountability in the same entity.

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 regulation is related to the Delaware Interscholastic Athletic Association and the amendments do not directly affect any other state educational policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? Because of the increase fines, there may be an increase in costs to member schools. The increases were discussed January 17, 2008 at the DIAA Annual Membership Meeting with the member schools.

1009 DIAA Senior High School Interscholastic Athletics

1.0 National Federation of State High Schools, Conferences, Contracts, ~~and~~ Equivalency Rules, and Definitions

1.1 National Federation of High School Associations

1.1.1 DIAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DIAA Board of Directors.

1.1.1.1 The playing rules of the United States Tennis Association, the United States Golf Association, and the United States Lacrosse Association are adopted for the sports of tennis, golf, and girls' lacrosse respectively except as modified by the DIAA Board of Directors.

1.2 Conferences

1.2.1 Member schools may establish voluntary conference organizations that may be composed of public and nonpublic schools. When established, they must submit their conferences' proposed membership and its constitution and bylaws to the DIAA Board of Directors and be approved by the DIAA Board of Directors before the schools may enter into any contractual agreements.

1.2.1.1 All subsequent amendments to the constitution and bylaws of the conferences must be compatible with all provisions of the DIAA Regulations; interpretations and with the rulings of the Executive Director, Sportsmanship Committee, and Board of Directors; state tournament regulations; and DIAA approved playing codes.

1.3 Contracts

1.3.1 Contracts between DIAA member schools or between DIAA member schools and full member schools of comparable state associations are encouraged but not required.

1.3.1.1 Conference master contracts are approved substitutes for individual contracts.

1.3.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question, appeal may be made to the Executive Director or the DIAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

1.3.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors.

1.3.2 Contracts between DIAA member schools and nonmember or associate member schools of comparable state associations are required.

1.3.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DIAA member school being assessed a ~~\$15.00~~ \$50.00 fine.

1.3.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors unless a signed individual contract is in place.

1.3.3 Contracts shall be interchanged according to the following provisions:

1.3.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

1.3.3.2 Contracts shall be drawn up by the faculty manager or other designated

staff member of the home school of the earlier varsity contest.

1.3.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

1.3.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question, and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DIAA Board of Directors.

1.3.4.1 If a game is not played because an out of state opponent qualifies for its state championship series and the date of the playoff game conflicts with the date of the regular season game, a forfeit shall not be awarded.

1.4 Equivalency Rules

1.4.1 A full member school shall not participate in a scrimmage or contest with an in state school that is not a member in good standing of DIAA.

1.4.1.1 Scrimmage shall be defined in as: an informal competition between schools in which the officials are not compensated, a score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt the play to provide instruction and the competition is strictly for practice purposes.

1.4.2 A full member school shall not participate in a scrimmage or contest with an associate or non member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

1.4.3 An associate member school shall not participate in a scrimmage or contest with an associate or non member school of another state association unless the opposing school complies with the conditions specified in 1.4.2. However, the opposing school shall be exempt from those rules which DIAA has waived for its associate member school.

1.4.4 Member schools shall not participate in a practice, scrimmage, or contest with a non school sponsored team.

1.4.5 Member schools shall not participate in a practice, scrimmage, or contest with post graduate students or college students. This provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

1.4.6 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a ~~\$100.00~~ \$500.00 fine.

1.5 Definitions

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

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

"Department" means the Delaware Department of Education.

"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 shall be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

"Individualized Education Program" or "IEP" means a written statement for a child with a disability as defined in 14 DE Admin. Code 922.

"Legally in attendance" means present at school as determined by a pre-established written policy adopted by the local school board or governing body of the school.

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

"School day(s)" shall mean 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.

"State Board" means the State Board of Education of the State pursuant to 14 Del.C. §104.

2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if He/She Does Not Meet the Following Requirements

2.1 Eligibility, Age

2.1.1 Students who become 19 years of age on or after June 15 immediately preceding the

school year shall be eligible for all sports during the current school year provided all other eligibility requirements are met. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

2.1.1.1 Requests for a waiver of the age requirement shall only be considered for participation on an unofficial, nonscoring basis in non contact or non collision sports

2.2 Eligibility, Residence

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s), legal guardian(s), or Relative Caregiver in the attendance zone of the school which he/she attends, or be a student 18 years of age or older and living in the attendance zone of the school which he/she attends (2.2.1.7) in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/ she shall be ineligible, for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, shall be granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

2.2.1.4 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 **Del.C.**, Ch.4.

2.2.1.5 A student who is a non resident of Delaware shall be eligible to attend a public school, charter school or career technical school if, in accordance with 14 **Del.C.** §607, his/her custodial parent or ~~court appointed~~ legal guardian or Relative Caregiver is a full time employee of that district.

2.2.1.6 Notwithstanding 2.2.1, a student shall be eligible at a public or career technical school if he/she is enrolled in accordance with 14 **Del.C.** §202(f), the Caregivers School Authorization.

2.2.1.6.1 An exception would be a student whose Relative Caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.2.1.7 A student who reaches the age of majority (18) and leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance on or after their 18th birthday. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, provided the student's choice application was properly submitted prior to his/her change of residence.

2.2.1.8 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

2.3 Eligibility, Enrollment and Attendance

2.3.1 A student must be legally enrolled in the high school which he/she represents in order to

participate in a practice, scrimmage or contest.

2.3.2 A ~~shared time~~ student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school. A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements; not a school at which he/she is receiving only specialized educational instruction such as vocational training.

2.3.3 Students with disabilities who are placed in special schools or programs

2.3.3.1 Definitions:

“**Campus**” means a contiguous land area containing one or more school buildings.

“**Special School or Program**” means a school or program approved by the Department of Education with the approval of the State Board of Education to serve students with disabilities, but does not include alternative schools.

“**Student With a Disability**” means a “child with a disability” as that term is defined in the ~~Administrative Manual for Special Education Services (AMSES)~~, 14 **DE Admin. Code** 925 922.

2.3.3.2 A student with a disability who is placed in a special school or program shall be eligible to participate in interscholastic athletics as follows:

2.3.3.2.1 If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.

2.3.3.2.2 If the special school or program does not sponsor the interscholastic sport in question and the student is served in a regular high school for all or part of the school day, the student shall be eligible only at that regular high school.

2.3.3.2.3 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is located on the campus of a regular high school, the student shall be eligible only at the regular high school on the same campus.

2.3.3.2.4 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is not located on the campus of a regular high school, the student shall be eligible only at the regular high school designated to serve the special school's or program's students.

2.3.3.2.4.1 School districts or charter schools which administer special schools or programs and have multiple high schools shall decide which of its regular high schools shall be designated to serve special school or program students in these circumstances.

2.3.4 A student who is participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the students custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the “choice district” in order to legally enroll at his/her home school. Without a release, the student would not be eligible legally enrolled and consequently would be ineligible to participate in interscholastic athletics.

2.3.5 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in school or out of school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

2.3.6 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities in accordance with pre-established written school policy.

2.3.6.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

2.3.7 A student who fails to complete a semester or is absent for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from the date of his/her reentry to school.

2.3.8 An ineligible student who practices in violation of 2.2.2 through 2.2.5 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

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2.4 Eligibility, Transfers

(Section 2.4 shall become effective the second day of school of the 2008-09 school year. The provisions in Section 2.4 that were in effect immediately preceding these revisions shall be in effect until that day.)

2.4.1 Definitions:

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

“**First year of eligibility**” means the school year a student first enters ninth grade and ends the day prior to the first day of school of their second year of eligibility.

“**One school year**” means the number school attendance days in a school year as adopted by the district or school. (i.e. 180 attendance days)

“**Previous participation**” means having tried out, practiced, scrimmaged, or competed in grades 9 through 12.

“**Receiving school**” means the school a student transfers to after leaving their previous school.

“**Second year of high school eligibility**” means the second year after a student enters ninth grade and includes sophomore and repeating freshman.

“**Sending School**” means the school a student transfers from to go to a different school.

~~2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:~~

~~2.4.2 No previous interscholastic athletic participation~~

~~2.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a “choice school” within the district and who has not completed the two year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a “choice school” to another “choice school” within the district.~~

~~2.4.4 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.~~

~~2.4.3 Previous interscholastic athletic participation~~

~~2.4.3.1 First Year of Eligibility~~

~~2.4.3.1.1 A student who has previously participated in interscholastic athletics may transfer one time during their first year of eligibility without loss of athletic eligibility.~~

~~2.4.3.1.2 Unless one of the exceptions applies, if a student who has previously participated in interscholastic athletics that transfers more than one time during their first year of eligibility, he/she shall be ineligible in any sport for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies: The period of ineligibility shall continue to the next grade/school year until 90 school days have passed.~~

~~2.4.3.2 Second year of Eligibility forward: Unless one of the exceptions applies a student who has previously participated in interscholastic athletics, transfers to a DIAA member school after the first day of school of their second year of high school eligibility shall be ineligible in any sport that the student previously participated in for a period of one school year commencing with the first day of official attendance in the receiving school. The period of ineligibility shall continue to the next grade/school year until the total number of school days in the school year have passed.~~

~~2.4.4 Exceptions~~

~~2.4.2.2 2.4.4.1 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship or custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship or custody, an affidavit, (except as permitted by 2.4.2.3 2.4.4.2), or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.~~

~~2.4.2.3~~ 2.4.4.2 The transfer is in accordance with the student being placed with a Relative Caregiver as per 14 **Del.C.** §202(f), the Caregivers School Authorization.

~~2.4.2.3.1~~ 2.4.4.2.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

~~2.4.2.4~~ 2.4.4.3 The transfer is the result of a change in residence by the custodial parent(s), legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended. A student who transfers shall be eligible in the receiving school immediately, when the custodial parent(s), legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

~~2.4.2.5~~ The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided that the following has occurred:

~~2.4.2.5.1~~ The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

~~2.4.2.5.2~~ The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

~~2.4.2.5.3~~ The student's legal residence is located in the attendance zone of the receiving school.

~~2.4.2.5.4~~ All other DIAA eligibility requirements have been met.

~~2.4.2.6~~ 2.4.4.4 The transfer is the result of the student being homeless as defined in the McKinney - Vento Act, 42 U.S.C. 11434a(2).

~~2.4.2.6.1~~ 2.4.4.4.1 Notwithstanding the above, the student shall be ineligible under the ~~ninety (90) school day~~ applicable transfer ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

~~2.4.2.6.1.1~~ 2.4.4.4.2 Seeking a superior team; or

~~2.4.2.6.1.2~~ 2.4.4.4.3 Seeking a team more compatible with the student's abilities; or

~~2.4.2.6.1.3~~ 2.4.4.4.4 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

~~2.4.2.6.1.4~~ 2.4.4.4.5 Avoiding disciplinary action imposed by the school of origin related to or affecting interscholastic athletic participation.

~~2.4.3~~ 2.4.4.5 Transfer Because of Promotion or Administrative Assignment: Transfer because of promotion or administrative assignment to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted or administratively assigned shall be eligible.

2.4.4.6 The transfer is the result of a student exercising transfers options (i.e. failure to make adequate yearly progress, persistently dangerous schools, etc.) mandated by the Elementary and Secondary Education Act, 20 U.S.C. 6316 (E) & (F); 14 Del.C. §155; 14 Del. Admin. Code 103; and 14 Del. Admin. Code 608.

~~2.4.4~~ 2.4.5 Transfer Because of a Change in the Program of Study or Financial Hardship: If a waiver of the ~~ninety (90) school day~~ transfer ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s), legal guardian(s) or Relative Caregiver is responsible for providing documentation to the DIAA Board of Directors to support the request.

~~2.4.4.1~~ 2.4.5.1 Documentation for change in the program of study (a multi year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

~~2.4.4.1.1~~ 2.4.5.1.1 The student's schedule;

~~2.4.4.1.2~~ 2.4.5.1.2 The student's transcript;

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receiving schools; 2.4.4.1.3 2.4.5.1.3 Current course descriptions from both the sending and

sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

the sending and receiving schools that the student is not transferring for athletic advantage (2.4.6 2.4.7).

hardship shall include: 2.4.4.2 2.4.5.2 Documentation for Financial Hardship: Documentation for financial

and unexpected reduction in income or increase in expenses; and

the sending and receiving schools that the student is not transferring for athletic advantage (2.4.6 2.4.7).

primary residence is established, a change in a student's primary residence without court action subjects the student to the ~~ninety (90) school day~~ applicable ineligibility clause.

ineligible under the ~~ninety (90) school day~~ applicable ineligibility clause if the reason for his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

~~2.4.7 A student who transfers from a public, private, career technical, or charter school to a school of choice, as authorized by 14 Del.C. Ch. 4 shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.~~

~~2.4.7.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.~~

~~2.4.8 A student who transfers from a school of choice to either a private school, career technical school or, after completing his/her two year commitment, to a public charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.~~

~~2.4.9 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.~~

2.4.8 Pursuant to 14 Del.C. Ch. 4 a student who transfers from a school of choice to another school of choice in grades 10, 11, and 12 shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/ she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services.

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters a competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal or headmaster of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for

expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp or clinic. Accepting an event program or a complimentary item(s) (t shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/ her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newspaper, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to the number of days in the school year provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study shall be adjudged eligible by the principal or headmaster if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education ~~plan~~ program (IEP).

2.6.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the regular school day, that satisfies an unmet graduation requirement.

2.6.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

2.6.3.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.3.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.5 Local school boards and nonpublic schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.6 An ineligible student who practices in violation of 2.6.1, 2.6.2, 2.6.3 or 2.6.4 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or

combination of spring sports.

2.7.1.2 "Hardship" shall be defined as extenuating circumstances peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver shall not be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA's minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/ her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006.9. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or ~~court-appointed~~ legal guardian(s) or Relative Caregiver sought assistance to ameliorate the effects of the hardship condition.

2.7.2 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade. If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

2.7.2.1 Eighth grade students who are enrolled or transfer to schools that meet the above criteria begin their five years of eligibility for ~~senior~~ high school athletic participation the first year they enter eighth grade.

2.7.3 Seventh grade students shall not be permitted to participate on ~~senior~~ high school interscholastic teams.

2.7.4 Participation of Postgraduates

2.7.4.1 Participation shall be defined as taking part in a school sponsored practice, scrimmage or contest on or after the first allowable date for practice in that sport.

2.7.4.2 Postgraduates shall not be eligible to participate in interscholastic athletics. All graduates of recognized ~~senior~~ high schools shall be considered postgraduates.

2.7.4.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other DIAA requirements.

2.7.4.4 Students whose commencement exercises are prior to the completion of the school's regular season schedule and the state tournament shall be eligible to compete.

2.8 Eligibility of Foreign Exchange Students and International Students

2.8.1 Notwithstanding 2.2, 2.3, and 2.4, foreign exchange students and international students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

2.8.1.1 All foreign exchange programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

2.8.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

2.8.2 International students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DIAA eligibility requirements including 2.2.

2.8.3 Once enrolled, foreign exchange and other international students must comply with all

DIAA eligibility rules.

2.8.3.1 Athletic recruitment of foreign exchange students or other international students by a member school or any other entity is prohibited, and any such students recruited shall be ineligible.

2.9 Student Eligibility Report Forms

2.9.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a ~~\$15.00~~ \$50.00 fine against the school.

2.9.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/ she shall be adjudged eligible and the school assessed a ~~\$40.00~~ \$25.00 fine.

2.10 Use of an Ineligible Athlete:

2.10.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and point(s) won.

2.10.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.10.2.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament, team and individual awards shall be returned to the event sponsor and team and individual records and performances shall be nullified.

2.10.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined ~~\$200.00~~ a minimum of \$200.00 but no more than \$1,000.00 and referred to the DIAA Sportsmanship Committee for consideration of further action unless the athlete or his/her parent(s) or ~~court-appointed~~ legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility and shall be automatic and not subject to refusal by the offending school's opponent.

2.10.3 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as the affected placements will be adjusted according to the rules of the sport.

2.10.3.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.10.3.1.1 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.10.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 2.10.1 and 2.10.2 shall be imposed.

2.10.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the amount of days up to length of the school year from the date the charge is substantiated.

2.10.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for the amount of days up to length of the school year from the date the charge

is substantiated.

2.10.7 If an athlete or his/her parent(s), legal guardian(s) or Relative Caregiver knowingly withholds information or provides false information that causes him/ her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the amount of days up to the length of the school year from the date the charge is substantiated.

2.11 Determination of Student Eligibility and the Appeal Procedures

2.11.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

2.11.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.11.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with 14 DE Admin. Code 1006.11.

9 DE Reg. 126 (7/1/05)

3.0 Physical Examinations, Weight Control Program for Wrestling and Required Medical Personnel in Attendance at All Football Games

3.1 Physical examinations

3.1.1 A student shall not be eligible to try out, practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after May 1 and before beginning such athletic activity for the current school year.

3.1.2 A certificate to that effect, as well as the parent's, legal guardian's, or Relative Caregiver's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

3.1.3 For any subsequent sports season in the school year, a limited reexamination shall be performed if any of the following circumstances exist: the athlete has been treated for an injury during the preceding sports season, the 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 athlete during the preceding sports season, or the athlete has a remedial defect.

3.1.4 The medical history of the student should be available at the time of each examination.

3.1.5 ~~A player who is properly certified to participate in interscholastic athletics but is physically unable to participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school or designee, a statement from a qualified physician that he/she is again physically able to participate. Prior to resuming participation, a player who is otherwise properly certified to participate in interscholastic athletics must present to the administrative head of school or designee, a statement from a qualified physician that the player is physically able to participate if one of the following conditions has occurred:~~

3.1.5.1 The player is physically unable to compete due to illness or injury for five(5) consecutive days on which a practice scrimmage or contest is held;

3.1.5.2 The player was apparently unconscious;

3.1.5.3 The player suffered a concussion.

3.2 Wrestling Weight Control Program

3.2.1 Each year, beginning November 1st and prior to January 15th, a wrestler must establish his/her 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 wrestler attends. The official weigh in for a regularly scheduled dual meet or tournament would establish certification. In addition, each year beginning November 1 and prior to January 15, each wrestler is required to determine his/her lowest allowable competitive weight according to the DIAA Weight Monitoring Program. A wrestler may recertify at a lower weight class during from November 1 and prior to January 15 if his/her individual weight loss plan allows for it. ~~However, once certified at a weight a wrestler may not weigh in more than one weight class above the weight of certification without automatically recertifying at~~

~~a higher weight. Once recertified to a higher weight class the wrestler can no longer recertify lower. However, a wrestler may not lose more than an average of 1.5 percent of their body weight during any seven day period throughout the entire wrestling season.~~ After January 14 no wrestler is allowed to recertify at a lower weight.

3.2.1.1 A wrestler who weighs in at least once but fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/ she last weighed in before that date.

3.2.1.2 A wrestler who does not weigh in at least once and fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she first weighs in after that date.

3.2.1.3 A wrestler who is unable, prior to January 15, to get down to the maximum allowable weight of ~~275~~ 285 pounds in order to compete in the heavyweight class shall be permitted to certify his/her minimum weight class at a later date in the season and thereafter be eligible to participate.

3.2.2 By January 15, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the secretary of the conference to which the school belongs or to the secretary of the independent tournament. Further, duly attested notices of additions to the certified roster shall be sent to the conference secretary without delay.

3.2.2.1 The conference secretary shall in turn send to each school in his/her conference copies of the certified rosters of each school. Further, he/she shall note and send copies of the notices of additions to the rosters as these additions occur.

3.3 Required Medical Personnel In Attendance at All Football Games

3.3.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service. Failure by the host school to provide this service shall result in a ~~\$100.00~~ \$250.00 fine.

4.0 Sports Seasons, Practices Sessions and Maximum Game Schedules and Designated Sports Seasons

4.1 Sports Seasons

4.1.1 The fall sports season shall begin on or after August 15th and end 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. A conference championship game must also be completed before the start of the state tournament in that sport and practice for any fall sport shall not begin earlier than August 15th. The first allowable competition date in the fall sports season shall be the first Friday after Labor Day.

4.1.1.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non contact phases of the kicking game, and teach non contact positional skills. Protective equipment shall be restricted to helmets, mouth guards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

4.1.1.2 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

4.1.2 The winter sports season shall begin with the first approved day for practice and end 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 and practice for any winter sport shall not begin earlier than 21 days before the first Friday in December.

4.1.3 The spring sports season shall begin on March 1 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 and practice for any spring sport shall not begin earlier than March 1.

4.1.4 A school which 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 ~~\$100.00~~ \$500.00 fine per each illegal practice day. The school shall be referred to the DIAA Sportsmanship Committee for consideration of further action.

4.1.5 A school which conducts practice prior to the first allowable date shall pay a fine of ~~\$100.00~~ \$500.00 per each illegal practice day. The school shall be referred to the DIAA Sportsmanship Committee for consideration of further action.

4.1.6 No member school shall participate in a post season contest without the written approval of the Executive Director.

4.2 Practice Sessions

4.2.1 A practice session shall be defined as any 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, warmup and cool down exercises, drills or mandatory strength training. Member schools shall conduct a minimum of 21 calendar days of practice under the supervision of the school's certified, emergency or approved volunteer coaching staff prior to the first scheduled contest in all sports.

4.2.2 Practice sessions shall be limited to two (2) hours on official school days. Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete. The two hour practice limitation does not include time for noninstructional activities such as dressing, showering, transportation, or training room care.

4.2.3 Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences. However there should be one day of no activity (practice, scrimmage, or contest) during any seven day period.

4.2.4 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. 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 (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

4.2.5 A school which exceeds the two hour practice limitation shall pay a ~~\$100.00~~ \$500.00 fine.

4.3 Maximum Game Schedules and Designated Sports Seasons:

4.3.1 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 DIAA Board of Directors.

4.3.2 The third contest or competition date in a week shall be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or spring vacation.

4.3.2.1 A team shall not participate in two ~~different cross country, indoor track or outdoor track meets~~ 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.

4.3.2.2 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.

4.3.2.3 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.

4.3.3 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.

4.3.3.1 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 (4) contests or competition dates in a week.

4.3.4 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. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

4.3.4.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the DIAA tournament committee.

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

4.3.6 A 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 ~~\$200.00~~ **\$500.00**.

4.3.6.1 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and pay a ~~\$100.00~~ **\$250.00** fine.

4.3.6.2 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the process stipulated in 2.10.

9 DE Reg. 126 (07/01/05)

9 DE Reg. 1964 (06/01/06)

5.0 School and Team Competition, Sanctioning of Competitions, State Championships and All Star Contests

5.1 School and Team Competition

5.1.1 Sponsoring Interscholastic Teams: Interscholastic competition is defined as any athletic contest between students representing two (2) 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 who are considered to be representing a school if the school does any of the following:

5.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

5.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

5.1.1.3 Permits students to compete under the name of the school.

5.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications in excess of what is customarily done for "outside" organizations.

5.1.1.5 Presents or displays individual or team awards.

5.1.2 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

5.1.2.1 The governing body of the participating district or nonpublic school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

5.1.2.2 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 of the school.

5.1.2.3 The participating schools agree to comply with all applicable DIAA rules and regulations as stated in the current DIAA Official Handbook.

5.1.3 Levels of Participation

5.1.3.1 Level 1 or developmental sport, less than twelve (12) participating schools at the varsity level. DIAA rules and regulations shall not be in effect.

5.1.3.2 Level 2 or recognized sport, twelve (12) or more participating schools at the varsity level. Participating schools must petition the DIAA Board of Directors for official recognition of the sport.

5.1.3.2.1 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.

5.1.3.3 Level 3 or championship sport sixteen (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.

5.1.3.4 Withdrawal of level 2 or level 3 status. If, for two (2) 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 of Directors.

5.1.4 Membership on Coed Teams

5.1.4.1 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. 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.

5.1.4.2 Coed teams shall participate only in the boys' state championship tournament or meet.

5.2 Sanctioning of Competitions

5.2.1 Member schools may participate in tournaments or meets involving four (4) 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:

5.2.1.1 The event shall not be for determining a regional or national champion.

5.2.1.2 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.

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

5.2.1.4 Non school event organizers shall submit a full financial report to the DIAA office within ninety (90) calendar days of the completion of the event.

5.2.1.5 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.

5.2.1.6 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.

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

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

5.2.2 Participation in a non sanctioned event shall result in payment of a ~~\$25.00~~ \$100.00 fine. A second offense shall result in a ~~\$50.00~~ \$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 ~~\$400.00~~ \$500.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

5.3 State Championships

5.3.1 State Championships: The minimum number of high schools which must sponsor a sport at the varsity level in order for DIAA to approve a state championship shall be sixteen (16).

5.3.1.1 State championship play shall be permitted at the varsity level only in football, basketball, indoor and outdoor track, cross country, swimming, wrestling, golf, baseball, soccer, tennis, field hockey, softball, girls' volleyball, and lacrosse provided such tournament or meet is under the direct control and supervision of or has the approval of DIAA.

5.3.1.2 A member school which does not pay all fines incurred during the school year by July 1st shall be ineligible to participate in a state championship event in any sport during the following school year until such time as all fines are paid.

5.3.2 All state championships shall be managed by committees established by the DIAA Board

of Directors.

5.3.2.1 Each tournament format, as well as the criteria and procedures for selecting and seeding the participating teams, must be approved by the Board of Directors and any subsequent changes must also be approved by the Board. The Executive Director shall advise the committees as to which proposed changes must be presented to the Board. If the Executive Director and the committee cannot agree, the proposed change must be presented to the DIAA Board of Directors for approval.

5.3.2.2 All financial arrangements, including the collection of monies and expenditures, must be approved by the Executive Director

5.3.2.3 Championship play in other sports must be confined to the individual conferences and conducted in accordance with the rules of the conference as approved by the DIAA Board of Directors.

5.4 All Star Contests

5.4.1 An all star contest shall be defined as an organized competition in which the participants are selected by the sponsoring organization or its designee on the basis of their performance during the interscholastic season in that sport.

5.4.2 Students who have completed their eligibility in a sport may participate in all star contests in that sport, if approved by DIAA, prior to graduation from high school.

5.4.3 Member schools shall not make their facilities, equipment, or uniforms available to the sponsoring organization or the participants unless the all star contest is approved by DIAA.

5.4.4 The all star contest must be approved by DIAA in accordance with the following criteria:

5.4.4.1 The contest shall not be for determining a regional or national champion.

5.4.4.2 The contest 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.

5.4.4.3 The awards given shall be in compliance with 9.0.

5.4.4.4 Exceptions to the adopted rules code for the sport, including uniform regulations, shall require the approval of DIAA.

5.4.5 A full financial report must be filed with the Executive Director within ninety 90 days of the contest. Failure to submit a financial report within the specified period of time shall result in the sponsoring organization being assessed a \$300.00 fine.

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

6.0 Athletic Camps and Clinics Sponsorship, Commercial Camps and Clinics and Open Gyms, Conditioning Programs and Non School Competition

6.1 Out of Season Athletic Camps and Clinic Sponsorship

6.1.1 DIAA does not restrict a student's decision to attend an out of season athletic camp or clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp, tournament, league or clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp or clinic may only instruct their returning athletes in accordance with 7.5.

6.1.1.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp or clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp or clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or headmaster or his/her designee and the funds shall be allocated according to the following guidelines:

6.1.1.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.1.1.1.2 All applicants shall share equally in the funds provided.

6.1.1.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.1.1.1.4 All applicants shall have one year of prior participation in the sport for which the camp or clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp or clinic.

PROPOSED REGULATIONS

6.2 Team Attendance at Out of Season Commercial Camps and Clinics

6.2.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp or clinic, may do so with the approval of the local school board or governing body. School funds shall not be used for this purpose. The disbursement of funds to pay for camp or clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or headmaster or his/her designee and the funds shall be allocated according to the following guidelines:

6.2.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.2.1.2 All applicants shall share equally in the funds provided.

6.2.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.2.1.4 All applicants shall have one year of prior participation in the sport for which the camp or clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp or clinic.

6.3 Individual Attendance at Commercial Camps and Clinics:

6.3.1 Commercial camps and clinics are defined as a camp or clinic operated for profit which provides coaching or other sports training for a fee.

6.3.2 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

6.3.2.1 The student must participate unattached and may not wear school uniforms.

6.3.2.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.3.2.3 The school may not provide transportation or pay fees.

6.3.2.4 The school coach may not require his/her athletes to participate in a camp or clinic, or provide instruction to his/her returning athletes in a camp or clinic except as provided in 7.5.

6.4 Open Gym Programs

6.4.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

6.4.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.4.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

6.4.1.3 The activities must be unstructured and student generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

6.4.1.4 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

6.4.1.5 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/ her assigned sport.

6.4.1.6 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

6.4.1.7 The participants must provide their own workout clothing.

6.5 Conditioning Programs

6.5.1 A member school may conduct a conditioning program in accordance with the following provisions:

6.5.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.5.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

6.5.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

- 6.5.1.4 A coach may not provide instruction in sport specific skills or techniques.
- 6.5.1.5 Sport specific equipment is prohibited.
- 6.5.1.6 The participants must provide their own workout clothing.

6.6 Non-School Competition in which Participants are Competing Unattached and are Not Representing Their Schools

6.6.1 A student may participate on a non school team or in a non school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

6.6.2 Participation on a non school team or in a non school individual event shall be subject to the following conditions:

6.6.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

6.6.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.6.2.3 The school or a school affiliated support group may not provide transportation.

6.6.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

6.6.2.5 The school coach may not require his/her athletes to participate in non school competition or provide instruction to his/her athletes in non school competition except as in 7.5.

6.6.3 14 **Del.C.** §122(b)(14) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools. Similar teams shall include organized intramural teams as well as non school teams in that sport.

9 DE Reg. 1964 (06/01/06)

7.0 Certified, Emergency and Volunteer Coaches, Student Teaching and Coaching and Coaching Out of Season

7.1 Certified Coaches:

7.1.1 Only those professional employees certified by the Department of Education 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 must be for the regular school year and the professional assignment shall be no less than ½ of the school day, exclusive of coaching duties.

7.1.2 All varsity head coaches (junior varsity 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 school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/she fails to attend the DIAA rules clinic or pass the open book rules examination in his/her 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 Executive Director.

7.1.2.1 Certified coaches at all levels of competition shall be required to hold a current certification in adult CPR.

7.2 Emergency Coaches

7.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the regular school year or whose professional assignment is less than ½ 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 his/her coaching assignment shall not be considered an emergency coach by DIAA.

7.2.1.1 Emergency head coaches at all levels of competition shall be required to hold a current certification in adult CPR

7.2.2 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

7.2.3 Emergency coaches may be employed provided the local governing body adheres to the

following procedures:

7.2.3.1 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.

7.2.3.2 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.

7.2.3.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

7.2.3.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her 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.

7.2.3.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

7.3 Student Teaching and Coaching

7.3.1 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

7.4 Volunteer Coaches

7.4.1 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 and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

7.5 Coaching Out of Season

7.5.1 From August 2nd through ~~June 14th~~ the first day after the last spring sport DIAA state tournament event a certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the varsity or subvarsity teams of the school at which he/she coaches or transfer students from other schools who play the coach's sport. He/she shall also be prohibited from coaching rising ninth graders (rising eighth graders if eighth grade is part of the same administrative unit as grades 9 through 12) who participated in his/her assigned sport at a feeder school. A rising ninth grader is a student who has completed eighth grade requirements but is not yet enrolled in ninth grade. A rising eighth grader is a student who has completed seventh grade requirements but is not yet enrolled in eighth grade.

7.5.1.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

7.5.1.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

~~7.5.1.3~~ 7.5.1.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

~~7.5.1.4~~ 7.5.1.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

~~7.5.1.5~~ 7.5.1.2.3 The league shall have registration and entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

~~7.5.1.6~~ 7.5.1.3 A certified, emergency, or volunteer coach shall not be allowed to provide instruction or coach during the designated season in his/her assigned sport to current members of the varsity or subvarsity teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

~~7.5.1.7~~ 7.5.1.4 A coach who is in violation of this section shall be suspended from coaching in the specified sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

7.5.2 From ~~June 15th~~ the first day after the last spring sport DIAA state tournament event through August 1st, a certified, emergency or volunteer coach shall be allowed to provide instruction in his/her assigned sport to returning members of the varsity or subvarsity teams of the school at which he/she coaches.

Instructional contact with the aforementioned returning school team members shall be subject to the following conditions:

7.5.2.1 A coach may provide instruction to an unlimited number of his/her returning school team members in formal league or tournament competition or in formal instructional camps or clinics provided the league or tournament or instructional camp or clinic is insured, organized and conducted by a non school affiliated organization.

7.5.2.2 A coaching staff may provide instruction to a maximum of two returning school team members in an informal setting which means student initiated and non scheduled. A coaching staff may have multiple two hour sessions in any given day. Returning school team members shall not receive more than 2 hours of sports instruction per day.

7.5.2.3 A coach shall not receive any compensation, from any source, for the instruction of his/her returning school team members. Reimbursement for out of pocket expenses (e.g. gas, food, lodging) incurred by returning school team members and coaches to attend leagues or tournaments or instructional camps or clinics are not prohibited provided that no local school or state educational funds are used.

7.5.2.4 Participation in the formal league and tournament or instructional camp or clinic, or informal instruction, shall be open, voluntary and equally available to all returning school team members as well as members of the student body.

7.5.2.5 A coach who is in violation of this section shall be suspended from coaching in the specified sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

8.0 Recognition of Officials' Associations, Required Use of Officials and Attendance at Rules Clinics

8.1 Recognition of Officials' Associations

8.1.1 The officiating of interscholastic contests in the state of Delaware which involve one (1) or more member schools shall be under the control of the DIAA and such control may include, but not be restricted to, giving examinations, evaluating officials, setting game fees, determining the number of officials per game, and assigning officials.

8.1.2 An official's association which desires to officiate middle school and high school contests shall request recognition and approval from DIAA by submitting the following documents to the DIAA Officials' Committee:

8.1.2.1 A letter of request to be recognized by DIAA and indicating the association's willingness to abide by DIAA rules and regulations. The president of the requesting officials' association or his/her designee shall petition the DIAA Board of Directors to render a decision.

8.1.2.2 A brief history of the association including but not limited to the officiating experience (if any) of the members and if a new association is being formed, the purpose for which the Association is being formed.

8.1.2.3 A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.

8.1.2.4 A description of the association's evaluation and rating system.

8.1.2.5 A description of the association's recruiting and training programs for new members.

8.1.2.6 A membership roster indicating the number of years of experience at the subvarsity, varsity, and state tournament levels for each member and also his/her most recent rating in a previous association. This information must be documented and is subject to verification.

8.1.2.7 ~~If applicable, letters~~ Letters of recommendation or names of references from leagues which the association has serviced during ~~the past year~~ their existence.

8.1.3 The Officials' Committee shall review the aforementioned documents and, ~~if necessary,~~ meet with the officers of the association to discuss their petition.

8.1.4 The Officials' Committee shall reserve the right to consult with any other interested parties during the evaluation process.

8.1.5 The Officials' Committee shall report its findings to the DIAA Board of Directors and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.

8.1.6 ~~The president of the officials' association or his/her designee shall petition the DIAA Board~~

PROPOSED REGULATIONS

~~of Directors and the Board shall render a decision. The Board of Directors shall consider the petition for recognition and the Official's Committee recommendation and make a decision to approve or deny the request. The petitioner may request an evidentiary hearing be held before the Board pursuant to the procedures in 1006.10.1.3.2. The Board shall decide if the petitioning officials association shall be granted recognition, granted recognition with conditions, or denied recognition.~~

8.1.7 An approved Association shall serve a minimum two year probationary Period during which time the association shall be evaluated. An Association designated as probationary is ineligible to provide officials to work the applicable DIAA State Tournament.

8.1.7.1 Members of the Officials' Committee and the applicable Sport Committee shall comprise the Officials Association Evaluation Committee (Evaluation Committee). The new officials association shall be evaluated according to the following criteria:

8.1.7.1.1 Total number of games worked at the Varsity level.

8.1.7.1.2 Total number of officials who worked games at the Varsity level.

8.1.7.1.3 Total number of member schools who contracted the services of

the Association.

8.1.7.1.4 A comparison of the percentage of games the Association worked against the percentage of games worked by other DIAA recognized officials associations in that sport.

8.1.7.1.5 A comparison of the percentage of the Association's registered officials against the number who worked Varsity level games.

8.1.7.1.6 A comparison of the ratio from 8.1.7.1.5 against any existing Association(s)' same ratio.

8.1.7.1.7 In addition, the evaluation may be based on any other available information which may include but is not limited to: the associations ability to work a minimum of 25 percent of all varsity contests played by DIAA member schools in that sport; written complaints by contracted schools; evaluations by member schools; input from member schools; or any other relevant information.

8.1.7.2 The results of all evaluations shall be shared with the probationary Association at the end of each season. The association shall have the opportunity to add comments to the final evaluation.

8.1.8 At the end of the minimum two-year probationary period the Evaluation Committee shall recommend to the Board one of the following options based on the evaluations and the Probationary Association's ability to work Varsity contests equal to or greater than twenty-five (25) percent of all Varsity contests played by member schools:

8.1.8.1 Re-approve conditionally for another year on probationary status.

8.1.8.2 Disapprove so as to no longer remain as an approved Association.

8.1.8.3 Re-approve conditionally with State Tournament consideration based upon the Sport worked.

8.1.8.4 Completely approve the Association with full State Tournament consideration equal to any existing Associations(s).

8.1.9 The Board of Directors shall consider the petition for recognition and the Official's Committee recommendation and make a decision. The probationary officials association may request an evidentiary hearing be held before the Board pursuant to the procedures in 1006.10.1.3.2. The Board shall decide if the petitioning officials association shall be:

8.1.9.1 Re-approved conditionally for another year on probationary status.

8.1.9.2 Disapproved so as to no longer remain as an approved Association.

8.1.9.3 Re-approved conditionally with State Tournament consideration based upon the Sport worked.

8.1.9.4 Completely approved with full State Tournament consideration equal to any existing Associations(s).

~~8.1.7~~ 8.1.10 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.

8.2 Required Use of Officials

8.2.1 Member schools and tournament sponsors shall be required to use officials 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 ~~\$50.00~~ \$100.00 fine per game per non approved official.

8.2.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

8.3 Attendance at Rules Clinics

8.3.1 Officials shall be required each year to both attend the DIAA rules interpretation clinic and to pass the rules examination provided by the DIAA office for the sport(s) they officiate.

8.3.2 Failure on the part of an official to attend the DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest during that season.

8.3.3 Failure to satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

8.3.4 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

8.3.5 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DIAA rules interpretation clinic, he/she may view a videotape of the DIAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

8.3.5.1 No later than the day of the DIAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

8.3.5.2 The out of state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

8.3.5.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

9.0 Awards and Scholarships

9.1 Awards

9.1.1 Member schools and support groups affiliated with a member schools, such as an alumni association or booster club, shall be allowed to present recognition awards for team and individual accomplishments. The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic, no more than ~~\$150.00~~ \$250.00. Member schools and support groups affiliated with member schools are also permitted to sponsor banquets.

9.1.2 A non profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and individual accomplishments with the approval of the administrative head of the school. Non profit groups shall also be permitted to sponsor banquets.

9.1.3 Commercial organizations shall be allowed to present recognition awards for team or individual accomplishments with the approval of the administrative head of the school.

9.1.4 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed (reference to the team or individual athletic accomplishment) are also acceptable. The awards shall have symbolic value only, awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed ~~\$150.00~~ \$250.00 per team or per recipient and shall require prior approval of the Executive Director.

9.2 Scholarships

9.2.1 Member schools and support groups affiliated with member schools shall be permitted to present post secondary scholarships.

9.2.2 Non profit organizations cosponsoring a tournament shall be allowed to give post secondary scholarships to participating schools provided they are not awarded on the basis of team or individual performance in the tournament. Scholarship monies shall be administered in accordance with DIAA and NCAA regulations.

10.0 Use of Influence for Athletic Purposes

10.1 Definition: The use of influence for athletic purposes shall include, but not be limited to, the following:

10.1.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or ~~court-appointed~~ legal guardian(s) or Relative Caregiver.

10.1.2 Offer of waiver or reduction of tuition or financial aid if based, even partially, on athletic considerations.

10.1.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

10.1.4 Offer of special privileges not accorded to other students.

10.1.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s), legal guardian(s) or Relative Caregiver to change residence.

10.2 Illegal Contact with Students, Student's parent(s), ~~Legal~~ legal guardians, or a Relative Caregiver

10.2.1 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s), legal guardian(s) or a Relative Caregiver in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

10.2.2 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s), legal guardian(s) or a Relative Caregiver, the former must refer the individual(s) to the principal or headmaster or school personnel responsible for admissions.

10.3 Permitted Activities

10.3.1 A school employee or Board approved volunteer may do the following:

10.3.1.1 Discuss the athletic program with a prospective student or his/her parent(s), legal guardian(s) or Relative Caregiver during an open house or approved visit initiated by the parent(s), legal guardian(s) or Relative Caregiver.

10.3.1.2 Provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

10.3.1.3 Conduct an informational presentation at a feeder school.

10.4 School Choice

10.4.1 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

10.5 Penalties

10.5.1 The use of influence or illegal contact including but not limited to, violations of 10.1 and 10.2 by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes may render the student ineligible for up to 1 full school year from the date the charge is substantiated. In addition, the offending school may be placed on probation, as determined by the DIAA Board of Directors, and the offending employee, if a coach, may be suspended for up to one (1) full school year from the date the charge is substantiated.

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

9 DE Reg. 1954 (06/01/06)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1540

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

1540 Secondary English Language Arts Teacher

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1540 Secondary English Language Arts Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to align it with the valid grade levels designated within the newly amended 14 DE Admin. Code 1531 Middle Level English Language Arts Teacher. This regulation sets forth the requirements for a Secondary English Language Arts Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday April 4, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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 will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1540 Secondary English Language Arts Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to ~~14 Del.C. §1220(a)~~, for English Teacher (required for grades 9 to 12, and valid in grades 5 to 8 in a middle level school).

~~7-DE-Reg-775 (12/1/03)~~

2.0 Definitions

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

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

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

~~"Educator"~~ means a person licensed and certified by the State under ~~14 Del.C. §1202~~ to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board approved by the State Board. The term 'educator' does not include substitute teachers.

~~"Examination of Content Knowledge"~~ means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

~~"Fifteen (15) Credits or Their Equivalent in Professional Development"~~ means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours, taken either as part of a degree program or apart from it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.

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

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

~~"Major or Its Equivalent"~~ means a minimum of thirty (30) semester hours of course work in a particular content area.

~~"NASDTEC"~~ means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

~~"NCATE"~~ means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

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

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

~~"State Board"~~ means the State Board of Education of the State pursuant to ~~14 Del.C. §104~~.

~~"Valid and Current License or Certificate from Another State"~~ means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired

certificates or licenses issued from another state.

~~7-DE Reg. 775 (12/1/03)~~

~~10-DE Reg. 100 (07/01/06)~~

3.0 Standard Certificate

The Department shall issue a Standard Certificate as an English Teacher to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in English; or

3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in English;

3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or

3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.

~~7-DE Reg. 775 (12/1/03)~~

~~10-DE Reg. 100 (07/01/06)~~

4.0 Multiple Certificates

Educators may hold certificates in more than one area.

~~7-DE Reg. 775 (12/1/03)~~

~~10-DE Reg. 100 (10/01/06)~~

5.0 Application Requirements

An applicant for a Standard Certificate shall submit:

5.1 Official transcripts; and

5.2 Official scores on the Praxis II examination if applicable and available; or

5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or

5.4 An official copy of the out of state license or certification, if applicable.

5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

6.0 Application Procedures for License Holders

If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.

~~7.0 Effect of Regulation~~

This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.

~~8.0 Validity of a Standard Certificate~~

A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 ~~DE Admin. Code~~ 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

~~9.0 Secretary of Education Review~~

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

~~7-DE-Reg-775 (12/1/03)~~

~~10-DE-Reg-100 (07/01/06)~~

~~Renumbered effective 6/1/07—see Conversion Table~~

1.0 Content

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

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

2.0 Definitions

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

3.0 Standard Certificate

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

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

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.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1542

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

1542 Secondary Mathematics Teacher

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1542 Secondary Mathematics Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to align it with the valid grade levels designated within the newly amended 14 DE Admin. Code 1532 Middle Level Mathematics Teacher. This regulation sets forth the requirements for a Secondary Mathematics Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday April 4, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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 will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science,

language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 ~~Del.C.~~ requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1542 Secondary Mathematics Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for Mathematics Teacher Secondary (required for grades 9 to 12, and valid in grades 5 to 8 in a middle-level school).

~~7-DE-Reg-775 (12/1/03)~~

2.0 Definitions

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

~~“Certification” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.~~

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

~~“Educator” means a person licensed and certified by the State under 14 ~~Del.C.~~ §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. The term ‘educator’ does not include substitute teachers.~~

~~“Examination of Content Knowledge” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

~~“Fifteen (15) Credits or Their Equivalent in Professional Development” means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours, taken either as part of a degree program or apart from it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.~~

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

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

~~“Major or Its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area.~~

~~“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.~~

~~“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.~~

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

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

~~“State Board” means the State Board of Education of the State pursuant to 14 ~~Del.C.~~ §104.~~

~~“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

~~7-DE Reg. 775 (12/1/03)~~

~~10-DE Reg. 100 (07/01/06)~~

3-0 Standard Certificate

The Department shall issue a Standard Certificate as a Mathematics Teacher to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

3-1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3-1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3-1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Mathematics; or

3-1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3-1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3-2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3-3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Mathematics;

3-3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or

3-4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.

~~7-DE Reg. 775 (12/1/03)~~

~~10-DE Reg. 100 (07/01/06)~~

4-0 Multiple Certificates

Educators may hold certificates in more than one area.

~~7-DE Reg. 775 (12/1/03)~~

~~10-DE Reg. 100 (07/01/06)~~

5-0 Application Requirements

An applicant for a Standard Certificate shall submit:

5-1 Official transcripts; and

5-2 Official scores on the Praxis II examination if applicable and available; or

5-3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or

5-4 An official copy of the out of state license or certification, if applicable.

5-5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

6-0 Application Procedures for License Holders

~~If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.~~

7.0 Effect of Regulation

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

8.0 Validity of a Standard Certificate

~~A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

9.0 Secretary of Education Review

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

~~7-DE-Reg-775 (12/1/03)~~

~~10-DE-Reg-100 (07/01/06)~~

~~Renumbered effective 6/1/07—see Conversion Table~~

1.0 Content

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

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

2.0 Definitions

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

3.0 Standard Certificate

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

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

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.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 2901 (14 Del.C. §2901)
14 DE Admin. Code 1543

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

1543 Secondary Science Teacher

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1543 Secondary Science Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to align it with the valid grade levels designated within the newly amended 14 DE Admin. Code 1533 Middle Level Science Teacher. This regulation sets forth the requirements for a Secondary Science Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday April 4, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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 will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science,

language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14

Del.C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1543 Secondary Science Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to ~~Del.C. §1220(a)~~, for Science Teacher Secondary (required for grades 9 to 12, and valid in a middle level school, grades 5 to 8). Certificates issued include Chemistry, Physics, Earth Science, Biology, Physical Science, and Integrated Science.

2.0 Definitions

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

“Certification” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

“Department” means the Delaware Department of Education.

“Educator” means a person licensed and certified by the State under 14 ~~Del.C. §1202~~ to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. The term ‘educator’ does not include substitute teachers.

“Examination of Content Knowledge” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

“Fifteen (15) Credits or Their Equivalent in Professional Development” means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours, taken either as part of a degree program or apart from it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.

“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness;

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

“Major or Its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area. A major or its equivalent for eligibility for a Standard Certificate for Physical Science includes physics, chemistry, astronomy, space science, engineering, or a related field. A major or its equivalent in any science discipline or related field is acceptable for eligibility for a Standard Certificate for Integrated Science.

“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

“Science Discipline” means those areas of science for which Delaware content standards have been established.

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

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

“State Board” means the State Board of Education of the State pursuant to 14 ~~Del.C. §104~~.

~~“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

~~10 DE Reg. 100 (07/01/06)~~

3-0 Standard Certificate

~~The Department shall issue the appropriate Standard Certificate as a Science Teacher in an established science discipline to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:~~

~~3-1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:~~

~~3-1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or~~

~~3-1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in the science discipline for which a Standard Certificate is sought; or~~

~~3-1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~

~~3-1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and~~

~~3-2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or~~

~~3-3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in the science discipline for which a Standard Certificate is sought;~~

~~3-3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or~~

~~3-4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.~~

~~10 DE Reg. 100 (07/01/06)~~

4-0 Multiple Certificates

~~Educators may hold certificates in more than one area.~~

~~6 DE Reg. 319 (9/1/02)~~

~~7 DE Reg. 775 (12/1/03)~~

~~8 DE Reg. 1138 (2/1/05)~~

~~10 DE Reg. 100 (07/01/06)~~

5-0 Application Requirements

~~An applicant for a Standard Certificate shall submit:~~

~~5-1 Official transcripts; and~~

~~5-2 Official scores on the Praxis II examination if applicable and available; or~~

~~5-3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or~~

~~5-4 An official copy of the out of state license or certification, if applicable.~~

~~5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

~~6.0 Application Procedures for License Holders~~

~~If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.~~

~~7.0 Effect of Regulation~~

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

~~8.0 Validity of a Standard Certificate~~

~~A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

~~9.0 Secretary of Education Review~~

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

~~6-DE-Reg-319 (9/1/02)~~

~~7-DE-Reg-775 (12/1/03)~~

~~8-DE-Reg-1138 (2/1/05)~~

~~10-DE-Reg-100 (07/01/06)~~

~~Renumbered effective 6/1/07—see Conversion Table~~

~~1.0 Content~~

~~1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Secondary Science Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8. Certificates issued include Biology, Chemistry, Earth Science, Integrated Science, Physical Science, and Physics.~~

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

~~2.0 Definitions~~

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

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

~~“Major or Its Equivalent” means a minimum of thirty (30) semester hours of course work in a~~

particular content area. A major or its equivalent for eligibility for a Standard Certificate for Physical Science includes physics, chemistry, astronomy, space science, engineering, or a related field. A major or its equivalent in any science discipline or related field is acceptable for eligibility for a Standard Certificate for Integrated Science.

3.0 Standard Certificate

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

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

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.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 2901 (14 Del.C. §2901)
14 DE Admin. Code 1544

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

1544 Secondary Social Studies Teacher

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1544 Secondary Social Studies Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to align it with the valid grade levels designated within the newly amended 14 DE Admin. Code 1534 Middle Level Social Studies Teacher. This regulation sets forth the requirements for a Secondary Social Studies Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday April 4, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of

decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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 will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1544 Secondary Social Studies Teacher

1.0 Content

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Social Studies Teacher Secondary (required for grades 9 to 12, and valid in grades 5 to 8 in a middle level school).
7-DE-Reg. 775 (12/1/03)~~

2.0 Definitions

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

~~“**Certification**” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.~~

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

~~“**Educator**” means a person licensed and certified by the State under 14 **Del.C.** §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board approved by the State Board. The term ‘educator’ does not include substitute teachers.~~

~~“**Examination of Content Knowledge**” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

~~“**Fifteen (15) Credits or Their Equivalent in Professional Development**” means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours, taken either as part of a degree program or apart from it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.~~

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

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

~~“**Major or Its Equivalent**” means a minimum of thirty (30) semester hours of course work in a particular content area.~~

~~“**NASDTEC**” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline~~

of educational personnel.

~~“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.~~

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

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

~~“State Board” means the State Board of Education of the State pursuant to 14 Del.C. §104.~~

~~“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

~~7-DE Reg. 775 (12/1/03)~~

~~10-DE Reg. 100 (07/01/06)~~

3.0 Standard Certificate

The Department shall issue a Standard Certificate as a Social Studies Teacher to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in history, political science, government, civics, geography, or economics; or

3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits of their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Social Studies;

3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or

3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.

~~7-DE Reg. 775 (12/1/03)~~

~~10-DE Reg. 100 (07/01/06)~~

4.0 Multiple Certificates

Educators may hold certificates in more than one area.

~~7-DE-Reg. 775 (12/1/03)~~

~~10-DE-Reg. 100 (07/01/06)~~

5.0 Application Requirements

An applicant for a Standard Certificate shall submit:

5.1 Official transcripts; and

5.2 Official scores on the Praxis II examination if applicable and available; or

5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or

5.4 An official copy of the out of state license or certification, if applicable.

5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

6.0 Application Procedures for License Holders

If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.

7.0 Effect of Regulation

This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.

8.0 Validity of a Standard Certificate

A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

9.0 Secretary of Education Review

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

~~7-DE-Reg. 775 (12/1/03)~~

~~10-DE-Reg. 100 (07/01/06)~~

~~Renumbered effective 6/1/07—see Conversion Table~~

1.0 Content

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

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

2.0 Definitions

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

3.0 Standard Certificate

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

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

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.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE** Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PUBLIC NOTICE

School-Based Wellness Center Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) with 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan to add specific reimbursement methodology language for School-Based Wellness Center Services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by March 31, 2008.

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

Summary of Proposed Amendment

The purpose of this proposal is to amend the Title XIX Medicaid State Plan to add specific reimbursement language for School-Based Wellness Center Services.

Statutory Authority

- 42 CFR 440.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*;
- 42 CFR §440.90, *Clinic Services*; and,
- State Medicaid Manual, Section 4320, *Clinic Services*.

Summary of Proposed Amendment

School-Based Wellness Center Clinic Services provide primary prevention and early intervention services, including physical examinations, treatment of acute medical problems, community referrals, counseling and other supportive services to children in school or educational settings.

The Centers for Medicare and Medicaid Services (CMS) advised the State Agency to revise the Title XIX Medicaid State Plan to add specific reimbursement methodology language for School-Based Wellness Center Services.

School-Based Wellness Center Services, operated by the Division of Public Health in Delaware schools, are reimbursed a single rate once each benefit year for any client served in one of the school-based clinics. The single rate is based on prior year statewide costs of all School-Based Wellness Centers.

No change will be made to the services provided under the school-based wellness services benefit.

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

This proposed regulation is also published concurrently herein under "Emergency Regulations" to allow for public comment.

DMMA PROPOSED ORDER REGULATIONS #08-03 REVISIONS:

ATTACHMENT 3.1-A
Page 4

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT State/Territory: DELAWARE

AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

9. Clinic Services

Clinic services are limited to the following:

- ~~Medical~~ Medical or rehabilitation clinics (including Mental Health clinics which require certification by the Division of Substance Abuse and Mental Health (DSAMH) as part of the Single State Agency for Medicaid) and
- State Licensed Free Standing Surgical Centers (FSSCs) which equate to Federally defined Ambulatory ~~Surgical Centers (ACs)~~ Surgical Centers (ACs) using related policies for ACSs described in Sections 2265 and 2266 of the Medicare Carriers Manual.
- School-Based Wellness Center Clinic Services that provide primary prevention and early intervention services, including physical examinations, treatment of acute medical problems, community referrals, counseling and other supportive services to children in school or educational settings.

(Break In Continuity of Sections)

ATTACHMENT 4.19-B
Page 2

Medical/Dental free-Standing Clinics are paid either a negotiated flat rate or as physicians are paid (see above). School-Based Wellness Center Services, operated by the Division of Public Health in Delaware schools, are reimbursed a single rate once each benefit year for any client served in one of the school-based clinics. The single rate is based on prior year statewide costs of all School-Based Wellness Centers.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Long Term Care Resource Exclusions - Automobiles

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care Resource Exclusions – Automobiles.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2008.

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 proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care Resource Exclusions - Automobiles.

Statutory Authority

- 42 CFR 416.1218, *Exclusion of the Automobile; and,*
- POMS Section SI 01130.200, *Automobiles and Other Vehicles Used for Transportation.*

Summary of Proposal

DSSM 20310.5 and 20330.1, *Automobiles*: One vehicle, regardless of the value, will be totally excluded if used for transportation of the eligible individual or a member of the eligible individual's household.

DMMA PROPOSED REGULATION #08-05

REVISIONS:

~~20310.5~~ **Automobiles**

~~One automobile, regardless of value, if, for the individual or a member of the individual's household (member of a household is one who receives food, clothing and shelter at the applicant's residence at time of institutionalization) if it fits the exclusions listed in Sections 20310.5.1–20310.5.4.~~

~~20310.5.1~~ **Employment**

~~The automobile is excluded if necessary for employment.~~

~~20310.5.2~~ **Medical Use**

~~If the automobile is necessary for the medical treatment of a specific or regular medical problem, it may be excluded.~~

~~20310.5.3~~ **Modifications**

~~An exclusion may be used if the vehicle is modified for operation by or transportation of a disabled person.~~

~~20310.5.4~~ **Essential Daily Activities**

~~The automobile may be excluded if it is necessary because of climate, terrain, distance, or similar factors to provide necessary transportation to perform essential daily activities.~~

~~20310.6~~ **Joint Ownership**

~~If the automobile is jointly owned and if a co-owner refuses to sell it may be excluded.~~

20310.5 **Automobiles**

20 CFR 416.1218
SI 01130.200

An automobile is any registered or non-registered vehicle that is used for transportation.

One automobile, per household, is excluded if:

- Used for transportation of the eligible individual or
- Used for transportation of a member of the eligible individual's household.

If there is more than one vehicle used for transportation, the automobile with the greatest equity value will be excluded.

The equity value of all additional automobiles will be evaluated as a resource.

(Break In Continuity of Sections)

~~20330.1~~ **Vehicles**

~~Vehicles are defined as automobiles, boats, travel trailers, motorcycles etc. The current market value of a vehicle is the average price that it will sell for (based on year, make, model and condition) on the open market in a certain geographic area. Current market value can be determined by using the NADA book (trade in value) or a written appraisal from a disinterested, knowledgeable source. One vehicle may be excluded under Section 20310.5. Only one vehicle may be excluded for a married couple.~~

~~If NO vehicle is excluded per Section 20310.5, up to \$4650 of the CMV of ONE vehicle is excluded. If the CMV exceeds \$4650, the excess counts as a resource, unless the vehicle can be excluded under some other provision (i.e., co-owner refuses to sell). It is unlikely the \$4650 exclusion will be used. This is because most vehicles are used for either a medical problem or for essential daily activities and can be excluded per Section 20310.5.~~

~~Any vehicle an individual owns in addition to the vehicle that was totally or partly excluded (up to \$4650), is a resource in the amount of its equity value. The equity value is the CMV minus amount owed on the vehicle. The exclusion is applied in the manner most advantageous to the individual. If one of two vehicles can be excluded as necessary for medical treatment, the exclusion is applied to the vehicle with the greater equity value regardless of which vehicle is used to obtain medical treatment.~~

20330.1 **Automobiles**

For the purpose of Medicaid, automobile is defined as any registered or unregistered vehicle used for transportation.

One vehicle may be excluded under Section 20310.5.

Only one vehicle may be excluded per married couple/household.

If one vehicle can not be excluded under Section 20310.5, or there is more than one vehicle, the equity value is a resource if:

- Is owned by an eligible individual/spouse
- Cannot be excluded under another provision (e.g. property essential to self support - DSSM 20320.5; co-owner refuses to sell) or conditional benefits do not apply (DSSM 20360).

The equity value is the price it can reasonably sell for on the open market minus any encumbrances.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Fair Hearing Procedures

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Fair Hearing procedures.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 31, 2008.

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 regulatory action is to amend the Division of Social Services Manual (DSSM) regarding Fair Hearing procedures.

Statutory Authority

- 31 Delaware Code, *Department of Health and Social Services*
- 45 CFR §205.10, *Hearings*
- 7 CFR §273.15, *Fair Hearings*
- 42 CFR §431.205, *Provision of Hearing System*

Summary of Proposed Changes

1) DSSM 5000, *Definitions*: This rule modification: a) updates the Fair Hearing policy to include the Child Care Subsidy Program; and, b) expands the definition of the Department to clarify the divisions affected by this policy.

2) DSSM 5405, *Fair Hearing Procedures*: This revision clarifies the responsibilities of each party in a fair hearing, including the extent of the hearing officer's authority.

DSS PROPOSED REGULATIONS #08-07 REVISIONS:

5000 Definitions

Advance Notice Period or Timely Notice Period - Is the ten (10) day period between the date a notice is mailed to the date a proposed action is to take effect.

Appellant - Is a recipient who has requested a hearing.

Benefits - Are any kind of assistance, payments or benefits made by TANF, GA, Medicaid, Child Care, or Food Stamps.

Claimant - Is an applicant who has requested a hearing.

~~**Department** - (or DHSS) is the Department of Health and Social Services.~~

DHSS - Is the Department of Health and Social Services, including

1) the Division of Social Services ("DSS"), in connection with financial assistance or child care subsidy assistance;

2) the Division of Medicaid and Medical Assistance ("DMMA") or a managed care company ("MCO") under contract with DHSS to manage an operation of the Medicaid Program, in connection with medical assistance;

3) the Division of State Service Centers ("DSSC") in connection with the Emergency Assistance Program.

DSS - Is the Division of Social Services (or "the Division.")

Fair Hearing - Is an administrative hearing held in accordance with the principles of due process which include:

- 1) Timely and adequate notice;
- 2) The right to confront and cross-examine adverse witnesses;
- 3) The opportunity to be heard orally;
- 4) The right to an impartial decision maker;
- 5) The opportunity to obtain counsel.

Hearing Decision - Is the decision in a case appealed to the State hearing officer. The decision includes the substance of what transpired at the hearing and a summary of the case facts, supporting evidence, and pertinent State or federal regulations and gives the reason for the decision. In Food Stamp disqualification cases, the hearing decision must also respond to reasoned arguments by the appellant.

EXAMPLE: At a Food Stamp Program Intentional Program Violation Hearing involving a failure to report a change promptly, an appellant may argue that a failure to report does not constitute "clear and convincing evidence" of intent to defraud. The hearing officer's decision must respond to this argument.

Hearing Officer - Is the individual responsible for conducting the hearing and issuing a final decision on issues of fact and questions of law.

Hearing Record - Is a verbatim transcript of all evidence and other material introduced at the hearing, the hearing decision, and all other correspondence and other documents which are admitted as evidence or otherwise included for the hearing record by the hearing officer.

Hearing Summary - Is a document prepared by an agency stating the reason(s) the action under appeal was taken and the information upon which the reasons are based. The summary may include documents to be used to decide the issue in question. Its purpose is to provide an appellant with information to prepare his/her case for the hearing.

MCO - Means a Managed Care Organization offering or providing medical services to recipients of medical assistance from ~~the Division of Social Services~~ DHSS and individual medical service providers of an MCO panel.

Party - A party to a hearing is a person or an administrative agency or other entity who has taken part in or is concerned with an action under appeal. A party may be composed of one or more individuals.

Request for a Fair Hearing - Any clear expression (oral or written) by the appellant or his/~~her~~ authorized agent that ~~(s)he~~ the individual wants to appeal a decision to a higher authority. Such request may be oral in the case of actions taken under the Food Stamp Program.

State Presenter - Is the agency employee advocating the State's case in a hearing.

(Break In Continuity of Sections)

5405 Fair Hearing Procedures

1) Hearing Officer's Introduction

The hearing officer will ~~appropriately introduce~~ open the ~~purpose of the meeting~~ hearing, will identify the individuals and roles of those in attendance, and generally "set the stage" to assure the appellant or claimant of his/~~her~~ right to be heard. In addition, ~~(s)he~~ the hearing officer will administer an oath to all witnesses and parties ~~presenting~~ expected to present testimony at the hearing. The hearing officer may, in his/~~her~~ discretion, deal with any preliminary matters prior to beginning the case.

2) Manner of Proceeding

The hearing officer shall conduct the hearing in an informed fashion, consistent however with the procedural rights of the Department and the claimant to a courteous, fair, and fairly conducted hearing consistent with due process and the requirements of the federal regulation. Parties will be courteous to each other and the hearing officer at all times and will obey the orders and rulings of the hearing officer.

3) Order of Presentation

a) Opening Remarks.

At the discretion of the hearing officer, the Department and the appellant or claimant will each be given an opportunity to make brief opening statements. An opening statement shall advise the hearing officer of the issues a party contends are a part of the case and shall ~~succinctly~~ briefly summarize how the party's case will be proven. The hearing officer may, ~~however~~, terminate or limit any opening statement which is unduly lengthy, repetitive or irrelevant.

b) ~~The State will present its case first, unless, in the discretion of the hearing officer, The moving party will present its case first.~~ The burden of persuasion proof rests on the other party (the claimant) is on the moving party. The moving party is the party to the hearing seeking a change in the status quo ante. The Department is the moving party for actions to discontinue, terminate, suspend, or reduce assistance. The appellant or claimant is the moving party for actions relating to ineligibility determinations, the denials of claims or the failure to act upon a claim with reasonable promptness. This shall Each party's case shall include the presentation of all witnesses to give testimony and all documents and other evidence ~~which is admissible~~ offered to prove its case. The other party may cross-examine each witness and may raise any legal basis for exclusion of any evidence at appropriate times during the hearing. Witnesses may be sequestered by or with the approval of the hearing officer.

c) ~~The other~~ Each party may present any witnesses to give testimony ~~(and may testify his/herself)~~ and other evidence which is admissible to ~~prove support his/her~~ its case. However, ~~such~~ the nonmoving party need not present any evidence, but may rely upon the ~~other~~ moving party's failure to prove an essential element of his/~~her~~ its case. If evidence or testimony is presented, the other party shall have the opportunity to raise any legal basis for its exclusion and the opportunity to cross examine witnesses at the appropriate time during the proceeding.

d) If the ~~second~~ party has presented ~~any~~ evidence, the ~~first~~ party may, in the discretion of the hearing officer, present rebuttal evidence.

e) Closing Remarks.

PROPOSED REGULATIONS

The parties will be given an opportunity to briefly summarize their cases in closing remarks. Such closing remarks may summarize evidence and present legal argument for the adoption of one position against the adoption of the other. However, the hearing officer may limit or terminate unduly lengthy, repetitive, or irrelevant closing remarks.

4) Role of Hearing Officer

The hearing officer is in charge of running the hearing. ~~He/she~~ The hearing officer shall make all rulings on the admissibility of evidence as to how the proceedings are conducted. The hearing officer may question witnesses or direct the parties to produce evidence which ~~he/she~~ the hearing officer determines ~~to be~~ is necessary for ~~him/her~~ to render a decision in the case. However, other than ensuring that the hearing is conducted fairly, the hearing officer is not permitted to assist either party in the presentation of ~~his/her/its~~ the case.

5) Decisions of the Hearing Officer

Decisions of the State hearing officer will be based exclusively on evidence introduced at the hearing. The decision of the hearing officer will be issued not more than 90 days from the date the request for a fair hearing is filed or more than 30 days from the date the hearing is conducted. The decision of the hearing officer is the final decision of the agency. Judicial review, pursuant to 31 **Del.C.** 520, may be taken directly from the hearing officer's decision, within thirty (30) days of the decision.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Child Care Subsidy Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy 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 Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 31, 2008.

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 regulatory action is to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program – Purchase of Care federal minimum wage requirements.

Statutory Authority

7 CFR §273.7(h)(1)(i), *Suitable Employment*

Summary of Proposed Change

This rule modification clarifies that the Purchase of Care minimum wage requirements are based on **federal** requirements in the following sections of the Division of Social Services Manual (DSSM): DSSM 11002.9, *Definitions and Explanation of Terms*; DSSM 11003.5, *In-Home Child Care*; and, DSSM 11003.9.1, *Income*.

DSS PROPOSED REGULATIONS #08-06 REVISIONS:

11002.9 Definitions and Explanation of Terms

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

A. TANF - Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the **Delaware Code** to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or participating in a TANF Employment and Training activity (Categories 11 and 12).

B. Authorization - Form 618d is the parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parents/caretakers must pay as part of their fee.

C. Caregiver/Provider - The person(s) whom DSS approves to provide child care services or the approved place where care is provided.

D. Caretaker - The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.

E. CCDBG - Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without State match to:

1. provide child care to low income families,
 2. enhance the quality and increase the supply of child care,
 3. provide parents the ability to choose their provider, and
 4. increase the availability of early childhood programs and before and after school services.
- Under the Division's DCIS II Child Care Sub system, CCDBG is part of Categories 31 and 41.

F. CFR - Code of Federal Regulations. These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.

G. CCMIS - Child Care Management Information System, the name used to describe the Division's payment system for child care.

H. Child - A person under the age of 13, or children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves or in need of protective services.

I. Child Care Category - The DCIS II Child Care Sub system code for the child care funding source. Case Managers choose category codes based on the parents/caretaker's technical eligibility for service. The codes are:

- 11 -- Participants receiving TANF and not working, but participating in TANF E&T;
- 12 -- Participants receiving TANF and working;
- 21 -- Participants receiving Food Stamps who are mandatory or voluntary participants in E&T and not receiving TANF;

31 -- SSBG, CCDBG, and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary;

41 -- A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or nonqualified alien to receive child care services. (Example: One child is a citizen and one is not. The citizen child is a 41.)

51 -- A participant is coded category 51 when s/ he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41.

J. Child Care Certificate - A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes to select a non-contracted provider of their choice cannot get care unless the provider completes one.

K. Child Care Parent Fee - The amount the parent/ caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.

L. Child Care Services - Those activities that assist eligible families in the arrangement of child care for their children.

M. Child Care Centers - A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.

N. Child Care Type - Refers to the setting or place where child care is provided. The four types of care are:

1. Center based (under DCIS II Child Care Sub system Site #17 or 18),
2. Group Home (under DCIS II Child Care Sub system Site #16),
3. Family Home (under DCIS II Child Care Sub system Site #15), and
4. In-Home (under DCIS II Child Care Sub system Site #19).

O. DCIS II - Delaware Client Information System, the automated client information system for the Department of Health and Social Services.

P. Educational Program - A program of instruction to achieve:

1. a basic literacy level of 8.9;
2. instruction in English as a second language;
3. a GED, Adult Basic Education (ABE), or High School Diploma;
4. completion of approved special training or certificate courses; or
5. a post-secondary degree where the degree is part of an approved DSS Employment and Training program.

The above definition excludes the pursuit of a graduate degree or second four-year college degree. A second associates degree may be attained if it leads to a bachelors degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.

Q. Employment - Either part-time or full time work for which the parent/caretaker receives wages equal to the federal minimum wage or an equivalent. It also includes periods of up to one month of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.

R. Family Size - The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.

S. Family Child Care Home - A place where licensed care is provided for one to six children who are not related to the caregiver.

T. TANF Child Care - The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program. Under the DCIS II Child Care Sub system, this is Category 11 and 12.

U. Food Stamp Employment and Training - The program by which certain unemployed mandatory and/ or voluntary Food Stamp recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food Stamp Employment & Training (FS E&T). Under the Division's DCIS II Child Care Sub system, this is Category 21.

V. In-Home Care - Care provided for a child in the child's own home by either a relative or non-relative, where such care is exempt from licensing requirements.

It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements.

W. Income - Any type of money payment that is of gain or benefit to a family. Examples of income include wages, social security pensions, public assistance payments, child support, etc.

X. Income Eligible - A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.

AA. Income Limit - The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.

AB. Job Training/Training - A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Stamp Employment & Training (FS E&T) contracted programs, WIA sponsored

training programs, recognized school vocational programs, and on-the-job training programs.

AC. Large Family Child Care Home - A place where licensed care is provided for more than six but less than twelve children.

AD. Legal Care - Care which is either licensed or exempt from licensing requirements.

AE. Parent - The child's natural mother, natural legal father, adoptive mother or father, or step-parent.

AF. Parental Choice - The right of parents/caretakers to choose from a broad range of child care providers, the type and location of child care.

AG. Protective Services - The supervision/ placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.

AH. Physical or Mental Incapacity - A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.

AI. Reimbursement Rates - The maximum dollar amount the State will pay for child care services.

AJ. Relative - Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.

AK. Residing With - Living in the home of the parent or caretaker.

AL. SSBG - Social Services Block Grant. Under the DCIS II Child Care Sub system, this is Category 31 child care.

AM. Seamless Services - To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.

AN. Self-Arranged Care - Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.

AO. Self-Initiated - Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Stamp Employment & Training (FS E&T) - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.

AP. Special Needs Child - A child under 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the competence to do so.

AQ. Special Needs Parent/Caretaker - An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the competence to do so.

AR. Technical Eligibility - Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.

AS. Verification - Written or oral documentation, demonstrating either need for service or sources of income.

AT. Purchase of Care Plus (POC+) – Care option that allows providers to charge most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined child care parent fee if applicable, and any additional provider-determined co-pay.

AU. Work Force Investment Act (WIA) - Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.

8 DE Reg. 1154 (02/1/05)

9 DE Reg. 572 (10/01/05)

10 DE Reg. 564 (09/01/06)

(Break in Continuity of Sections)

11003.5 In-Home Child Care

See Administrative Notice: A-7-99 Child Care Issues

The Fair Labor Standards Act requires that in-home child care providers be treated as domestic service workers. As a result, DSS must pay these providers the federal minimum wage. Paying the federal minimum wage would make the cost of in-home care disproportionate to other types of care. As a result, DSS has placed a limit on parental use of the in-home care option.

- A. As of July 1994, in-home care has been limited to:
 - 1. families in which four or more children require care, or
 - 2. families with fewer children only as a matter of last resort.
- B. Examples of "last resort" may include:
 - 1. the parent works the late shift in a rural area where other types of care are not available, or
 - 2. there is a special needs child for whom it is impossible to find any other child care

arrangement.

Federal regulations define in-home care as child care provided in the child's own home. In-home care also includes situations where the caregiver and the child share a home.

EXAMPLE 1: Ms. Jones lives at 100 Main Street in Newark. Ms. Jones goes to Mrs. Johnson's house at 200 Main Street in Newark to provide dependent care for Mrs. Johnson's children. Because in-home care is provided, Ms. Jones must be paid at least the federal minimum wage. Ms. Jones must, therefore, be providing dependent care to at least four children.

EXAMPLE 2: Ms. Smith and Ms. Kelly live in the same house at 500 DuPont Street in Wilmington. Ms. Smith provides dependent care for Ms. Kelly's only child in this house. The federal minimum wage provisions do not apply. Ms. Smith would receive the established rate for the one child even though the rate is below the federal minimum wage.

(Break in Continuity of Sections)

11003.9 Financial Requirements

Child care services are available to families who otherwise cannot pay for all or part of the cost of care. This determination of who cannot afford to pay all, or a portion of the cost of care, is always a determination based on income. The financial requirements, which follow, relate to the circumstances which qualify parent/caretakers for child care services based on income. These requirements help determine whose income to count or not count, what is counted, and when and how to count it.

11003.9.1 Income

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

- 1. Money from wages or salary, such as total money earnings from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues, etc. Wages need to be equal to the federal minimum wage or an equivalent.

Gross income from farm or non-farm self-employment is determined by subtracting the self-employment standard deduction for producing income as described below. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the TANF standard allowance for work connected expenses. In the case of unusual situations (such as parent/caretaker just beginning business), refer to DSSM 9056 and 9074.

Self-Employment Standard Deduction for Producing Income

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

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all its business costs to receive the standard deduction.

Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.

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

9 DE Reg. 564 (10/01/05)

B. Disregarded Income

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

1. per capita payments to, or funds held in trust for, any individual in satisfaction of a judgment of Indian Claims Commission or the Court of Claims;
2. payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act;
3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);
4. withdrawal of bank deposits;
5. money borrowed or given as gifts;
6. capital gains;
7. the value of USDA donated foods and Food Stamp Act of 1964 as amended;
8. the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;
9. any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
10. loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;
11. any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act;
12. home produce utilized for household consumption;
13. all of the earned income of a minor or minor parent (under 18) who is a full-time student or a part-time student who is working but is not a full-time employee (such as high school students who are employed full-time during summer);
14. all payments derived from participation in projects under the Food Stamp Employment & Training (FS E&T) program or other job training programs;
15. all Vista income; and
16. all income derived as a Census taker.

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

9 DE Reg. 564 (10/01/05)

PROPOSED REGULATIONS

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 2741 (18 **Del.C.** §§314 and 2741)
18 **DE Admin. Code** 606

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 606 relating to the standardization of insurance identification cards and notification to the Department of Motor Vehicles of the termination of automobile insurance. The docket number for this proposed amendment is 638.

The purpose of the proposed amendment to regulation is to eliminate the requirement that insurance identification cards be issued for periods of less than six months when the payment period is for a period of less than six months. The text of the proposed amendment is reproduced in the March 2008 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday April 7, 2008, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

606 Proof of Automobile Insurance [Formerly Regulation 31]

1.0 Authority

1.1 This regulation is adopted under the authority of 18 **Del.C.** §§314 and 2741; 21 **Del.C.** §2118 as amended by S. B. 212, and adopted in cooperation with the Division of Motor Vehicles. This regulation is promulgated under the provisions of the Administrative Procedures Act, 29 **Del.C.**, Ch.101.

11 DE Reg. 800 (12/01/07)

2.0 Purpose

2.1 The purpose of this regulation is to

2.1.1 establish requirements to govern the form of the standardized insurance identification (ID) card for each insured vehicle pursuant to Delaware law;

2.1.2 establish the procedure by which automobile insurers shall notify the Division of Motor Vehicles when automobile insurance coverage is terminated or when insurers pay claims for uninsured motorists; and

2.1.3 provide procedures for the submission of insurance company data to the Division of Motor Vehicles for administrative efficiency.

11 DE Reg. 800 (12/01/07)

3.0 Definitions

"**Commercial auto coverage**", "**commercial vehicle coverage**" or "**commercial lines policy**" is any coverage provided to an insured, regardless of the number of vehicles or entities covered, under a commercial auto, garage, or truckers coverage form and/or rated from either a commercial manual or rating rule as filed and approved by the Delaware Department of Insurance. Vehicle type and ownership are not necessarily the primary factors in either underwriting the coverage or rating the coverage. The rating may be subject to individual risk characteristics including but not limited to experience rating, schedule rating, loss rating or deductible rating.

"**Fleet**" shall mean five or more vehicles under single ownership or lease used for commercial purposes.

"**Personal lines auto coverage**," personal lines vehicle coverage" or "personal lines policy" shall apply to any insured or insurance policy that does not fall within commercial lines.

To the extent necessary, the definitions contained in 21 **Del.C.** §101 shall apply to all terms not otherwise defined herein.

11 DE Reg. 800 (12/01/07)**4.0 Insurance Identification Card**

4.1 All companies licensed to write automobile insurance in the State of Delaware must furnish Insurance Identification Cards. At least one card must be issued for each vehicle for which liability insurance is in effect. Delaware policyholders who are members of the military and are stationed outside of Delaware may be issued a card of that state provided their coverage meets Delaware requirements.

4.2 Insurers may use uniform ACORD format or may prepare the ACORD format as described below:

4.2.1 The size, weight, and color of the card shall be as below:

4.2.1.1 Size: Not smaller than 3-1/2" x 2-1/4" or larger than 3" x 5"

4.2.1.2 Weight: Optional

4.2.1.3 Color: White

4.2.1.4 Each card shall be printed on paper stock which contains a clearly visible watermark, screened color, reflective ink, or laser-lock which prevents unauthorized or fraudulent reproduction. The watermark must be a company logo, or a generic insurance-specific logo which clearly identifies the watermark as issued by an insurance company. The ACORD "ghost script" anti-fraud paper with the ACORD watermark shall satisfy the watermark requirement.

4.2.2 The insurance card shall contain the following information:

4.2.2.1 The statement "The ID card must be carried in the vehicle at all times" shall be shown on the face of the card if space is available; otherwise this statement may appear on the back of the card.

4.2.2.2 Card shall be identified as "Identification Card."

4.2.2.3 The insurance company name shall be printed on the face of the card. If the insurer is part of a group, the group name may be printed on the card so long as the card clearly identifies the name of the insurer issuing the insurance.

4.2.2.4 Insurer's five digit National Association of Insurance Commissioners ("NAIC") company identification number.

4.2.2.5 Named Insured. This name must be the named insured as carried in the insurer's records.

4.2.2.6 The insurer may, at its option, include the address of the insured.

4.2.2.7 Policy Number.

4.2.2.8 Effective date of the time period the policy shall be in effect.

4.2.2.9 Expiration Date. The insurance identification card shall be valid for no more than the term stated in the policy but not to exceed 6 months. Notwithstanding the foregoing limitation, an insurance identification card may be issued for a period of 12 months if the premium has been written on an annual basis and the premium is being paid in installments of no more than for a 12 month period. ~~Any insured who has not been continuously insured by a licensed insurance company or a qualified self insured during the six months preceding the effective date of an ID card under this regulation shall be issued an ID card with an expiration date no longer than the date for which premium has been paid or for six months whichever is shorter; provided, however, that any insured owning five or more vehicles may be issued an ID card which is effective for a six month period.~~ The expiration date shall be stated in such manner that the exact date of expiration can be clearly identified. For purposes of this section, a policy renewed in the same company with a lapse in coverage of 30 days or less shall be considered to have been continuously insured by a licensed insurance company during the preceding six months.

4.2.2.10 Vehicle(s) Insured. Information shall be completed by indicating any of the following, depending on the type of policy or vehicle involved:

4.2.2.10.1 Year, Make, and Vehicle Identification Number ("VIN") of the vehicle(s) insured. Model of the vehicle may be shown as the Make. The Year, and Make of the vehicle may be abbreviated, but the complete VIN must be shown.

4.2.2.11 Items which are not obvious as to meaning shall be appropriately captioned.

4.2.3 The order of the information to be contained on the ID card may be rearranged at the option of the company, provided there is no drastic change and the rearrangement is necessary to accommodate a fixed printout system already established by a company.

4.2.4 At least one ID card shall be issued for each vehicle insured under the policy for which liability insurance is in effect.

4.2.5 If a vehicle is specifically described on the ID card, the company must issue a new card upon either a change of vehicle or the acquisition of any additional one. If a different policy number is assigned upon renewal, a new ID Card must also be issued. The expiration date requirement of section 4.2.2.9 above shall apply to an insured's replacement or additional insured vehicle in a manner similar to the previously owned or insured vehicle. The owner of the vehicle shall so inform the insurer of the additional or replacement vehicle. Only after the insurer is so informed, shall the insurer be obligated to issue an ID card to the insured for the additional or replacement vehicle.

4.2.6 A letter or notification should accompany every ID card advising the insured that the card is required to register the vehicle, to obtain new tags, and to serve as evidence of insurance for the law enforcement authorities, e.g., in cases involving accidents, moving traffic violations or road spot checks. This notification may be printed on the back of the ID card. Delaware law requires the ID card to be in the vehicle when it is being operated.

4.2.7 The Division of Motor Vehicles will accept for registration purposes a copy of the application for insurance or the assignment notice or binder pending issuance of insurance or the assignment notice pending issuance of the ID card. However, such evidence of insurance will be accepted for registration purposes only if it has been dated prior to the date and no later than the day preceding the date of application for registration. For Assigned Risk coverage, insurers shall instruct their agents to place an insurer identification code of "99999" on applications to indicate placement with the Assigned Risk Plan.

4.2.8 Insurance ID cards shall be issued in conformance with section 4.2.2 above. The Insurance Commissioner may exercise his statutory authority to investigate and examine the compliance of insurance carriers with this regulation. The Insurance Commissioner may, after notice and hearing, impose and enter an order as follows:

4.2.8.1 For each occasion where the Insurance Commissioner determines that an ID card was issued inadvertently in non-compliance with section 4.2.2.9 above, the insurer shall be fined \$100. No fine, however, shall be imposed if the ID card was validly issued.

4.2.8.2 For each occasion where the Insurance Commissioner determines an ID card was issued with disregard of the requirements of Section 4.2.2.9 above, but with no pattern of conscious disregard, the insurer shall be fined \$1,000.

4.2.8.3 For each occasion where the Insurance Commissioner determines an ID card was issued as part of a pattern of conscious disregard of the requirements of section 4.2.2.9 above, the insurer shall be fined \$2,000.

4.2.9 "Date of issuance" of an insurance card shall be the effective date of that card.

Amended Section 4 became effective May 12, 1993.

11 DE Reg. 800 (12/01/07)

5.0 Violations and Penalties

5.1 If an insurer shall violate the provisions of this regulation, the Commissioner shall give written notice to the insurer of the violation and said notice shall inform the insurer of the right to request a hearing pursuant to 18 **Del.C.** §323.

5.2 If an insurer shall be determined to be in violation by consent or after a hearing, the Commissioner may impose such penalties as permitted pursuant to the Insurance Code.

11 DE Reg. 800 (12/01/07)

6.0 Notice of Cancellation or Termination

6.1 When a personal lines insurance policy is cancelled or terminated and that cancellation or termination is final under 18 **Del.C.** §3904 (a) (1) within 6 months of the original date of issuance, the insurer must file a Notice of Cancellation with the Division of Motor Vehicles.

6.2 The notice shall be filed with the Division of Motor Vehicles within 30 days following the effective date on which cancellation has become final. "Final" means the date after which coverage cannot be reinstated except by the issuance of a new policy.

6.3 The notice shall be a form with the size, content, and format consistent with the attached forms or as otherwise approved by the Division of Motor Vehicles.

11 DE Reg. 800 (12/01/07)**7.0 Furnishing Motor Vehicle Liability Insurance Information to the Division of Motor Vehicles**

7.1 An insurer shall furnish within 30 days of a request by the Division of Motor Vehicles prescribed information on each motor vehicle insured in the State of Delaware. The information shall be provided in the form and manner approved by the Division of Motor Vehicles.

11 DE Reg. 800 (12/01/07)**8.0 Random Selection/Verification**

8.1 Pursuant to 21 **Del.C.** §2118 the Division of Motor vehicles shall periodically randomly select on an annual basis at least 10 percent of the vehicle registrations and send them to the insurers of record for verification of liability insurance.

8.2 All responses from the insurers shall be delivered to the Delaware Division of Motor Vehicles within 30 days of the mailing date of the verification request.

8.3 The random selection/verification process shall be done no more than twelve times and no less than four times annually.

11 DE Reg. 800 (12/01/07)**9.0 Notification of Uninsured Drivers**

9.1 Each insurer licensed to write automobile liability insurance in Delaware shall notify the Division of Motor Vehicles on a form approved by the Division of Motor Vehicles the name of any person or persons involved in an accident or filing a claim who is alleged to have been operating a Delaware registered motor vehicle without the insurance required under Delaware law. The insurer shall provide the name, address, and description of the vehicle alleged to be uninsured.

11 DE Reg. 800 (12/01/07)**10.0 Additional Required Proofs of Insurance**

10.1 Each insurer licensed to write automobile liability insurance in this State shall furnish to their insureds verification of the insurance in force at the request of the Division of Motor Vehicles by use of a form approved by the Division of Motor Vehicles. Each insurer is to utilize such measures as may be necessary to assure delivery of these forms to qualified insured drivers only.

11 DE Reg. 800 (12/01/07)**11.0 Severability**

11.1 If any provision of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application and to this end the provisions of this regulation are declared to be severable.

11 DE Reg. 800 (12/01/07)**12.0 Effective Date**

12.1 This Regulation shall become effective ~~January 1, 2008~~ May 12, 2008.

*Regulation No. 31 was entitled "Insurance Identification Card" under an effective date of July 1, 1979; amended July 1, 1982; amended effective January 1, 1991 and again on May 12, 1993 under present title except for the conditions specified under § 6 and § 4 of the regulation and April 12, 1993.

Attachments A to G accompanying Regulation No. 31 follow:

INSURANCE CERTIFICATION REQUEST
INITIAL TAP PROCESSING
LETTER OF TRANSMITTAL
RANDOM SELECTION TAPE PROCESSING
RANDOM SELECTION MANUAL PROCESSING

DELAWARE UNINSURED VEHICLE REPORT
DELAWARE INSURANCE CERTIFICATION
11 DE Reg. 800 (12/01/07)

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS

OFFICE OF WORKERS' COMPENSATION

Statutory Authority: 19 Delaware Code, Section 2322D (19 Del.C. §2322 D)

PUBLIC NOTICE

**1342 Health Care Provider Certification
Workers Compensation Regulations**

The Health Care Advisory Panel, in accordance with 19 Del.C. §2322D, has proposed a certification process for the Health Care Provider Application for Certification ("Certification"). This proposal sets forth the Certification process and form.

A public hearing will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on April 14, 2008, at the Delaware Department of Labor, Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed Certification and form may obtain a copy from John Kirk, Administrator, Delaware Workers' Compensation Division, Department of Labor, P.O. Box 9828, 4425 N. Market Street, Wilmington, DE 19809-9954. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

1342 Health Care Provider Certification

1.0 Definitions

As used in this regulation:

"Certification" means the certification pursuant to 19 Del.C. §2322D, required for a Health Care Provider to provide treatment to an employee, pursuant to Delaware's Workers' Compensation Statute.

"Health Care Provider Application for Certification" means the Department's approved application form which Health Care Providers must submit to the Department to so that pre-authorization of each health care procedure, office visit or health care service to be provided to the employee is not required.

"Health Care Providers" for the purposes of Certification includes physicians, chiropractors and physical therapists providing treatment to an injured worker during his/her period of inpatient or outpatient hospitalization; all other personnel employed by a hospital providing treatment to an injured worker during his/her period of inpatient or outpatient hospitalization are excluded from the Certification process.

2.0 Certification

2.1 Section 2322D, Chapter 23, Title 19, **Delaware Code** authorizes and directs the Department to adopt by regulation complete rules and regulations relating to Health Care Provider Certification within one (1) year after the first meeting of the Health Care Advisory Panel.

2.2 Section 2322D(a), Chapter 23, Title 19, **Delaware Code** establishes the minimum certification requirement to be certified as a Health Care Provider:

2.2.1 With regard to the Certification of any hospital facility providing inpatient and/or outpatient services, the person completing and signing the Health Care Provider Application for Certification on behalf of the hospital shall have the authority to do so and must attest to and be responsible for the completion of all of the requirements set forth on the Health Care Provider Application for Certification.

2.2.2 Services provided by an emergency department of a hospital pursuant to §2322B(h)(3) of

Chapter 23, Title 19, **Delaware Code** shall not be subject to the requirement of Certification.

2.2.3 The provisions of this section shall apply to all treatment of employees provided after the effective date of these rules and regulations regardless of the date of injury.

2.2.4 Notwithstanding the provisions of §2322D of Chapter 23, Title 19, **Delaware Code**, any health care provider may provide services during one office visit, or other single instance of treatment, without first having obtained prior authorization from the employer if self insured, or the employer's insurance carrier, and receive reimbursement for reasonable and necessary services directly related to the employee's injury or condition at the health care provider's usual and customary fee, or the maximum allowable fee pursuant to fee schedule adopted pursuant to Section 2322B of Chapter 23, Title 19, **Delaware Code** whichever is less.

2.2.5 The allowance of reimbursement for the employee's first contact with any health care provider for treatment of the injury as described in 3.2.4 is further limited to instances when the health care provider believes in good faith, that the injury or occupational disease was suffered in the course of the employee's employment.

2.3 Completed Certification should be mailed to:

Mr. John F. Kirk, III
State of Delaware Department of Labor
Office of Workers' Compensation
P.O. Box 9954M
Wilmington, DE 19809-9954

2.4 Instructions and provisions for completing the Certification Form online will be published on the Office of Workers' Compensation website when available.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 **Del.C.** §903(e)(2)(a))
7 **DE Admin. Code** 3511

REGISTER NOTICE SAN# 2008-01

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)

1. Title of the Regulations:

Tidal Finfish Regulations

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

The Summer Flounder Fishery Management Plan (FMP) details the annual process that the Atlantic States Marine Fisheries Commission's Summer Flounder Fishery Management Board, the Mid-Atlantic Fisheries Management Council and the National Marine Fisheries Service are to use for establishing conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2008. Delaware is obligated to cap the summer flounder recreational harvest at 64,000 fish for 2008. The harvest cap has been adjusted downward from the previous year's level of 76,608 fish because of slower than projected rebuilding in the stock. Although Delaware and all the coastal states in the management regime must adjust their harvest cap downward, estimates of Delaware's 2007 harvest (109,696 fish) indicated that landings of summer flounder exceeded the harvest cap imposed for 2007. As such, it is anticipated that management measures for summer flounder in 2008 will need to achieve a 41.3 percent harvest reduction from the estimated harvest in 2007. It is proposed that a suite of management options will be developed that take into consideration measures that have been successfully employed in the past to achieve reductions in harvest while attempting to meet the needs of the fishing public. These options will include potential minimum size limits ranging between 18.5 and 19.5 inches in

combination with various creel limits that can range from 1 to 4 fish per day and also incorporate seasonal closures. Five management options for Delaware have been reviewed by the ASMFC Summer Flounder Technical Committee to determine if the correct data sets and analyses were used to project landings under the various options. All five options were deemed technically valid by the ASMFC Summer Flounder technical committee and were also approved by the ASMFC Summer Flounder Board on February 7, 2008. These approved options will be presented at a public hearing on March 27, 2008 in order to receive input from the fishing community on the various management strategies.

3. Possible Terms of the Agency Action

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware

4. Statutory Basis or Legal Authority to Act:

7 Del. C. §903, (e)(2)(a)

5. Other Regulations That May Be Affected by the Proposal:

None

6. Notice of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on these proposed amendments will be held on March 27, 2008 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, April 2, 2008.

7. Prepared By:

Richard Cole, (302) 739-4782, February 6, 2008.

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)
(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. (Note: creel limit to be determined in combination with seasonal closure and size limit.)

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 ~~eighteen (18)~~ inches between the tip of the snout and the furthest tip of the tail.

3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~eighteen (18)~~ 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. (Note: size limit to be determined in combination with seasonal closure and creel limit.)

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. (Note: creel limit to be determined in combination with seasonal closure and size limit.)

Note: Proposed options for seasonal closures associated with creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware during 2008.

<u>Option</u>	<u>Season Closure</u>	<u>Number of Open Days</u>	<u>Bag Limit</u>	<u>Minimum Size</u>
<u>1</u>	<u>May 11 - June 23</u>	<u>322</u>	<u>2</u>	<u>18.5</u>
<u>2</u>	<u>none</u>	<u>365</u>	<u>1</u>	<u>19.0</u>
<u>3</u>	<u>May 11 - June 1</u>	<u>343</u>	<u>4</u>	<u>19.0</u>
<u>4</u>	<u>Aug 24 - Dec. 31</u>	<u>235</u>	<u>4</u>	<u>19.0</u>
<u>5</u>	<u>none</u>	<u>365</u>	<u>4</u>	<u>19.5</u>

- 1 DE Reg. 1767 (5/1/98)
- 2 DE Reg. 1900 (4/1/99)
- 3 DE Reg. 1088 (2/1/00)
- 4 DE Reg. 1552 (3/1/01)
- 5 DE Reg. 462 (8/1/01)
- 5 DE Reg. 2142 (5/1/02)
- 6 DE Reg. 1358 (4/1/03)
- 7 DE Reg. 1575 (5/1/04)
- 8 DE Reg. 1488 (4/1/05)
- 9 DE Reg. 1759 (5/1/06)
- 10 DE Reg. 1722 (5/1/07)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a), (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3716 and 3771

REGISTER NOTICE SAN# 2008-02

3716 Crab Pot Number Buoys and Vessel Panel Color Code and Number Requirements; and 3771 Oyster Harvesting Licensee Requirements

1. **Title of the Regulations:**
Shellfish Regulations

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

This proposed revision of Shellfish Regulation 3716 would allow only one color code to be used per vessel even if the allowable limit of up to three crab pot licensees fish their pots from the same vessel. This proposed change will facilitate enforcement of the pot limits and will simplify painting and retrieving of crab pot floats for those

crabbers who routinely partner to fish from the same vessel. There is no proposed change to the numbering system for each crabber except that if two or three crabbers fish from the same vessel, then all numbers must be displayed on the 2' by 2' marker panel displayed on the vessel. One of the numbers from a crabber on that vessel must be displayed on a color-coded buoy attached to each crab pot fished from that vessel. This regulation is proposed to go into effect January 1, 2009 in order to give the crabbers an opportunity to re-paint their floats if necessary to comply with the new regulation.

The proposed revision to Shellfish Regulation 3771 would modify the required procedures for applying oyster harvesting tags. Each tag issued by the Department shall be cinched around the top of the oyster bag and locked such that the bag may not be opened nor oysters removed from the bag without breaking the tag or seal. Bags shall be tagged prior to the vessel leaving the shellfish harvest grounds and returning to port. This change will facilitate enforcement of tagging requirements and should discourage the illegal, yet common practice of re-using oyster tags after the bags are emptied. This regulation would go into effect immediately upon promulgation.

3. Possible Terms of the Agency Action:

Changes to regulation 3716 would not go into effect until January 1, 2009. Changes to regulation 3771 would take effect immediately upon promulgation. These regulation revisions would remain in effect indefinitely or until changed.

4. Statutory Basis or Legal Authority to Act:

§1902, §2306, §2105, and §2106 of 7 Delaware Code.

5. Other Regulations That May Be Affected by the Proposal:

N/A

6. Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302)739-3441. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on March 31, 2008. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to Lisa.Vest@state.de.us. The hearing record will remain open for written or e-mail comments until 4:30 PM April 2, 2008.

7. Prepared By:

Roy W. Miller, 302-739-9914, February 12, 2008.

3716 Crab Pot Number Buoys and Vessel Panel Color Code and Number Requirements (Formerly S-29)

(Penalty Section 7 **Del.C.** §1912)

Proposed revisions to 3716 would take effect January 1, 2009.

1.0 The color code assigned by the Department to a commercial crab pot licensee shall be displayed on each buoy or buoys attached to the line of each crab pot deployed in the water in the following order:

1.1 The first color in the color code sequence shall be on a buoy or buoys located the farthest from the crab pot (top).

1.2 The last color in the color code sequence shall be on the buoy or buoys located the closest to the crab pot (bottom).

1.3 Any second or third color in the color code sequence between the first and last colors shall be on a buoy or buoys in the same top to bottom order as in the color code sequence.

2.0 Each color coded buoy attached to a line of a commercial crab pot shall measure at least three (3) inches by three (3) inches by three (3) inches except that a separate buoy, located between the crab pot and color-coded buoy nearest the crab pot but no closer than five (5) feet to the color coded buoy nearest the crab pot may be of lesser dimensions.

3.0 Each color in a color code shall cover a contiguous area of at least 28 square inches on a buoy.

4.0 Each color coded buoy shall be visible on the water's surface when the tide is slack and the wind is less than ten (10) miles per hour.

5.0 Each color coded buoy shall have its color or colors recognizable at all times.

6.0 If more than one licensee elects to fish his or her crab pots from the same vessel, then all licensees who fish from that vessel, up to the maximum of three licensees per vessel, shall use the same color code on the pots fished from that vessel. Any licensee who subsequently elects to fish their pots on their own and not on a vessel with other licensees retains the right to use their originally assigned color code.

~~6~~7.0 The color code assigned by the Department to a commercial crab pot licensee shall be displayed on the 2' x 2' panel on the licensee's vessel in a manner that when viewed from either side of the vessel, the sequence of colors shall be as follows relative to the vessel:

~~6~~7.1 The first color in the color code sequence shall be on the panel in a vertical band closest to the stern of the vessel.

~~6~~7.2 The last color in the color code shall be on the panel in a vertical band closest to the bow of the vessel.

~~6~~7.3 Any second or third color in the color code sequence between the first and last colors shall be on the panel in vertical band(s) in the same stern to bow order as assigned in the color code sequence.

~~7~~8.0 Each color coded panel shall be visible and the color(s) shall be recognizable at all times while tending crab pots.

~~8~~9.0 Each color coded panel shall be displayed as vertical bands on the panel such that each color covers a contiguous area of equal size. The panel shall not display any color other than the colors in the assigned color code except for a color used to indicate the crab pot number.

10.0 If more than one licensee, up to the maximum of three licensees per vessel, elects to fish his or her crab pots from the same vessel, then that vessel shall display the same color code panel as on the pots fished from that vessel.

~~9~~11.0 A number shall be assigned by the Department to each commercial crab pot license.

~~40~~12.0 The commercial crab pot licensee's number shall be displayed on the color coded panel on the licensee's vessel with at least three (3) inch high contrasting colored Arabic numerals so that said number shall be visible from either side of the vessel. If more than one licensee elects to fish his or her crab pots from the same vessel then the color coded panel shall contain all of the numbers being fished from that vessel.

~~44~~13.0 The commercial crab pot licensee's number shall be displayed on at least one color coded buoy attached to each crab pot displayed in the water in at least one (1) inch high Arabic numerals. The number shall be painted in a contrasting color, branded on or carved into the buoy. If more than one licensee elects to fish his or her crab pots from the same vessel, then one of the crab pot's license numbers assigned to that vessel shall be displayed on at least once color coded buoy attached to each crab pot fished from that vessel, although no one licensee may fish more than 200 pots at any one time.

3771 Oyster Harvesting Licensee Requirements (Formerly S-73)

(Penalty Section 7 Del.C. §1912)

Proposed revisions to 3771 would take effect immediately upon ratification.

1.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess another person's oyster harvesting tags while on board the vessel listed on said person's oyster harvesting license unless the other person is on board said vessel while harvesting oysters.

2.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds for direct sale to not attach an oyster harvesting tag in the locked position through the fabric of a bushel bag containing oysters. The tag shall be cinched around the top of the bag and locked such that the bag may not be opened nor oysters removed from the bag without breaking the tag or seal. Bags shall be tagged prior to the vessel leaving the shellfish harvest grounds and returning to any port.

3.0 It shall be unlawful for any person to possess a bushel bag that is empty or partially filled with oysters so long as an oyster harvesting tag is attached to said bag.

5 DE Reg. 2140 (5/1/02)

6 DE Reg. 1356 (4/1/03)

4.0 It shall be unlawful for any person to possess an oyster cage that is empty of oysters so long as

an oyster harvesting tag is attached to said cage. A partially filled oyster cage must have the appropriate number of tags attached in the locked position to reflect the number of bushels of oysters in the cage.

6 DE Reg. 1356 (4/1/03)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2700 Board of Professional Land Surveyors

Statutory Authority: 24 Delaware Code, Section 2706 (24 **Del.C.** §2706(a))
24 DE Admin. Code 2700

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Chapter 27, Section 2706(a)(1), the Delaware Board of Professional Land Surveyors proposes to revise its Rules and Regulations. The proposed Rules and Regulations are being updated to change references to the Board Chair, better define the field experience requirement for those seeking licensure, adopt a process for foreign credentialing, eliminate a table dealing with the licensure process, and other items.

A public hearing will be held on the proposed Rules and Regulations on Thursday, April 17th, 2008 at 9:00 a.m. in Conference Room A, second floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments shall be submitted to the Board in care of the Division of Professional Regulation at the above address. The final date to submit written comments shall be at the above scheduled Public Hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or make comments at the Public Hearing should notify the Division of Professional Regulation at (302) 744-4500.

2700 Board of Professional Land Surveyors

1.0 General Provisions

1.1 Pursuant to 24 **Del.C.** Ch. 27, the Delaware Board of Professional Land Surveyors ("the Board") is authorized to, and has adopted, these Rules and Regulations. The Rules and Regulations are applicable to all Professional Land Surveyors and applicants to the Board.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board's Administrative Assistant at the Division of Professional Regulation. Requests to the Board may be directed to the same office or visit our web site at www.dpr.delaware.gov.

1.3 The Board's President Chair shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President's Chair's absence, the Board's Secretary Vice Chairman shall preside at meetings and perform the duties usually performed by the President Chair.

1.4 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.5 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board's duties.

1.6 The Board reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided that the exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 27.

1.7 Board members are subject to the provisions applying to "honorary state officials" in the "State Employees', Officers' and Officials' Code of Conduct," found at 29 **Del.C.** Ch. 58.

2.0 Definitions

Definitions under Section 2 will be listed in the current "Definitions of Surveying and Associated Terms," published by the American Congress on Surveying and Mapping, except as otherwise provided by Delaware law.

"Combined Office and Field Experience" - is defined as being multi-faceted experience in responsible

charge of land surveying projects, performed under the direct supervision of a professional land surveyor in the active practice of land surveying. The office aspect of this experience shall include the technology relevant to civil drafting, mathematical calculations necessary for subdivision, boundary and right-of-way determinations, road, ~~design~~, stormwater, sediment and erosion control, and sewer design as well as the interpolation of field-run topographical data and the like. Office experience should also include applied familiarity with land development submittal and approval processes.

~~The subject field experience shall include time spent in responsible charge relevant to all aspects of on-site inspection, evaluation and field-gathered information as well as the supervision of crew personnel and communication and coordination with a professional land surveyor and office staff.~~

Field experience shall include time spent on site in responsible charge of inspection, evaluation, and gathering of relevant survey information. On-site supervision of and responsibility for field crew personnel while in communication and coordination with a professional land surveyor and office staff shall qualify as field experience.

“Direct Supervision” - applies to one duly licensed as a Professional Land Surveyor (PLS) and only a licensee may provide direct supervision. The physical presence of a PLS on every type of surveying project is not required. There are, however, times when a site visit is necessary to make important decisions involving boundary retracements, property line disputes, etc.

~~Direct supervision of a party chief and field crew ~~would~~ personnel requires daily contact to determine the need for the presence of a PLS on site. This need would be based upon the type of work to be performed and the professional judgment of the PLS in charge. Should it be determined that a site visit is not warranted, the PLS, at a minimum, should instruct the field crew personnel as to the procedures to be used, the data to be gathered, the maps or plats to be relied upon and the scope of the work to be performed. ~~At the end of the assignment, all work should be reviewed and checked by the PLS. The PLS shall follow the same minimum requirements when instructing survey office personnel. All assignments performed by survey personnel, both field and office, shall be reviewed and checked by the PLS providing direct supervision.~~~~

While it has been argued that a survey crew does not always have to be under the direct supervision of a PLS, ~~it is the Board's opinion that~~ only a PLS has the ability to make that determination. It is therefore necessary for the field crew to have daily contact with the PLS so that this decision can be made properly, in order to protect the public.

“Related Science Curriculum” – are those courses of study for which one-third of the required core courses are the same or similar as those required for a Baccalaureate Degree Program in Surveying. These core courses may include but are not limited to Algebra, Trigonometry, Analytical Geometry, Calculus, General Physics and Computer Programming.

Degrees in related fields of study may include but not be limited to Civil Engineering, Mathematics, Physics, Agricultural Engineering, Actuarial Studies, Statistics, Geology and Forestry.

Because requirements for graduation differ from institution to institution, when considering these Related Science Curriculums attention will be given to the specific coursework completed. This examination of completed coursework may allow for greater flexibility of this definition. Section 2708(a).

“Surveying Curriculum” - For the purpose of these regulations, the term "Surveying Curriculum" will mean any approved curriculum for a Baccalaureate Degree in Surveying as it is accepted by the institution bestowing the said degree. This curriculum shall necessarily include but not be limited to courses in Surveying, Advanced Surveying, Legal Principles of Surveying, Data Adjustment, Subdivision Planning and Layout, Route and Construction Surveying, Engineering and Geodetic Astronomy, Topographic Surveying and Cartography and/or those other studies required by the institution where the degree is earned.

Independent study course work (which includes all correspondence, internet and distance-learning study) shall be considered only if those courses have been accepted by an Accreditation Board for Engineering and Technology (ABET) as part of the approved curriculum. Section 2708(a).

3.0 Meeting Schedule and Election of Officers

The Board shall meet at least once each quarter of the calendar year. At the first regularly scheduled meeting in the first quarter, the Board will elect from its members a chair, vice-chair, and secretary. Section 2704(b).

4.0 Periodic Review of Application Form

The Application Form for those seeking licensure under 24 **Del.C.** Ch. 27 shall be reviewed every five

years. Section 2706 (a)(2).

5.0 Designation of the National Examination

For the required National Examination for licensure under 24 **Del.C.** Ch. 27, the Board adopts the two-part examination developed by the National Council of Examiners for Engineering and Surveying (NCEES), consisting of the Principles and Practice of Surveying Examination and the Fundamentals of Surveying Examination, as amended from time to time (then in effect at time of examination). Section 2706(a)(3).

6.0 Designation of the Drainage Examination/Delaware Law Examination

6.1 For the required drainage examination/Delaware law examination the Board adopts the bank of questions developed for this purpose and/or approved for this purpose by a recognized psychometrician or other authority whose services are acquired and approved by the Division of Professional Regulation of the Delaware Department of State. Section 2706(a)(4).

6.2 Exam review procedures.

6.2.1 An applicant may review only the questions answered incorrectly.

6.2.2 No other materials will be allowed into the room when reviewing the exam.

6.2.3 There will be a 30-minute time limit supervised by the Division of Professional Regulation.

6.2.4 The fee will be determined by the Division of Professional Regulation.

6.2.5 An applicant cannot review the exam within 90 days prior to the next exam date.

6.2.6 An exam review will be limited to only one review.

7.0 Adoption of Administration and Grading Procedures and Passing Scores for National Examination

The Board adopts the administration and grading procedures and the passing scores adopted by the NCEES for the two-part national examination, described in Section 5.0 of these regulations. Section 2706(a)(5).

8.0 ~~Process for Evaluation of Applicants' Credentials and Experience for Licensure~~ Foreign Credentialing

~~See Attachment B.~~

8.1 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from The Center of the National Council of Examiners of Engineers and Surveyors, its successor, or any other similar agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board.

8.2 Applications will be kept active and on file for two (2) years. If the applicant fails to meet the licensure requirements and/or pass the examination within two (2) years, the application shall be deemed to have expired and the applicant must reapply in the same manner as for initial application, i.e., submits the application, documentation, proper fee, and obtains board approval to be eligible to sit for the examination.

8.3 The Board will not review incomplete applications.

8.4 All signatures must be original on all forms.

8.5 The applicant shall have obtained the passing score on the NCEES Fundamentals of Surveying, NCEES Principles of Surveying and DE State Drainage and Law Examination.

9.0 Procedure for Granting Licenses and License Renewals

9.1 When an applicant is approved for licensure, the Division of Professional Regulation will send a letter to the applicant advising that person of the prorated license fee. Once the license fee is received by the Division, a license number is issued and mailed to the applicant.

9.2 The Division of Professional Regulation will send a renewal notice to the last known address for each licensee at least 30 days prior to renewal. Even if a licensee does not receive a renewal, it is his/her responsibility to renew their license.

6 DE Reg. 271 (9/1/02)

10.0 Continuing Education

10.1 Biennium Requirements.

Effective each biennium, as a condition for renewal of a ~~Certificate of Registration~~ license for the

practice of land surveying, a Professional Land Surveyor shall be required to successfully complete 24 hours of professional development within the preceding biennium. Any licensee who completes in excess of 24 hours of professional development within the preceding biennium may NOT have the excess applied to the requirements for the next biennium.

10.2 A licensee shall complete at least two (2) hours on ethics and professionalism for each renewal period with no carry-over credit for any biennium renewal period.

10.3 Sources of Credit. In reviewing and approving applications for PDHs, the Board shall take into consideration:

10.3.1 Program Content: Courses must cover land surveying topics and must directly contribute to accomplishment of the primary purpose of continuing education, which is to help assure that licensees possess the knowledge, skills and competence necessary to function in a manner that protects and serves the public interest. The knowledge or skills taught must enable licensees to better serve surveying clients and the subject matter must be directly related to the land surveying practice. All educational courses must be approved by the Board.

10.3.2 Instruction: ~~Except as set forth below, t~~The course must be one that will be conducted by a qualified instructor who will be able to interact directly either in person or by interactive television with all students at all times during the course. The course may be conducted through the use of interactive television or other media which permits continuous mutual communication between the instructor and all students, continuous observation of the instructor by all students, and continuous observation of all students by the instructor. Distance education courses may be acceptable when the sponsor gives the licensee a final exam and sends verification to the Board that the licensee has completed the course with a passing grade.

10.3.2.1 Distance education courses are defined as programs whereby instruction does not take place in a traditional classroom setting but rather through other media where teacher and student are apart. Distance education may not be utilized with the exceptions of interactive television and verified courses described above.

10.3.3 Examples of topics that are acceptable, but not limited to:

- ALTA/ACSM land title surveys
- GPS (survey related)
- GIS (survey related)
- Delaware land use laws
- Case law
- Boundary laws and regulations
- Research
- Evidence
- Boundary determination
- Unwritten rights
- Conflict resolution; i.e. boundary line agreements
- Adverse possession
- Highway surveys
- Railroad surveys
- Easements and rights of way
- Geodesy
- Highway design/Highway safety
- Surveyor in court/Expert testimony
- State and international boundaries
- Water boundaries
- Technical writing related to deed descriptions and survey reports
- Mathematics and computer applications of land surveying
- Measurement and analysis
- Photogrammetry and aerial photo interpretation
- Survey standards
- Survey instrumentation
- Business management and professional development related

to the land surveying practice; i.e. surveying contracts, communicating with clients, good business planning and management, quality assurance

Ethics and professionalism

Liability for land surveyors

Drainage design

Sediment and erosion control

First aid/CPR

10.3.4 Serving as a member of a committee or a board or a commission, which has as its primary duty the preparation or grading of written tests which are given for the purpose of determining the proficiency of an applicant for registration, using accepted test development principles, shall be counted as one (1) PDH per hour of attendance.

10.3.5 Attendance at workshops or seminars, which are directly related to land surveying, shall count as one (1) PDH per actual hour of classroom attendance. Such sessions must be planned in advance, a record must be maintained describing the content and a record of attendance must be kept. This may include society meetings in which educational programs are presented.

10.3.6 The active teaching of land surveying at the college level, within the immediate preceding biennium, shall be counted as eight (8) PDHs per year. No more than sixteen (16) PDHs shall be issued for teaching at the college level in any renewal period. CREDIT WILL NOT BE GIVEN TO FULL TIME EDUCATORS.

10.3.7 Teaching a workshop or seminar, which is directly related to land surveying or professional development, shall be counted as two (2) PDHs per actual hour of teaching time, not to include preparation. No more than eighteen (18) PDHs may be claimed in any 2-year period. CREDIT WILL BE GIVEN FOR ONLY ONE PRESENTATION IN A TWO-YEAR PERIOD.

10.3.8 College level courses directly related to land surveying or professional development shall be counted as 40 PDH per credit hour. Ten (10) PDHs will be counted for each CEU (continuing education unit) earned.

10.3.9 Presentation and/or publication of a professional paper will be counted as 10 PDHs. No more than 20 PDHs may be claimed in any biennium renewal.

10.4 Renewal Credit.

10.4.1 Each licensee applying for renewal shall attest to satisfying the continuing education requirements outlined in Rule 10.1, 10.2, and 10.3 in the period defined in Section 10.1 of these rules. Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted.

10.4.2 ~~If the Board should, for any reason, deny or modify the licensee's request for carryover PDHs, the Board shall notify the licensee of such action after the next Board meeting. The licensee's submittal shall be on a form provided by the Board and shall contain a statement signed and sealed by the licensee, which attests to the correctness thereof. Such statement shall accompany and be filed with the licensee's request for renewal.~~ Licensees should retain their PDH files and records for at least five (5) years.

10.5 Pro-Rated Credits for Renewal. A licensee for renewal shall follow the following schedule of reporting PDH credits: if, at the time of renewal, you have been licensed for less than one year, NO continuing education is required; licensed for more than one year, but less than two years, half (12 PDHs) is required; licensed for two or more years, the full amount (24 PDHs) is required.

10.6 Renewal. Any licensee who has submitted a correctly completed paper or electronic renewal form as required in Section 10.4.1 and has met all other requirements shall be granted renewal.

10.7 Audit. Each biennium, the Division of Professional Regulation shall select from the list of potential renewal licensees a percentage, determined by the Board, which shall be selected by random method. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements.

10.8 Documentation and Audit by the Board. When a licensee whose name or number appears on the audit list applies for renewal, the Board shall obtain documentation from the licensee showing detailed accounting of the various PDHs claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with attendance verification. The Board shall attempt to verify the PDHs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the

review, the Board shall decide whether the licensee's PDHs meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.

10.9 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's certificate of registration shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered misconduct in the practice of land surveying, pursuant to 24 **Del.C.** §2712. The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 fine.

10.10 Noncompliance – Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required PDHs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required PDHs. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of professional development within the extension period approved by the Board.

10.11 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal pursuant to the Administrative Procedures Act.

10.12 Retired Licensees. Licensees 62 years old and over who are retired (working less than 20 hours weekly) shall need only twelve (12) PDHs, including one ethics PDH, each biennium to satisfy the professional development requirements outlined herein.

10.13 Multiple State Licensees. Any licensee, who is not a Delaware resident and resides in another state or commonwealth, and is licensed in that state or commonwealth having a comparable continuing education requirement, shall not be required to satisfy these requirements in addition to those of his/her home state, but will satisfy these requirements as a minimum. Any questions regarding compliance with this Section shall be resolved by the Board.

6 DE Reg. 271 (9/1/02)

11.0 Investigations and Designation of Board Member for Contact with Division of Professional Regulation

Upon notice to the Board that a disciplinary investigation of a licensee is underway by the Division of Professional Regulation, the Board shall designate a Board member to assist the investigator. Whenever feasible, the Board member designated for this purpose should not reside in the county where the licensee under investigation resides or maintains his or her dominant area of practice. Section 2706(a)(10).

12.0 Minimum Technical Standards for Licences

12.1 The Board is required under Sections 2701 and 2112(a)(9) to establish minimum technical standards for licensees. The purpose of these standards is to establish minimum technical criteria to govern the performance of surveys when more stringent specifications are not required by other agencies or by contract. Further, the purpose is to protect the inhabitants of this state and generally to promote the public welfare. The Board also established minimum standards for Mortgage Inspection Plans (MIPs), and other types of work, frequently performed by licensees in portions of the state.

12.2 Procedure and Standards. Whenever a surveyor conducts a boundary survey, or an improvement location survey of properties, or an ALTA/ACSM Land Title Survey, or Subdivision Survey, a plat showing the results shall be prepared, ~~and a~~ A copy of the survey shall be furnished to the client unless deemed unnecessary by the client. The plat shall conform to the following requirements and shall include the following information:

12.2.1 The plat shall be drawn on any reasonably stable and durable drawing paper, vellum or film of reproducible quality. No plat or map shall have dimensions of less than 8 ½ x 11 inches.

12.2.2 The plat shall indicate the Source of Title, Tax Parcel Number and, when

applicable, the Postal Address of the subject property. The plat shall show the written scale, area and classifications of the survey. These classifications (suburban, urban, rural, and marshland) are based upon both the purposes for which the property is being used at the time the survey is performed and any proposed developments, which are disclosed by the client, in writing. This classification must be based on the criteria in Section 12.4 and the survey must meet the minimum specifications set forth in Attachment A. The scale shall be sufficient to show detail for the appropriate classification.

12.2.3 The horizontal direction of all boundary lines shall be shown in relationship to grid north, magnetic, or in lieu thereof, to true north or to such other established line or lines to which the survey is referenced. The horizontal direction of the boundary lines shall be by direct angles or bearings. A prominent north arrow shall be drawn on every sheet. The description of the bearing reference system shall be stated on the plat. Bearings shall be written in a clockwise direction unless impractical.

12.2.4 All monuments, natural and artificial (man-made), found or set, used in the survey, shall be shown and described on the survey plat. The monuments shall be noted as found or set. All monuments set shall be ferrous metal, or contain ferrous metal, not less than ½ inch in diameter and not less than 18 inches in length, except however, a corner which falls upon solid rock, concrete, or other like materials shall be marked in a permanent manner and clearly identified on the plat. Monuments shall be set at all corners of all surveys as required by these standards, with the exception of meanders such as meanders of streams, tidelands, wetlands, lakes, swamps and prescriptive road rights-of-way. Witness monuments shall be set or referenced whenever a corner monument cannot be set or is likely to be disturbed. Such witness monument shall be set as close as practical to the true corner. If only one (1) witness monument is set, it must be set on the actual boundary line or prolongation thereof. Otherwise, at least two (2) witness monuments shall be set and so noted on the plat of the survey. Monuments shall be identified, where possible, with a durable marker bearing the firm name or the surveyor's registration number and/or name.

12.2.5 The plat of a metes and boundary survey must clearly describe the commencing point and label the point of beginning for the survey.

12.2.6 Notable discrepancies between the survey and the recorded description, shall be noted, and the source of information title used in making the survey, shall be indicated. When an inconsistency is found, including a gap or overlap, excess or deficiency, erroneously located boundary lines or monuments, the nature of the inconsistency shall be indicated on the drawing.

12.2.7 In the judgment of the surveyor, the description and location of any physical evidence found along a boundary line, including but not limited to fences, walls, buildings or monuments, shall be shown on the drawing.

12.2.8 The horizontal length (distance) and direction (bearing) of each line as determined in an actual survey process shall be shown on the drawing and indicated in a clockwise direction unless impractical.

12.2.9 ~~At least three (3) elements (including The radius, arc length, and chord bearing and chord distance)~~ of all circular curves, shall be shown.

12.2.10 Information used by the surveyor in the property description shall be clearly shown on the plat, including but not limited to, the point of beginning, course bearing, distance, monuments, etc.

12.2.11 The lot and block or tract numbers or other recorded subdivision designations, ~~including those of adjoining lots, if the survey is within a recorded subdivision of the subject property and adjoining properties shall be shown.~~ If the adjoining properties ~~is are~~ not within a recorded subdivision, then the name and deed record of all adjoining owners shall be shown.

12.2.12 Recorded public and private rights-of-way or easements which are discovered during the title search performed by others and supplied to the surveyor or graphically shown on the recorded plat, which includes the property, or which are known or observed adjoining or crossing the land surveyed, shall be shown.

12.2.13 Location of all permanent improvements pertinent to the survey, referenced radially and perpendicular to the nearest boundary, shall be shown.

12.2.14 Visible or suspected encroachments onto or from adjoining property or abutting streets, with the extent of such encroachments, shall be shown.

12.2.15 A plat or survey shall clearly bear the ~~Company~~ Firm Name and ~~individual licensee's~~ name, license number, title, "Professional Land Surveyor", contract address, and date of survey and original signature and board-approved seal of the licensed surveyor in responsible charge. This signature and seal

is certification that the survey meets minimum requirements of the Standards for Land Surveyors as adopted by the Delaware Board.

12.2.16 The following information shown on the plat must be included in a written description, if one is provided:

- 12.2.16.1 The commencing point and point of beginning.
- 12.2.16.2 Sufficient caption to connect the plat and description.
- 12.2.16.3 Length and direction of all lines in a clockwise direction unless impractical.
- 12.2.16.4 Curve information as described in paragraph 12.2.9.
- 12.2.16.5 Type of monuments noted as found or set.
- 12.2.16.6 The area of the parcel.
- 12.2.16.7 Adjoining owners, subdivision name, etc.

12.3 Standards for Horizontal Control.

12.3.1 Definitions for specific types of horizontal control surveys, along with standards and procedures, may be found in National Geodetic Survey (NGS) or successor publications. All geodetic surveys, including determination and publication of horizontal and vertical values utilizing Global Positioning Systems, Ground Control Systems or any other system which relates to the practice and profession of Land Surveying, shall be performed under the direct control and personal supervision of a licensed Professional Land Surveyor licensed in the State of Delaware.

12.3.2 Control Surveys that are used to determine boundary lines, including developing coordinates for existing boundary corners, shall meet the Standards contained herein.

12.3.3 Land Information Systems/Geographic Information Systems (LIS/GIS) maps should be built on a foundation of coordinates obtained by an accurate survey. Creation of LIS/GIS maps and services should include a Professional Land Surveyor licensed in the State of Delaware for coordination and input of their knowledge in these fields.

12.4 Classification of Surveys. (See Attachment A)

12.4.1 Urban Surveys - Surveys of land lying within or adjoining a city or town. This would also include the surveys of commercial and industrial properties, condominiums, townhouses, apartments and other high-density developments regardless of geographic location.

12.4.2 Suburban Surveys - Surveys of land lying outside urban areas. This land is used almost exclusively for single family residential use or residential subdivisions.

12.4.3 Rural Surveys - Surveys of land such as farms and other undeveloped land outside the suburban areas which may have a potential for future development.

12.4.4 Marshland Surveys - Surveys of land which normally lie in remote areas with difficult terrain and usually have limited potential for development and cannot be classified as urban, suburban or rural surveys. This includes, but is not limited to, surveys of farmlands and rural areas.

12.5 ALTA/ACSM Land Title Survey. The current published standard as amended from time to time.

12.6 Mortgage Inspection Plans (MIP)

12.6.1 Purpose. The purpose of an MIP is to locate, describe and represent the positions of buildings or other visible improvements, or both, affecting the property being inspected.

12.6.2 Product. The results of the MIP shall be stated on a plat showing the property inspected and the location of the buildings or other visible improvements affecting the inspected property.

12.7 The Approval by the Consumer and Disclosures.

12.7.1 The surveyor shall not begin work for compensation pursuant to this regulation until the surveyor receives a signed approval form more particularly described below.

12.7.2 The approval form or its equivalent shall be sufficient if signed by one consumer, whether or not there are multiple consumers, or, if a consumer is not an individual, the consumer's duly authorized agent, with respect to the property for which services pursuant to this regulation are sought. The approval form shall at a minimum contain:

12.7.2.1 An approval by the signer of the requested services; and

12.7.2.2 An explanation of the differences between an MIP and a boundary survey which includes an improvement location drawing.

12.7.2.3 The following approval form or its equivalent shall suffice for the purpose of complying with this regulation: "Approval Form (on company letterhead, with name, address and telephone

number)

In connection with the purchase or refinancing of the property located at _____, we have been requested to prepare an MIP.

Since an MIP is not a boundary survey and does not identify property boundary lines, State regulations require us to have your approval. Therefore, please sign and return the original of this form promptly, by fax or mail, so that there will be no delay in settlement.

If you wish, we can perform a boundary survey, which includes an Improvement Location Drawing (ILD). This survey will identify property boundary lines and will mark property boundary corners.

An MIP will cost approximately \$_____. A boundary survey which includes an ILD will cost (approximately \$_____) (between \$_____ and \$_____).

Very truly yours,

Check appropriate lines:

_____ We approve the preparation of an MIP. We have read and understand that, in the absence of any problem revealed by or during the preparation of this drawing, it may be all that is required of the land surveyor.

_____ We request a boundary survey that will include an ILD, and will identify property boundary lines and mark property boundary corners.

_____(Signature)

_____(Signature)

12.7.3 Upon receipt of an approval form, which complies with this section, the surveyor shall perform the services approved by the consumer. If the consumer requests a boundary survey which includes an ILD, then the survey shall be consistent with the provisions set forth in The Minimum Model Standards adopted by the Board.

12.8 Minimum Procedures. If the consumer approves the preparation of an MIP, the surveyor shall perform at least the following procedures:

12.8.1 Examine the current deed and/or plat for the subject parcel and review the most current tax assessment map for inconsistencies with deed or plat.

12.8.2 Take sufficient on-site measurements to enable the surveyor to perform the tasks called for by this regulation with regard to the:

12.8.2.1 Locations of buildings and those other improvements pertinent to the MIP;

12.8.2.2 Locations of possible encroachments reasonably determined based on a

visual inspection;

12.8.2.3 Easements; and

12.8.2.4 Rights-of-way.

12.8.3 If the consumer has approved an MIP, then the following elements shall be shown:

12.8.3.1 Significant buildings, structures and other improvements, and their relationship to the apparent property lines referenced radially and/or perpendicular to the nearest boundary, based on the field measurements taken by the surveyor, and any other evidence considered by the surveyor;

12.8.3.2 Statement with regard to the level of accuracy and accuracy of apparent setback distances; (REFER TO ATTACHMENT A)

12.8.3.3 Possible encroachments to the extent reasonably determined by a visual inspection of the property either way across property lines; and

12.8.3.4 Minimum setback lines, as shown on plats,

12.8.3.5 A minimum of two control points and their relationship to each other and the subject property.

12.8.3.6 Easements or rights-of-way as shown on plats or current deed of record for subject property.

12.8.4 If, in connection with the preparation of an MIP, a surveyor finds evidence to

warrant, in the surveyor's professional opinion, the performance of a boundary survey, the surveyor shall so notify, in writing, the consumer or the consumer's representative.

12.8.5 If the consumer has approved the preparation of an MIP, then:

12.8.5.1 The MIP prepared by the surveyor shall prominently display, at a minimum, advice to the effect that:

12.8.5.1.1 The MIP is of benefit to a consumer only insofar as it is required by a lender, a title insurance company or its agent in connection with the contemplated transfer, financing, or refinancing; and

12.8.5.1.2 The MIP is not to be relied upon for the establishment or location of fences, garages, buildings or other existing or future improvements.

12.9 Plats.

12.9.1 The original plat of an MIP shall be a reproducible drawing at a scale which clearly shows the results of the field work, computations, research and record information as compiled and checked.

12.9.2 The plat shall be prepared in accordance with the following procedures:

12.9.2.1 A reasonably stable and durable drawing paper, linen or film is considered a suitable material;

12.9.2.2 Plats may not be smaller than 8 ½ x 11 inches;

12.9.2.3 The plat shall show the following:

12.9.2.3.1 Caption or title and address or lot number of the property,

12.9.2.3.2 Scale,

12.9.2.3.3 Date,

12.9.2.3.4 Name and address of the firm or surveyor; and

12.9.2.3.5 Original signature and board-approved seal of the licensed

surveyor in responsible charge,

12.9.2.3.6 Consumer's name,

12.9.2.3.7 Statement with regard to the level of accuracy and accuracy of apparent setback distances; (REFER TO ATTACHMENT A)

12.10 Maintenance of Records.

12.10.1 The surveyor shall make a reasonable effort to maintain records, including names or initials of all personnel, date of performance, reference to field data, such as book number, loose leaf pages and other relevant data.

12.11 Local Standards.

12.11.1 All work shall be performed according to the minimum standards for the community in which the service is provided, as long as said standards meet or exceed the standards herein. (1) Current local standards shall take precedence over the MIP as to the manner in which mortgage or deed-related surveys or plans are prepared and as to the manner of field work and staking related to these surveys or plans, if those standards require more detailed or more accurate work to meet those local standards.

12.12 ~~11.2~~ Based on current information, the MIP shall be accepted as a minimum standard only in New Castle County. In Kent and Sussex counties, MIP's shall not be considered to meet the minimum local standards for the work required for mortgage or deed-related surveys or plans. For mortgage and deed-related surveys or plans in Kent County and Sussex County, the minimum requirement is an Improvement Location Drawing prepared in compliance with Regulation 12.0 which includes proper monument placement.

12.12.1 Electronically Transmitted Documents. Documents including drawings, specifications and reports, that are transmitted electronically to a client or a governmental agency shall have the computer-generated seal removed from the original file, unless signed with a digital signature as defined in 12.12.2. After removal of the seal the electronic media shall have the following inserted in lieu of the signature and date: This document originally issued and sealed by (Name of sealer), containing the original seal, signature and date of the licensee may be duplicated by photocopy or electronic scanning processes and distributed either in hardcopy or electronic medium. The scanned digital files of properly certified documents are not subject to the requirements of this paragraph. The electronic submission of CAD, vector or other files subject to easy editing are subject to the requirements of this paragraph. Easy editing is based on the file consisting of separate elements that can be individually modified or deleted.

12.12.2 Documents to be electronically transmitted that are signed using a digital signature, shall contain the authentication procedure in a secure mode and a list of the hardware, software and

parameters used to prepare the document(s). Secure mode means that the authentication procedure has protective measures to prevent alteration or overriding of the authentication procedure. The term "digital signature" shall be an electronic authentication process that is attached to or logically associated with an electronic document. The digital signature shall be:

- | | |
|------------------|---|
| <u>12.12.2.1</u> | <u>Unique to the licensee using it;</u> |
| <u>12.12.2.2</u> | <u>Capable of verification;</u> |
| <u>12.12.2.3</u> | <u>Under the sole control of the licensee; and</u> |
| <u>12.12.2.4</u> | <u>Linked to a document in such a manner that the digital signature</u> |

is invalidated if any data in the document is changed.

12.12.3 Electronic formats must be approved by the board and must meet all criteria set forth in 12.2.1 and 12.2.2.

7 DE Reg. 918 (01/01/04)

13.0 Professional Conduct - Code of Ethics

13.1 Foreword. Honesty, justice and courtesy form a moral philosophy which, associated with mutual interest among men and women, constitutes the foundation of ethics. The surveyor should recognize such a standard, not in a passive observance, but as a set of dynamic principles guiding his/her conduct and way of life. It is his/her duty to practice his/her profession according to this Code of Ethics.

As the keystone of professional conduct is integrity, the surveyor will discharge his/her duties with fidelity to the public, his/her employers and clients, and with fairness and impartiality to all. It is his/her duty to interest his/herself in the public welfare, and to be ready to apply his/her special knowledge for the benefit of mankind. He/she should uphold the honor and dignity of his/her profession and avoid association with any enterprise of questionable character. In his/her dealings with fellow surveyors he/she should be fair and tolerant.

13.2 Professional Life.

13.2.1 The surveyor will cooperate in extending the effectiveness of the surveying profession by interchanging information and experience with other surveyors and students and by contributing to the work of surveying societies and associations, schools and the scientific and surveying press.

13.2.2 It shall be considered unprofessional and inconsistent with honorable and dignified bearing for any surveyor to advertise his/her work in a false or deceptive manner that may mislead the public.

13.2.3 The surveyor will avoid all conduct or practice likely to discredit or do injury to the dignity and honor of his/her profession.

13.2.4 Because superior and distinct knowledge of surveying is essential to the profession, it is imperative for the surveyor to continue his/her education.

13.2.5 The surveyor shall not permit the use of his/her professional seal on any work over which he/she was not in responsible charge and/or direct supervision.

13.3 Relations With The Public.

13.3.1 The surveyor will endeavor to extend public knowledge of surveying and will discourage the spreading of untrue, unfair and exaggerated statements regarding surveying.

13.3.2 He/she will have due regard for the safety of life and health of public and employees who may be affected by the work for which he/she is responsible.

13.3.3 He/she will express an opinion only when it is founded on adequate knowledge and honest conviction while he/she is serving as a witness before a court, commission or other tribunal.

13.4 Relations With Clients and Employers.

13.4.1 The surveyor will act in fairness and in a professional manner toward each client or employer and produce a quality survey regardless of price.

13.4.2 He/she will engage, or advise his/her client or employer to engage, and he/she will cooperate with, other experts and specialists whenever the client's or employer's interests are best served by such service.

13.4.3 He/she will disclose no information concerning the business affairs or technical processes and data of clients or employers without their consent.

13.4.4 He/she will not undertake work which he/she believes will not be successful without first advising his/her client of his/her opinion.

13.4.5 He/she will promptly disclose to his/her client or employer any interest in a

business which may compete with or affect the business of his/her client or employer. He/she will not allow an interest in any business to affect his/her decision regarding surveying work for which he/she is employed, or which he/she may be called upon to perform.

13.4.6 An employed surveyor will not solicit or accept other employment to the detriment of his/her regular work or the interests of his/her employer.

13.5 Relations With Surveyors.

13.5.1 The surveyor will see that those licensed to survey are properly qualified by character, ability and training and those who prove unworthy of their privileges are disciplined.

13.5.2 He/she will uphold the principle of appropriate and adequate compensation for those engaged in surveying work, including those in subordinate capacities, as being in the public interest and maintaining the standards of the profession.

13.5.3 He/she will endeavor to provide opportunity for the professional development and advancement of surveyors in his/her employ.

13.5.4 He/she will not directly or indirectly injure the professional reputation, prospects or practice of another surveyor. However, if he/she discovers an error or disagrees with the work of another surveyor, it is the duty of that surveyor to inform the other surveyor of such fact.

13.5.5 He/she will not review the work of another surveyor for the same client, except with the knowledge or consent of such surveyor or unless the connection of such surveyor with the work has been terminated.

13.5.6 He/she will not compete with another surveyor on the basis of charges by reducing his/her normal fees after having been informed of the charges named by the other, or undertake any work at a price that will not permit a satisfactory professional performance. Any offer of professional service should be on the basis of his/her regular fees.

13.5.7 He/she will not use the advantages of a salaried position (public or private) to compete unfairly with another surveyor, or use the advantages of instruments and office facilities (public or private) to compete with other surveyors without charging for such instruments and facilities at current rates.

13.5.8 He/she will not attempt to practice in any field of surveying in which he/she is not proficient. He/she should call in special consulting services to supplement his/her own experience and that of his/her organization on problems outside of their usual field.

14.0 Criminal History Reviews of Licensee Applicants

Part of the licensure process for applicants under 24 **Del.C.** Ch. 27 includes a requirement that the applicant not have a criminal conviction record, nor pending criminal charges relating to an offense, the circumstances of which substantially relate to the practice of land surveying. The Board shall review the information provided on the Application Form relating to this issue to determine if the applicant's criminal history record is substantially related to the practice of land surveying. Section 2708(a)(6).

15.0 Reciprocity Eligibility

15.1 24 **Del.C.** §2709 requires the Board to grant reciprocal licenses to applicants presenting proof of current licensure in good standing in another state, the District of Columbia, or territory of the United States, whose standards for licensure are "substantially similar" to Delaware standards.

15.2 All states that are contiguous to Delaware are considered to have "substantially similar" standards to the Delaware standards. In determining whether other jurisdiction's standards are substantially similar, the Board will consider the evidence presented by the applicant intended to show this similarity.

16.0 Renewal of Lapsed Licenses

A licensee may renew a license that has lapsed after the renewal date, by payment of the late fee penalty and proof of the required PDHs to the Division of Professional Regulation, if the licensee files for renewal within six (6) months of the most recent renewal date. ~~A licensee who does not file for renewal within that period must re-apply for a new license.~~ Section 2711.

17.0 Replacement of Lost, Destroyed or Mutilated Licenses

Lost, destroyed, or mutilated licenses may be replaced by payment of the appropriate fee to the Division of Professional Regulation. Section 2716(c).

18.0 Professional Seals, Rubber Stamps and Signatures

18.1 A raised seal shall be used wherever possible.

18.2 When a raised seal cannot be used, a rubber seal may be used, but only with red ink so that the lettering will stand out.

18.3 The signature must be originally hand written.

18.4 The seal to be used by a Delaware licensee shall conform to the above regulation and have two concentric circles. The inner circle shall contain only the words "REGISTERED," "NO.," and "DELAWARE." The area between the two circles shall contain, at the bottom, the words "PROFESSIONAL LAND SURVEYOR" reading counterclockwise and at the top, the name of the licensee as written below, reading clockwise.

18.5 The seal acceptable to the Board is the one recognized in the trade as the No. 1 official pocket size, which has an inner circle 1" in diameter and an outer circle 1 ½" in diameter. A sample is below. Replace JOHN DOE AND No. 123 with your name and number.



18.6 All new licensees shall provide to the Board a copy of both the raised and rubber seal within 30 days of issuance of their license.

6 DE Reg. 271 (9/1/02)

19.0 Crimes substantially related to practice of land surveyors

19.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the practice of land surveyor in the State of Delaware without regard to the place of conviction:

19.1.1 Menacing. 11 **Del.C.** §602

19.1.2 Reckless endangering in the second degree. 11 **Del.C.** §603

19.1.3 Reckless endangering in the first degree. 11 **Del.C.** §604

19.1.4 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605

19.1.5 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606

19.1.6 Assault in the second degree. 11 **Del.C.** §612

19.1.7 Assault in the first degree. 11 **Del.C.** §613

19.1.8 Assault by abuse or neglect. 11 **Del.C.** §615

19.1.9 Terroristic threatening. 11 **Del.C.** §621(a)(b)

19.1.10 Unlawful administering drugs. 11 **Del.C.** §625

19.1.11 Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626

19.1.12 Prohibited acts as to substances releasing vapors or fumes. 11 **Del.C.** §627

19.1.13 Vehicular assault in the second degree. 11 **Del.C.** §628

19.1.14 Vehicular assault in the first degree. 11 **Del.C.** §629

19.1.15 Vehicular homicide in the second degree. 11 **Del.C.** §630

19.1.16 Vehicular homicide in the first degree. 11 **Del.C.** §630A

19.1.17 Criminally negligent homicide. 11 **Del.C.** §631

19.1.18 Manslaughter. 11 **Del.C.** §632

19.1.19 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633

19.1.20 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634

19.1.21 Murder in the second degree. 11 **Del.C.** §635

19.1.22 Murder in the first degree. 11 **Del.C.** §636

19.1.23 Unlawful sexual contact in the second degree. 11 **Del.C.** §768

19.1.24	Unlawful sexual contact in the first degree. 11 Del.C. §769
19.1.25	Rape in the fourth degree. 11 Del.C. §770
19.1.26	Rape in the third degree. 11 Del.C. §771
19.1.27	Rape in the second degree. 11 Del.C. §772
19.1.28	Rape in the first degree. 11 Del.C. §773
19.1.29	Sexual extortion. 11 Del.C. §776
19.1.30	Continuous sexual abuse of a child. 11 Del.C. §778
19.1.31	Female genital mutilation. 11 Del.C. §780
19.1.32	Unlawful imprisonment in the first degree. 11 Del.C. §782
19.1.33	Kidnapping in the second degree. 11 Del.C. §783
19.1.34	Kidnapping in the first degree. 11 Del.C. §783A
19.1.35	Arson in the first degree. 11 Del.C. §803
19.1.36	Burglary in the third degree. 11 Del.C. §824
19.1.37	Burglary in the second degree. 11 Del.C. §825
19.1.38	Burglary in the first degree. 11 Del.C. §826
19.1.39	Multiple Offenses. 11 Del.C. §827
19.1.40	Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828
19.1.41	Robbery in the second degree. 11 Del.C. §831
19.1.42	Robbery in the first degree. 11 Del.C. §832
19.1.43	Carjacking in the second degree. 11 Del.C. §835
19.1.44	Carjacking in the first degree. 11 Del.C. §836
19.1.45	Shoplifting. 11 Del.C. § 840
19.1.46	Theft. 11 Del.C. §841
19.1.47	Theft of Services. 11 Del.C. §845
19.1.48	Extortion. 11 Del.C. §846
19.1.49	Misapplication of property. 11 Del.C. §848
19.1.50	Theft of rented property. 11 Del.C. §849
19.1.51	Receiving stolen property. 11 Del.C. §851
19.1.52	Identity theft. 11 Del.C. §854
19.1.53	Forgery. 11 Del.C. §861
19.1.54	Falsifying business records. 11 Del.C. §871
19.1.55	Tampering with public records in the second degree. 11 Del.C. §873
19.1.56	Tampering with public records in the first degree. 11 Del.C. §876
19.1.57	Offering a false instrument for filing. 11 Del.C. §877
19.1.58	Issuing a false certificate. 11 Del.C. §878
19.1.59	Bribery. 11 Del.C. §881
19.1.60	Bribe receiving. 11 Del.C. §882
19.1.61	Issuing a bad check. 11 Del.C. §900
19.1.62	Criminal impersonation of a police officer. 11 Del.C. §907B
19.1.63	Unlawfully concealing a will. 11 Del.C. §908
19.1.64	Fraudulent conveyance of public lands. 11 Del.C. §911
19.1.65	Fraudulent receipt of public lands. 11 Del.C. §912
19.1.66	Insurance fraud. 11 Del.C. §913
19.1.67	Health care fraud. 11 Del.C. §913A
19.1.68	New home construction fraud. 11 Del.C. §917
19.1.69	Unauthorized access. 11 Del.C. §932
19.1.70	Theft of computer services. 11 Del.C. §933
19.1.71	Interruption of computer services. 11 Del.C. §934
19.1.72	Misuse of computer system information. 11 Del.C. §935
19.1.73	Destruction of computer equipment. 11 Del.C. §936
19.1.74	Dealing in children. 11 Del.C. §1100
19.1.75	Abandonment of a child. 11 Del.C. §1101
19.1.76	Endangering the welfare of a child. 11 Del.C. §1102
19.1.77	Sexual exploitation of a child. 11 Del.C. §1108

- 19.1.78 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- 19.1.79 Possession of child pornography. 11 **Del.C.** §1111
- 19.1.80 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 19.1.81 Bribery. 11 **Del.C.** §1201
- 19.1.82 Receiving a bribe. 11 **Del.C.** §1203
- 19.1.83 Giving unlawful gratuities. 11 **Del.C.** §1205
- 19.1.84 Receiving unlawful gratuities. 11 **Del.C.** §1206
- 19.1.85 Perjury in the third degree. 11 **Del.C.** §1221
- 19.1.86 Perjury in the second degree. 11 **Del.C.** §1222
- 19.1.87 Perjury in the first degree. 11 **Del.C.** §1223
- 19.1.88 Making a false written statement. 11 **Del.C.** §1233
- 19.1.89 Threats to public officials. 11 **Del.C.** §1240
- 19.1.90 Assault in a detention facility. 11 **Del.C.** §1254
- 19.1.91 Bribing a witness. 11 **Del.C.** §1261
- 19.1.92 Bribe receiving by a witness. 11 **Del.C.** §1262
- 19.1.93 Tampering with a witness. 11 **Del.C.** §1263
- 19.1.94 Interfering with child witness. 11 **Del.C.** §1263A
- 19.1.95 Bribing a juror. 11 **Del.C.** §1264
- 19.1.96 Bribe receiving by a juror. 11 **Del.C.** §1265
- 19.1.97 Tampering with physical evidence. 11 **Del.C.** §1269
- 19.1.98 Disorderly conduct. 11 **Del.C.** §1301
- 19.1.99 Felony hate crimes. 11 **Del.C.** §1304
- 19.1.100 Harassment. 11 **Del.C.** §1311
- 19.1.101 Aggravated harassment. 11 **Del.C.** §1312
- 19.1.102 Felony stalking. 11 **Del.C.** §1312A
- 19.1.103 Trading in human remains and associated funerary objects. 11 **Del.C.** §1333
- 19.1.104 Adulteration. 11 **Del.C.** §1339
- 19.1.105 Carrying a concealed deadly weapon. 11 **Del.C.** §1442
- 19.1.106 Possessing a destructive weapon. 11 **Del.C.** §1444
- 19.1.107 Felony possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447
- 19.1.108 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A
- 19.1.109 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448
- 19.1.110 Theft of a firearm. 11 **Del.C.** §1451
- 19.1.111 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455
- 19.1.112 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458
- 19.1.113 Act of intimidation. 11 **Del.C.** §3532
- 19.1.114 Aggravated act of intimidation. 11 **Del.C.** §3533
- 19.1.115 Prohibited drug offenses A. 16 **Del.C.** §4751
- 19.1.116 Prohibited drug offenses B. 16 **Del.C.** §4752
- 19.1.117 Unlawful delivery of noncontrolled substances. 16 **Del.C.** §4752A
- 19.1.118 Prohibition against transfer, sale and purchase. 7 **Del.C.** §5306
- 19.1.119 Alteration, theft or destruction of will. 12 **Del.C.** §210
- 19.1.120 Receiving or transferring stolen vehicle. 21 **Del.C.** §6704

19.2 Crimes substantially related to the practice of professional land surveyors shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

ATTACHMENT A

CONDITION	MARSH	RURAL	SUBURBAN	URBAN	REMARKS AND FORMULA
Unadjusted closure (minimum)	1: 5,000	1:7,500	1:10,000	1:15,000	Loop or between monuments
Angular closure (minimum)	30" N	20" N	15" N	10" N	N = number of angles in traverse
Accuracy of distances	0.10 ft + 200 ppm	0.07 ft + 150 ppm	0.05 ft + 100 ppm	0.03 ft + 50 ppm	100 ppm = 1:10,000
Elevations for boundaries controlled by tides, contours, etc. accurate to:	+ or -.50 ft	+ or -.50 ft	+ or -.50 ft	+ or -.50 ft	Based on NGVD (1929) or NAVD 88
Location on subject property or pertinent improvements, structures, paving, etc.	+ or - 2 ft	+ or - 1 ft	+ or - 0.1 ft	+ or - .10 ft	Any shown improvement within 75" of property must use these tolerances
Positional error in map plotting not to exceed: (applies to original map only)	1/10	1/20	1/20	1/40	National Map accuracy calls for 1/.50th inch
Area	0.1 acre	0.1 acre	0.001 acre	+ or - nearest square foot = less than 1 acre; 0.0001 = greater than 1 acre	Areas involving water boundary, Left to discretion of practitioner

**EVALUATION OF APPLICANTS CREDENTIALS FOR LICENSURE
ATTACHMENT B**

- ~~NO~~ License is denied
- ~~YES~~ Due process. State Ref: Administrative Procedures Act
- ~~Candidate is applying for initial license. Statute 2708~~
- ~~YES~~ Other jurisdiction is substantially similar. Statute 2709(a)
- ~~NO~~ Re-test
- ~~YES~~ Candidate sits for test
- ~~NO~~ propose to deny
- ~~YES~~ Candidate requests hearing
- ~~YES~~ Candidate passes test. Statute 2708(a)(2)
- ~~YES~~ Licensure. Statute 2706(a)(7)
- ~~Propose to deny~~
- ~~YES~~ Candidate has completed paperwork properly. Statute 2708(a)
- ~~YES~~ Candidate has 6 years combined office, field and boundary survey experience in responsible charge under licensed land surveyor. Statute 2708(a)
- ~~YES~~ Candidate has 5 years combined office, field and boundary survey experience in responsible charge under licensed land surveyor. Statute 2708(a)
- ~~YES~~ Candidate has 3 years combined office, field and boundary survey experience in responsible charge under licensed land surveyor. Statute 2708(a)

PROPOSED REGULATIONS

~~NO—Candidate has 10 years combined office, field & boundary survey experience in responsible charge under professional land surveyor. Statute 2708 (a)(1)(d)~~

~~NO—Candidate has successfully completed 32 semester hours or equivalent in land surveying or related subjects. Statute 2708(a)(1)(e)~~

~~NO—Candidate is graduate of 4 year Related science curriculum. Statute 2708(a)(1)(b)~~

~~YES—Candidate is graduate of 4 year Surveying curriculum. Statute 2708(a)(1)(a)~~

~~Candidate is licensed in another jurisdiction. Statute 2709(a)~~

8 DE Reg. 1280 (03/01/05)

6 DE Reg. 271 (09/01/02)

10 DE Reg. 1630 (04/01/07)

DIVISION OF PROFESSIONAL REGULATION

3500 Board of Examiners of Psychologists

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 Del.C. §3506(a)(1))

24 DE Admin. Code 3500

PUBLIC NOTICE

3500 Board of Examiners of Psychologists

The Delaware Board of Examiners of Psychologists, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §3506(a)(1), proposes amendments to its regulation 11.0. Specifically, the proposed modification of regulation **11.0 Professional Conduct** would require licensees to adhere to the American Psychological Association's current Record Keeping Guidelines.

A public hearing is scheduled for Thursday, April 7, 2008 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Nancy Fields at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Nancy Fields at the above address or by calling (302) 744-4500.

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

3500 Board of Examiners of Psychologists

(Break in Continuity of Sections)

11.0 ~~Professional Conduct~~ **Record Retention**

~~Psychologists and psychological assistants may be disciplined for violations of provisions of 24 Del.C. §3514. Licensees must to adhere to the most recent version of the American Psychological Association's Record Keeping Guidelines. The most recent version can usually be found in the APA's website www.apa.org. The record retention schedules in the Record Keeping Guidelines may be superseded by the requirements under state law or of other authorities or entities, such as the licensee's insurance carrier. The longest required retention period for any class of records should be followed. It is the licensee's responsibility to determine the proper schedule to follow.~~

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

3500 Board of Examiners of Psychologists

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 2901 (14 **Del.C.** §2901)
14 **DE Admin. Code** 1101

REGULATORY IMPLEMENTING ORDER

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

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin.** 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 amendment allows for the placement of a U.S. Flag decal or plate on a school bus.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Monday, January 7, 2007, in the form hereto attached as *Exhibit "A"*. The Department received four written comments from three persons (two written comments from the same person); and three comments by telephone. There was one person that specifically supported the U.S. flag decal; another person wanted to know how to get an "awareness" decal added to the regulation; and another person that disagrees with any prohibition of any type of decal. Those voicing disagreement to the amended regulation included one person that specifically mentioned the U.S. flag not be allowed on the exterior of school buses; one person that was concerned with any type of decal because of a potential distraction for drivers; and one person that did not agree that school buses should be "public billboards for any reason."

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 allow for the placement of the U.S. Flag decal or plate on a school bus.

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 February 21, 2008. 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 21st day of February 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 21st day of February 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

*Please note that no changes were made to the regulation as originally proposed and published in the January 2008 issue of the *Register* at page 853 (11 DE Reg. 853). 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](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 2901 (14 **Del.C.** §2901)
14 **DE Admin. Code** 1102

REGULATORY IMPLEMENTING ORDER

1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000). The amendment allows for the placement of a U.S. Flag decal or plate on a school bus.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Monday, January 7, 2007, in the form hereto attached as *Exhibit "A"*. The Department received four written comments from three persons (two written comments from the same person); and three comments by telephone. There was one person that specifically supported the U.S. flag decal; another person wanted to know how to get an "awareness" decal added to the regulation; and another person that disagrees with any prohibition of any type of decal. Those voicing disagreement to the amended regulation included one person that specifically mentioned the U.S. flag not be allowed on the exterior of school buses; one person that was concerned with any type of decal because of a potential distraction for drivers; and one person that did not agree that school buses should be "public billboards for any reason."

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000) in order to allow for the placement of the U.S. Flag plate or decal on school buses.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000) 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** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000) 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 February 21, 2008. 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 21st day of February 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 21st day of February 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

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Dr. Terry M. Whittaker

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Jorge L. Melendez

Dennis J. Savage

***Please note that no changes were made to the regulation as originally proposed and published in the January 2008 issue of the *Register* at page 856 (11 DE Reg. 856). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 2901 (14 **Del.C.** §2901)
14 **DE Admin. Code** 1103

REGULATORY IMPLEMENTING ORDER

[1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007](#)

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005). The amendment allows for the placement of a U.S. Flag decal or plate on a school bus.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Monday, January 7, 2007, in the form hereto attached as *Exhibit "A"*. The Department received four written comments from three persons (two written comments from the same person); and three comments by telephone. There was one person that specifically supported the U.S. flag decal; another person wanted to know how to get an "awareness" decal added to the regulation; and another person that disagrees with any prohibition of any type of decal. Those voicing disagreement to the amended regulation included one person that specifically mentioned the U.S. flag not be allowed on the exterior of school buses; one person that was concerned with any type of decal because of a potential distraction for drivers; and one person that did not agree that school buses should be "public billboards for any reason."

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005) in order to allow for the placement of a U.S. Flag decal or plate on a school bus.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005). attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005) 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** 1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005). amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005) in the *Administrative Code of Regulations* for the Department of Education.

VV. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on February 21, 2008. 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 21st day of February 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 21st day of February 2008

FINAL REGULATIONS

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

*Please note that no changes were made to the regulation as originally proposed and published in the January 2008 issue of the *Register* at page 860 (11 DE Reg. 860). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

[1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007](#)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1549

Regulatory Implementing Order**1549 Dance Teacher****I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to adopt regulation **DE Admin. Code** 1549 Dance Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to adopt this regulation in order to broaden certification opportunities for educators in the areas of Visual and Performing Arts. This adopted regulation sets forth the requirements for a Dance Teacher.

Notice of the proposed adoption of the regulation was published in the *News Journal* and the *Delaware State News* on Friday November 30, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby adopted 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 the regulation adopted shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1549 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 7TH DAY OF FEBRUARY, 2008

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF FEBRUARY, 2008.

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham
Barbara Rutt
Terry Whittaker

Richard M. Farmer, Jr., Vice President
Jorge Melendez
Dennis J. Savage

***Please note that no changes were made to the regulation as originally proposed and published in the December 2007 issue of the *Register* at page 718 (11 DE Reg. 718). 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, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1558

Regulatory Implementing Order

340 Certification Theater Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 340 Certification Theater Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to update the certification area, and to bring it under the auspices of the Professional Standards Board as required in 14 **Del.C.** The amended regulation title will read 1558 Theater Teacher. This amended regulation sets forth the requirements for a Theater Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware*

FINAL REGULATIONS

State News on Friday, November 30, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1558 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 7TH DAY OF FEBRUARY, 2008

Kathleen Thomas, Chair

Cathy Cathcart

Joanne Christian

Marilyn Dollard

Sandra Falatek

Karen Gordon

Barbara Grogg

Leslie Holden

Lori Hudson

Dorothy McQuaid

Mary Mirabeau

Wendy Murray

Gretchen Pikus

Karen Schilling-Ross

Michael Thomas

Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF FEBRUARY, 2008.

STATE BOARD OF EDUCATION

Jean W. Allen, President

Richard M. Farmer, Jr., Vice President

Mary B. Graham

Jorge Melendez

Barbara Rutt

Dennis J. Savage

Terry Whittaker

*Please note that no changes were made to the regulation as originally proposed and published in the December 2007 issue of the *Register* at page 716 (11 DE Reg. 716). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

[340 Certification Theater Teacher](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES

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

ORDER

Disabilities Services Eligibility Criteria

2100 Eligibility Criteria

Nature of the Proceedings:

Delaware Health and Social Services ("Department")/ Division of Developmental Disabilities Services (DDDS) initiated proceedings to adopt the State of Delaware Regulations Governing the Division of Developmental Disabilities Services Eligibility Criteria. The Department's proceedings to adopt the regulations were initiated pursuant to 29 **Delaware Code** Sections 7903(10) and 7909A(e).

The Department published its notice of the proposed regulatory change pursuant to 29 **Delaware Code** Sections 7903(10) and 7909A(e) in the October 1, 2007, *Delaware Register of Regulations* (Volume 11, Issue 4), requiring written materials and suggestions from the public concerning the proposed regulations be produced by November 2, 2007, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulation.

Summary of Proposed Changes

Statutory Authority

- 29 **Del.C.**, §7903(10)
- 29 **Del.C.**, §7909A(e)

Summary of Proposed Changes

1) The definition/diagnosis of mental retardation has been modified to correspond with the American Association on Intellectual and Developmental Disabilities Classification Manual definition of 2002. The proposed criteria, therefore, is consistent with the most current diagnostic nomenclature in the field of developmental disabilities.

2) Asperger's Disorder has been added to the eligibility criteria. Currently, DDDS includes Autism in the eligibility criteria. Recently, there has been a national effort at viewing autism as a spectrum of disorders of which both Autism and Asperger's are considered core disorders. From a programmatic and service delivery standpoint, Asperger's fits in the DDDS service system model. The addition of Asperger's Disorder to the Division's eligibility criteria is also consistent with what some other states are doing and with what the Department of Education did in adding Asperger's Disorder to its Autism special education classification.

3) Addition of two legal requirement statements: a) "citizen or a lawful alien of the United States"; b) "resident of the State of Delaware". This is consistent with **Delaware Code** regarding eligibility for state services and consistent with Department policy.

Summary of Comments Received with Agency Response and Explanation of Changes

The **State Council for Persons with Disabilities**; the **Delaware Developmental Disabilities Council**; and the **Governor's Advisory Council For Exceptional Citizens** presented identical comments on the proposed regulation. DDDS has considered those comments together and responds as follows:

Comment: The preface to the regulation and public notice recites that the Division will convene a public hearing to receive comments. However, no time or date of a public hearing are provided. This violates the APA.

Agency Response: The two newspaper public notices regarding the publishing of the proposed regulation clearly specify a comments period of 30 days and the manner of submitting comments in writing to the Division. The preface of the publication in the Register (paragraph 2) clearly specifies the manner in which comments are to

be submitted to the Division. No public hearing was scheduled. Our review of the matter found that no persons contacted the Division offices or the Register of Regulation offices regarding an intent to comment at a Public Hearing regarding the proposed regulation and, therefore, we do not believe anyone withheld submitting comments on the proposed regulation. A previous public hearing was held on an earlier version of the regulation and testimony at that public hearing was considered as part of the overall analysis of the determination to adopt the regulation. No violation of APA process or procedures occurred.

Comment: Section 1.0 should substitute "meet" for "meets" for proper grammar.

Agency Response: Agree with comment.

Comment: The regulation is inconsistent in its use of the terms "disability" and "disorder". For consistency the Division should consider amending Section 1.0 to refer to "disability/disorder", i.e., the same language used in 1.3.

Agency Response: In 1.0 "developmental disability" is a specific term used to include a variety of disorders. Public Law 106-402 provides a federal definition of the term developmental disabilities. Disability is defined as "the expression of limitations in individual functioning within a social context and represents a substantial disadvantage to the individual" (AAIDD, *Mental Retardation*, 2002; pp. 15). Disorder, on the other hand, is defined as being "conceptualized as a clinically significant syndrome or pattern that occurs in an individual" (Diagnostic & Statistical Manual - IV, 1994, pp. xxi). Some of the conditions specified in 1.3 represent disorders (Mental Retardation, Autistic Disorder, Asperger's Disorder and Prader-Willi Syndrome per DSM - IV; AAIDD). While brain injury and neurological conditions are more general terms and are defined for the purposes of service eligibility in terms of the disabilities presented. Therefore, the use of the terms disability and disorder as used in 1.3 are being applied to appropriately reflect these differences.

Comment: There is some tension between 1.1 and the recent Duffy v. Meconi, No. 05-127 (September 11, 2007). The commentator recommended that there be the following amendment: "a resident of the State of Delaware; provided, however, that the division may entertain, assess, and process an application from a non-resident who confirms the intent to establish Delaware residency".

Agency Response: The Duffy case decision states that "states may impose bona fide residency requirements to ensure that services and benefits go to actual residents of the state" (pp. 6). Therefore, 1.2 does not conflict with Duffy. Further, Duffy notes "it is not the residency regulations themselves that frame the legal issue; rather it is how the State applies and puts regulation in practice" (pp. 8). Therefore, implementation of residence vis a vi determining eligibility per this regulation is a policy matter not regulatory and should be dealt with at the policy and procedure level.

Comment: The word "generalized" should be deleted from 1.3.1 and 1.3.5. References to "generalized limitations in intellectual functioning" are anachronisms. The 2002 AAMR criteria clearly reject the notion that limitations must be "generalized". Rather, they recite that "within and individual, limitations often coexist with strengths" (pp. 8 and 23).

Agency Response: The term "generalized" is important in clarifying that mental retardation is a disability characterized by a generalized impairment in cognitive functioning. This differentiates mental retardation from other cognitive based disabilities such as language based learning disabilities, non-verbal based learning disabilities, etc. The AAIDD (2002) Classification Manual notes that "intelligence is best conceptualized and captured by a general factor of intelligence" (pp. 55). The reference to limitations co-existing with strengths is further explained on page 8. Assumption 3 underlying the definition notes that "Individuals with mental retardation may have capabilities and strengths that are independent of their mental retardation. These may include strengths in social or physical capabilities, strengths in some adaptive skill areas, or strengths in one aspect of an adaptive skill in which they otherwise show an overall limitation." Clearly, the strengths co-existing point relates to adaptive, social, physical capabilities and not intellectual or cognitive functioning. Therefore, "generalized" serves a clarifying purpose in the eligibility regulation.

Comment: The format of the regulation is awkward. There is no punctuation at the end of 1.1, 1.2, 1.3.4, 1.3.5, 1.4, and 1.5.

Agency Response: Agree. Punctuation should be added.

Comment: The new "grandfather" provision is problematic. The commentator interpreted 1.6 as subjecting all current clients to maintaining eligibility under standards which applied when initially determined eligible.

Agency Response: The intent of 1.6 is to not require that all currently enrolled individuals meet the new eligibility criteria requirements as long as they meet 1.1 (citizen or a lawful alien of the United States) and 1.2 (resident of the State of Delaware). This can be clarified by replacing 1.6 as follows: "Any individual who is receiving services on the effective date of these regulations who meets the requirements of 1.1 and 1.2 of this section and meets either the requirements of the regulations under which the individual initially established eligibility or the requirements of 1.3 through 1.5 shall be deemed eligible for services".

Comment: The Division has reinstated a limited authorization for persons with brain injury or neurological conditions related to mental retardation to qualify for Division services. Several comments were made related to this section:

A) The commentator stated that the structure of this standard should be reassessed. Paragraphs b and c are redundant. Everyone must meet 1.4 and 1.5 and there is no reason to repeat the adaptive behavior functioning and age 22 onset requirements.

Agency Response: The experience of the Division with individual interpretations of similar type standards in the current eligibility regulation suggests that some confusion has existed without the clear restatement of the adaptive behavior and age of onset requirements. It may be somewhat redundant but provides better clarity as to the specific requirements in these two areas.

B) The commentator stated that the eligibility criteria for brain injury remains narrowly defined to include only persons with both intellectual functioning in the mental retardation range and adaptive functioning limitations. Several substitutions were proposed: 1) Brain injury, including Dementia Due to Head Trauma (DSM-IV); and/or 2) Applicants with brain injury would still have to meet the same adaptive behavior limitations applied to other conditions through 1.4; or 3) brain injury characterized in intellectual functioning defined as IQ scores approximately one standard deviation below the mean (IQ of 85) or 1.5 deviations below the mean (IQ of 77.5).

Agency Response: Brain injury is a broad term that specifies the organ (i.e. brain) that is injured and damaged and not a specific diagnosis or disabilities manifested as the other eligibility disorders in the regulation (1.3.2; 1.3.3; 1.3.4). The characteristics of a brain injury may include impairments or changes in one or more of a wide variety of areas or domains of functioning: attentional processes; cognition; language; memory; behavior, emotional and personality; and/or motor and physical. Impairments may result in a variety of specific disorders: dementia; amnesic disorders; attention deficit disorders; personality change disorders; psychotic type disorders; mood disorders; anxiety disorders; sleep disorders; impulse control disorders, etc. The type of services, supports and treatments needed vary greatly depending on the specific impairments and disorders manifested by the injury. The Division's core focus of services, supports and treatments are with individuals with significant cognitive and adaptive behavior deficits. Individuals with brain injuries resulting in emotional/behavioral and/or physical impairments can best receive appropriate services in the mental and behavioral health and physical disabilities service systems. Therefore, it is appropriate for the Division to establish a level of cognitive and adaptive behavior impairments required for eligibility. The AAIDD Classification Manual (2002) defines intelligence as a "general mental ability. It includes reasoning, planning, solving problems, thinking abstractly, comprehending complex ideas, learning quickly, and learning from experience" (pp. 51). Based on this definition, AAIDD's expert consensus has determined that significant subaverage intellectual functioning is defined as two or more standard deviations below the mean. Therefore, the two standard deviations below the mean criteria for cognitive impairment seems a reasonable and appropriate approach to defining the level of impairment required for service eligibility.

Comment: The regulation is objectionable since it does not "capture" conditions similar to Autism, Asperger's Disorder, and Prader-Willi Syndrome. There are both rare and common conditions which may be categorically excluded from DDDS eligibility barring eligibility of persons with similarly impairing diagnoses. The commentator notes that individuals with hyperphagic short stature (HSS) have similar profiles to individuals with Prader-Willi Syndrome. Children with HSS have a mean IQ of 77 and would not be eligible while an individual with Prader-Willi and the same IQ would be eligible. The commentator proposes to substitute for 1.3.6 the following: "neurological disability/disorder related to those listed in 1.3.1 to 1.3.4 including Pervasive Developmental Disorder if such disorder results in an impairment of intellectual functioning and/or adaptive behavior functioning similar to such disorders".

Agency Response: The commentator's proposal overly broadens the scope and type of disorders

included in such a matter that it becomes impractical to determine what is included and what is not. Any disorder which has some neurological basis could arguably be included if there was some level of cognitive and/or adaptive behavior impairment. Theoretically, this proposal could be interpreted to include learning disabilities, eating disorders, any neurological disorder resulting in adaptive behavior impairment, language disorders, etc. The Division role and mission in the service system is not designed to serve such a diverse range of disorders and it focuses its services and resources on specific disorders that are closely related as outlined in the Division's proposed regulation.

The **Autism Society of Delaware** submitted the following comments. DDS has considered each comment and responds as follows:

Comment: Suggest that the term Autism Spectrum Disorder or criteria of "functional limitations" be used in order to include all those with the deficits in social and communication skills that the Division seeks to serve rather than using specific diagnoses.

Agency Response: The design of the Division's eligibility regulation is predicated on a diagnostic system of disorders with specific levels of impairments. Autism Spectrum Disorder is an umbrella term used in the DSM - IV but is not a diagnosis. Therefore, the specific diagnostic nomenclature used in the proposed regulation is consistent with the approach the Division has always taken regarding eligibility scheme and criteria. It also is clearer, consistent and more exact in specifying who is eligible for services.

Comment: There is no clarification as to who can make diagnosis accepted for eligibility and no discussion of continuity of services from the education system to the adult services system.

Agency Response: Section 2.0 of the proposed regulation specifies that the diagnosis of the eligible condition must be based on standardized assessment instruments accepted by the Division. This requirement assures that any diagnosis is based on current and appropriate diagnostic assessment procedures and protocols. Rather than try to list specific professions (ignoring the individual clinician's training and expertise in the specific eligibility disorder area) that may make diagnoses, the proposed regulation requirement assures that diagnoses will be made by clinicians that have the training and professional background to administer, score, and interpret these standardized assessment instruments assuring a higher degree of validity and reliability in the diagnostic process.

The Department of Education establishes its own special education classification scheme that is focused around their core services of education and learning. This scheme may or may not match in various parts with the Division's core service focus. The issue of continuity or transition from education to adult services crosses many different adult services agencies and providers. From a best practices policy standpoint the transition from education to adult services is expected to be initiated at around age 16 to allow appropriate services to be developed and put in place. This is a policy issue and not a regulatory matter.

Comment: The revised regulations do not specify what tools would be used to assess client's level of function and need; however, the ICAP is the tool currently in use. The commentator encourages the Division to work with the developer of the tool to adapt it to persons with Autism spectrum disorder, or to use an alternative form of assessment.

Agency Response: Section 2.0 of the proposed regulation specifies that adaptive behavior functioning shall be established and based on the use of standardized assessment instruments. There are a number of valid and reliable instruments that are used to assess the adaptive behavior functioning of a person with a developmental disability including an Autistic Disorder and Asperger's Disorder. The Division does not specify which particular instrument should be used. The particular instrument used may vary according to the variables factors associated with the individual be assessed and the clinical judgment of the examiner. The ICAP is used as part of the Division's rate setting process, not its eligibility determination process. Therefore, it is not appropriate to address the issue of the ICAP in the Division's eligibility regulation.

Comment: The requirement that the disability originate before age 22 may pose a problem for many people with Asperger's Disorder since Asperger's has only recently been identified as a distinct disorder. The final regulation should permit an exemption for those who are not diagnosed before age 22 if the diagnosing physician indicates that the patient or their family reported symptoms or behaviors which appeared before that age.

Agency Response: The diagnosis of Asperger's Disorder is made on the basis of specific behaviors and

symptoms having been manifested at fairly specific age ranges within the developmental period (prior to age 22). There is no requirement in making the diagnosis of Asperger's Disorder or in the regulation that indicates that the diagnosis be made prior to age 22. Rather, the behaviors and symptoms must have developed and have manifested at specific times during the developmental period. The diagnosis, itself, can be made at any age. The regulation speaks to the clinical diagnosis (regardless of the age the diagnosis was made) and the required adaptive behavior impairments.

Comment: While the regulations do not explicitly exclude those individuals whose intelligence is average or even high, ASD remains concerned that ability to succeed in academics or intellectual arenas may count against an individual in need of services for social deficits.

Agency Response: The regulation clearly does not require an impairment in cognitive functioning in individuals appropriately diagnosed with Autistic Disorder or Asperger's Disorder. In addition to the diagnosis, the regulation requires significant limitations in adaptive behavior as outlined in 1.4.1, 1.4.1.1, and 1.4.1.2 of the regulation. Deficits in social skills are specifically addressed in this section of the regulation.

Findings of Fact:

The Department finds that the proposed changes as set forth in the October 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation related to the Division of Developmental Disabilities Services Eligibility Criteria is adopted and shall be final effective March 10, 2008.

Vincent P. Meconi, Secretary, DHSS, February 13, 2008

***Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 423 (11 DE Reg. 423). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

2100 Eligibility Criteria

DIVISION OF SOCIAL SERVICES

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

ORDER

Temporary Assistance for Needy Families Employment and Training Program

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Temporary Assistance for Needy Families (TANF) Employment and Training Program regarding participation and participation rates. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the January 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding

participation and participation rates provisions for the TANF Employment and Training Program.

Statutory Authority

- Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)
- 45 CFR §261.22, *How will we determine a State's overall work rate?*
- 45 CFR §261.31, *How many hours must an individual participate to count in the numerator of the overall rate?*
- 45 CFR §261.32, *How many hours must an individual participate to count in the numerator of the two-parent rate?*
- 45 CFR §261.35, *Are there any special work provisions for single custodial parents?*

Summary of Proposed Change

DSSM 3006.2, *TANF Employment and Training Participation and Participation Rates*: These rule modifications clarify the calculation of the work participation rate and the required participation of TANF recipients in employment and training activities. Previously implemented in January 2007, this policy was already a federal exemption option but DSS was more restrictive with the thirteen (13) weeks option.

Summary of Comments Received with Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

First, Council suggests DSS consider substituting "Two Employable Parent Families" for "Two Parent Families" in the heading of the second table on p. 870. This would conform to 45 C.F.R. 261.24(a)(2) which recites as follows:

The rate applies to the two-parent families with two work-eligible individuals. However, if one of the parents is a disabled work-eligible, we will not consider the family to be a two-parent family, i.e., we will not include such a family in either the numerator or denominator of the two-parent rate.

Agency Response: Federal and State regulations consistently reference "Two Parent Families"; while your suggestion does offer clarification to parts of the definition of a two parent family it could also result in increased confusion as to what is meant by "employable". DSS has decided to leave the header unchanged.

Second, since the current federal regulatory changes took effect in 2006, DSS could consider substituting "2006 and after" for "2002 and after" and "1999 and after" in the tables on p. 870.

Agency Response: The chart referenced accurately reflects the federally required state participation rates for the years 1999 and 2002. The federal policy reflected in the chart predates rule changes that resulted from the passage of Deficit Reduction Act of 2005.

Findings of Fact:

The Department finds that the proposed changes as set forth in the January 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Temporary Assistance for Needy Families (TANF) Employment and Training Program regarding participation and participation rates is adopted and shall be final effective March 10, 2008.

Vincent P. Meconi, Secretary, DHSS, February 13, 2008

***Please note that no changes were made to the regulation as originally proposed and published in the January 2008 issue of the *Register* at page 869 (11 DE Reg. 869). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[Temporary Assistance for Needy Families Employment and Training Program](#)

DIVISION OF SOCIAL SERVICES

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

ORDER

Food Stamp Program Child Support Cooperation and Sanctions

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding child support provisions. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the January 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

Statutory Authority

- 7 CFR 273.11(o), *Custodial Parent's Cooperation with the State Child Support Agency*
- 7 CFR 273.11(c), *Treatment of Income and Resources of Certain Non-Household Members*

Summary of Proposed Changes

DSSM 9076.1 (Revision), *SSN Disqualification, Child Support Sanctions and Ineligible ABAWDs*: Currently TANF and Child Care require DSS applicants and recipients to cooperate with DCSE to get benefits. DSS is proposing to require the same cooperation for food stamp clients. The only difference is that only the custodial parent or responsible individual will be sanctioned for non-compliance, not the other household members. The sanctioned individual will have his/her income and deductions prorated like other prorated, sanctioned deemers.

DSSM 9094 (New), *Cooperation with the Division of Child Support Enforcement (DCSE)*: DSS is proposing to take the option to require custodial parents and other individuals responsible for the care of minor dependents to cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility for the Food Stamp Program.

Requiring the cooperation with child support will help facilitate the client towards self-sufficiency by identifying and locating absent parents, establishing paternity, and establishing support payments for the dependent children. Also, requiring cooperation may uncover unreported income. Child support payments may reduce the household's benefit; however, the household will have more money to spend on household expenses and food.

Summary of Comments Received with Agency Response and Explanation of Changes

The following organizations offered public comments summarized below: Delaware Community Legal Aid Society (DECLASI); the Delaware's Victims' Rights Task Force (DVRTF); the Governor's Advisory Council for Exceptional Citizens (GACEC); the State Council for Persons with Disabilities (SCPD); and, the Delaware Coalition Against Domestic Violence (DCADV). The Division of Social Services (DSS) has carefully considered all comments and responds as follows.

DECLASI

I reject this proposal to link the FS benefits eligibility to DCSE cooperation. This rule will eliminate a lot of needy individuals from this program and create unnecessary barriers in addressing Hunger in America. What happens when the custodial parent cannot identify who is the father of her children even after all the required test

to identify a father has been done. Presently, I am familiar with a case of a grandmother who has legal custody of 3 grandchildren and has been denied TANF because her daughter cannot identify who is the father of her children. Because the daughter cannot tell her who is the father of these children, the grandmother cannot tell DCSE who is the father of these children either. Yet, she has been denied TANF because according to DCSE the grandmother has failed to cooperate. The grandmother has been put in a position to support these children with her meager salary. Her only salvation, if you can call it that, is that she is getting FS. However, if the law changes you can imagine the predicament the custodial parent would face when having difficulties in identifying the absent parent. This is just an example of how unjust is to make this program so strict that needy children and families may go hungry when in fact this program was created to alleviate hunger in this country. Even with the Good Cause clause and the right of client to grieve this issue, the sad situations will be to see families and needy children denied FS until the issue is clarified.

In an effort to tightened these regulations to avoid non citizens from getting government benefits, as it was done under the Welfare Reform and subsequent regulations. Now, the Food Stamp Program has been targeted and more and more barriers to this program are put into place, the negative results would be in depriving our own needy US citizens' population from accessing the Food Stamp program with so many obstacles that basically prevents them from putting food on their tables.

CLASI Comment: I reject this proposal to link the FS benefits eligibility to DCSE cooperation. This rule will eliminate a lot of needy individuals from this program and create unnecessary barriers in addressing Hunger in America.

Agency Response: The proposed Food Stamp (FS) rule would only remove the caretaker who chooses not to cooperate with the Division of Child Support Enforcement (DCSE) from the FS allotment. Children are never removed from the allotment for reasons of non-cooperation with DCSE. The intent of the rule is to help caretakers of children with absent parents to obtain more income for the support of the children in their care and to establish the paternity of children that will benefit the children for the rest of their lives. (For example, if a child's paternity was never established and that absent parent dies, that child may not be able to get survivor benefits.)

CLASI Comment: What happens when the custodial parent cannot identify who is the father of her children even after all the required test to identify a father has been done?

Agency Response: The proposed policy has the following good faith effort provision that will cover those situations where the custodial parent or caretaker does not know who the father is.

Good Faith Effort

If the applicant or recipient cannot provide the minimum information required about the absent parent, DCSE may still determine the person as cooperating if the person completes a Good Faith Affidavit. The Affidavit lists the steps the caretaker took to get the information and what barriers the person faced.

CLASI Comment: Presently, I am familiar with a case of a grandmother who have legal custody of 3 grandchildren and has been denied TANF because her daughter cannot identify who is the father of her children. Because the daughter cannot tell her who is the father of these children, the grandmother cannot tell DCSE who is the father of these children either. Yet, she has been denied TANF because according to DCSE the grandmother has failed to cooperate. The grandmother have been put in a position to support these children with her meager salary. Her only salvation, if you can call it that, is that she is getting FS. However, if the law changes you can imagine the predicament the custodial parent would face when having difficulties in identifying the absent parent. This is just an example of how unjust is to make this program so strict that needy children and families may go hungry when in fact this program was created to alleviate hunger in this country.

Agency Response: Scenarios such as this one are the types that the good faith effort policy will cover. As stated above, the needy children will not go hungry because DSS will only deem the caretaker uncooperative with DCSE. DSS will only remove the adult from the FS case; the children will continue to get food stamps.

CLASI Comment: Even with the Good Cause clause and the right of client to grieve this issue, the sad situations will be to see families and needy children denied FS until the issue is clarified.

Agency Response: As stated above, DSS will not deny Food Stamp benefits to any child due to non-cooperation with DCSE.

CLASI Comment: In an effort to tightened these regulations to avoid non-citizens from getting government

benefits, as it was done under the Welfare Reform and subsequent regulations. Now, the Food Stamp Program has been targeted and more and more barriers to this program are put into place, the negative results would be in depriving our own needy US citizens' population from accessing the Food Stamp program with so many obstacles that basically prevents them from putting food on their tables.

Agency Response: Requiring clients to cooperate with DCSE is not a barrier to the Food Stamp Program. DSS will process Food Stamps the same way we currently process benefits with an assumption that the caretaker will cooperate with DCSE. There is no loss of benefit to the children and no loss of benefit to the caretaker until DCSE determines the caretaker is non-cooperative. An individual's refusal to cooperate without good cause is the real barrier. Mandating cooperation with DCSE is a vehicle used to help the children get the support from their absent parent(s) that they are entitled to and to help families become more self-sufficient. It also helps to ensure that households received the correct amount of Food Stamp benefits.

DVRTF

Consistent with federal regulations, DSS authorizes exceptions to cooperation based on good cause. However, the DSS standards are sometimes narrower than the corresponding federal regulations. The DSS definition of "domestic violence" at the bottom of p. 875 is as follows:

Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.

Consistent with the attached 7 C.F.R. 273.11(o)(2)(i)(B), the federal definition of "domestic violence" is broader:

For purposes of this provision, the term "domestic violence" means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual, sexual abuse, sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempt at physical or sexual abuse; mental abuse; neglect or deprivation of medical care.

Contrary to the federal regulation, the DSS standard would disallow consideration of the following forms of domestic violence: 1) mental abuse; 2) neglect; and 3) deprivation of medical care. The DSS standard solely focuses on physical injury and sexual abuse and merits amendment.

The DVRTF would appreciate the Division's consideration of expansion of the DSS definition of domestic violence to comply with the broader federal standards.

Agency Response: DSS will expand the definition of domestic violence to include the language cited under 7 CFR 273.11(o)(2)(i)(B) and the domestic violence policy for the TANF program outlined in 3010.2.2 through 3010.2.4, as indicated by [Bracketed Bold Language] in the final order regulation.

GACEC and SCPD

As background, the U.S. Department of Agriculture (USDA) offers states the option of requiring parents/caretakers to cooperate with the state's child support agency as a condition of receiving Food Stamps. The Division of Social Services (DSS) already requires such cooperation as a condition of participation in the TANF and child care programs. It now proposes to adopt the USDA option of requiring such cooperation as a condition of participation in the Food Stamp program. We have the following observations.

First, there are pros and cons to requiring parents to cooperate with the Division of Child Support Enforcement (DCSE) to pursue child support. The attached article describes some negative concerns linked to New York City's requirement of child support cooperation as a prerequisite to participation in its child care subsidy program. The article notes that low income beneficiaries risk losing their jobs if they must take time off to participate in court proceedings. Moreover, immigrants often fear any involvement in the court system and that anxiety may prompt them to forego Food Stamps. On the positive side, DSS posits that the requirement "will help facilitate the client towards self-sufficiency" and "may uncover unreported income". At p. 873. Reasonable persons may differ on whether the pros outweigh the cons of this initiative. We anticipate there could be some financial impact and assume a fiscal analysis has been done. In addition, we expect this to impact the workload of the employees that will implement this process.

Agency Response: DSS agrees there are pros and cons to requiring the cooperation of child support for

any program. Caretakers already must cooperate with Child Support in order to participate in the TANF and child care subsidy program. Medicaid requires the cooperation with Child Support to get medical support. The Division of Child Support Enforcement (DCSE) reports that caretakers are cooperating with DCSE so they can receive child care subsidies. DCSE reports they have received court orders varying from the minimum of \$86 a month to \$400 a month.

Second, consistent with federal regulations, DSS authorizes exceptions to cooperation based on good cause. However, the DSS standards are sometimes narrower than the corresponding federal regulations. The DSS definition of "domestic violence" at the bottom of p. 875 is as follows:

Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.

Consistent with the attached 7 C.F.R. 273.11(o)(2)(i)(B), the federal definition of "domestic violence" is broader:

For purposes of this provision, the term "domestic violence" means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual, sexual abuse, sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempt at physical or sexual abuse; *mental abuse*; or *neglect or deprivation of medical care*.

[emphasis supplied]

Contrary to the federal regulation, the DSS standard would disallow consideration of the following forms of domestic violence: 1) mental abuse; 2) neglect; and 3) deprivation of medical care. The DSS standard solely focuses on physical injury and sexual abuse. This could benefit from amendment.

Agency Response: As previously noted, DSS will expand the definition of domestic violence to include the language cited under 7 CFR 273.11(o)(2)(i)(B) and the domestic violence policy for the TANF program outlined in 3010.2.2 through 3010.2.4, as indicated by [Bracketed Bold Language] in the final order regulation.

Third, the federal regulation requires Delaware to waive the normal DCSE fees and costs of services if DSS implements this option. See attached 7 C.F.R. 273.11(o)(4). Consistent with the attached excerpt from the DCSE application, there is a \$25 annual processing fee which would apparently be precluded by the federal regulation. The DSS regulation should ensure conformity with 7 C.F.R. 273.11(o)(4) by including a recital that the DCSE shall not require payment of a fee or other cost for services from Food Stamp beneficiaries.

Agency Response: DSS and DCSE have agreed that DCSE will waive both the \$25 application fee and the \$25 collection fee when collections reach \$500 for all food stamp clients.

Fourth, the DSS regulation makes DCSE the final decision-maker of "good cause for refusing to cooperate" [§9094, Good Cause Determination]. In contrast, the federal regulations envision DSS as the final decision-maker with DCSE merely providing input:

(iii) Review by the State Child Support or TANF Agency. Prior to making a final determination of good cause for refusing to cooperate, the State agency will afford the State Child Support Agency or the agency which administers the program funded under Part A of the Social Security Act the opportunity to review and comment on the findings and the basis for the proposed determination and consider any recommendations from the State Child Support or TANF agency.

7 C.F.R. 273.11(o)(2)(iii). See also 7 C.F.R. 273.11(o)(2) ["Paragraph (o)(1) of this section shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency..."]

Agency Response: DSS and DCSE staff always work together to make sure a sanction is appropriate before removing an individual. DSS is adding language regarding this effort as indicated by [Bracketed Bold Language] in the final order regulation.

Fifth, the DSS regulation ostensibly limits aggrieved Food Stamp beneficiaries to a DCSE hearing. See

§9094, Administrative Hearing. Since DSS is the final decision-maker, the aggrieved Food Stamp beneficiary should be entitled to a DSS fair hearing authorized by 16 DE Admin Code 5000 and 9090.5.

Agency Response: DSS automatically sends the regular DSS Fair Hearing request form with each notice when DSS takes action to sanction individuals for non-cooperation. DCSE offers individuals an opportunity to have an administrative hearing to dispute the findings made by the DCSE and will attempt resolve the dispute before the hearing. Clients can still request a fair hearing with DSS.

DCADV

This writing constitutes the Delaware Coalition Against Domestic Violence's (DCADV) comments regarding the Division of Social Services' (DSS) proposed DSSM 9076.2 and DSSM 9094. DCADV is a non-profit agency with a primary purpose to conduct systemic advocacy on behalf of domestic violence victims/survivors and their children. DCADV has, in this capacity, enjoyed a fruitful working relationship with DSS regarding TANF, economic justice and empowerment for victims and survivors of domestic violence. The results of our collaborative work have included successful training and policy initiatives. Unfortunately, neither DCADV nor the DSS TANF staff with whom DCADV has worked extensively, has been involved in the crafting of proposed DSSM 9076.2 or 9094. Accordingly, DCADV submits these comments in response to the Department of Health and Social Services' general solicitation.

DCADV has two major concerns regarding the proposed DSSM 9076.2 and DSSM 9094. DCADV's initial concern is that enactment of the proposed policies will substantially narrow the definition of "domestic violence" as that term is authorized by the Code of Federal Regulations and captured in current DSS policy. DCADV's second concern is that the process outlined in proposed DSSM 9094 allows DCSE to unwittingly place a recipient in harm's way. These two concerns are discussed in more detail, below.

Proposed DSSM 9076.2 and 9094 Provide a Substantially Narrowed Definition of Domestic Violence

Proposed DSSM 9094 would require that natural, adoptive and other custodial parents "cooperate" with the Division of Child Support Enforcement (DCSE) by performing a number of acts in order to help DCSE obtain sources of family income. Those acts include: (1) supplying sufficient information to identify and locate children's putative parents; (2) prove paternity of putative parents; (3) assist in obtaining payments or property from putative parents; (4) appear at an office of DSS or DCSE to give verbal or written information or written documents; (5) appear as a witness in court or other hearings or proceedings; and (6) provide information (or confirm the lack thereof) under penalty of perjury. It is believed that the Department of Health and Social Services, as evidenced by the good faith exception to the cooperation requirements included in proposed DSSM 9094, recognizes that engaging in those enumerated acts could be unsafe for domestic violence victims/survivors. Proposed DSSM 9094 in fact allows DCSE and DSS to waive the requirement for persons who are victims of domestic violence. The concern, however, is that proposed DSSM 9094's definition of "domestic violence" is too narrow.

- Proposed DSSM 9094 inappropriately limits domestic violence to physical injury and/or sexual assault. The proposed policy states that:
Domestic violence for purposes of this provision means that the person [e.g. the natural, adoptive or custodial parent] or child would be subject to **physical acts that result in, or are threatened to result in, physical injury or sexual abuse**. (Please refer to the "Good Cause Determination" provision of Proposed DSSM 9094. Please note that all bolded and italicized type reflects emphasis supplied by DCADV.)
- Proposed DSSM 9094's definition of domestic violence is narrower than the definition of domestic violence set forth in the Code of Federal Regulations. In its DSSM 9094 summary statement DSS cites 7 CFR 273.11 (o) as the federal statutory authority upon which proposed DSSM 9094 is based. 7 CFR 273.11 (o), in addition to physical or sexual abuse, specifically includes "**mental abuse; or neglect or deprivation of medical care**" in its definition of domestic abuse. (See specifically 7 CFR 273.11 (o) (B)).
- Proposed DSSM 9094's definition of domestic violence is narrower than DSS' current domestic violence policy. (Please see the attached DSS domestic violence policy at paragraphs 3010 through 3010.2.5).
- DSS policy at 3010.2.3 states that:

Domestic violence occurs when one spouse, domestic partner or significant other tries to maintain **power and control** over the other person. The perpetrator of the violence may use physical, **verbal or sexual violence** to maintain power and control over the victim.

- DSS policy at 3010.2.3 enumerates the following, again with emphasis supplied to the original text, as specific acts which "**shall be** considered to be domestic violence":
 - **mental or emotional abuse;**
 - **neglect or deprivation of medical care; or**
 - **stalking.**
- DSS policy at 3010.2.3 further provides the following list (specifically described by DSS as "not . . . all encompassing") as "examples . . . of how domestic violence may look":
 - A husband who cuts up his wife's clothing so she has nothing to wear to work;
 - A partner who constantly tells his partner that she is worthless or calls her names in private or in public; or
 - A partner who has to know her partner's every movement and gets furious for not knowing those movements;
 - A partner who doesn't allow his partner to go out without him; or
 - A partner who constantly calls or shows up at this partner's job to interfere with her work.
- Proposed DSSM 9094 limits its scope to assisting only those persons who are attempting to escape domestic violence, while DSS's current domestic violence policy properly provides that the good faith waiver exists in order to avoid having recipients comply with requirements that "make it more difficult for the family to escape and/or remain safe from the violence". (Please refer to DSSM 3010.2.5).
- It is DCADV's understanding that DSS and DCSE are two divisions of DHSS. It is also DCADV's understanding that DSS operates both the TANF and the Food Stamp Program. 7 CFR 273.11 (o) provides that a State agency's ability to disqualify a person for failure to cooperate with child support enforcement is limited by the provisions of 7 CFR 273.11 (o) (2). 7 CFR 273.11 (o) (2) (i) (C) specifically provides that a person shall not be disqualified if the person "meets any good cause criteria identified by the State agency". 7 CFR 273.11 (o) (2) (i) (C) continues by asserting that "These [good faith] criteria will be defined in consultation with the Child Support Agency or TANF program, whichever is appropriate, and identified in the State plan according to Sec. 272.2 (d) (xiii)." DCADV submits that DSS (not DCSE) is the DHSS agency identified in the noted state plan. DCADV submits that proposed DSSM 9094 should be rewritten in order to conform to DSS' definitions and descriptions of "domestic violence" found in the TANF policy at 3010 through 3010.2.5.

DCADV objects to proposed DSSM 9079076.2 and 9094 because, as discussed above, those provisions conflict with the reality and dynamics of domestic violence as they are aptly captured at DSSM 3010 through 3010.2.5. DCADV submits that confusion, high federal reporting errors, inappropriate denial of benefits to domestic violence victims/survivors and their children, staff frustration, and safety risks to domestic violence victims/survivors and their children could ensue as a result of the failure of the proposed provisions to duplicate the outlined definition and examples of domestic violence found at DSSM 3010 through 3010.2.5.

Proposed DSSM 9094 Would Permit DCSE Staff to Affirmatively Contact Abusers And Thereby Potentially Place Domestic Violence Victims/Survivors and Their Children In Harm's Way.

The Investigations of Good Cause Claim provision of proposed DSSM 9094 is very dangerous. That provision seemingly authorizes DCSE to contact abusers in order to satisfy itself that abuse has taken place. The Federal Code of Regulations does not authorize a state child support agency to contact domestic violence abusers in order to satisfy itself that the claim of abuse is legitimate. To do so would undermine the very protections that the "good cause" provisions seek to provide. The investigation authorized by the CFR is properly limited to a "review of" the evidence provided by the recipient (i.e. court orders, police reports, social service agency reports, etc.). The CFR does not authorize child support agencies to conduct independent investigations of abuse.

For all of the reasons noted above (and for other reasons like the use of confusing and otherwise unclear language choices), DCADV urges DSS to decline to adopt proposed DSSM 9076.2 and 9094. Additionally, DCADV

notes that it is willing to work with DSS to craft language which would more adequately address safety concerns of domestic violence victims/survivors and their children.

Agency Response: As previously noted, DSS will expand the definition of domestic violence to include the language cited under 7 CFR 273.11(o)(2)(i)(B) and the domestic violence policy for the TANF program outlined in 3010.2.2 through 3010.2.4, as indicated by **[Bracketed Bold Language]** in the final order regulation.

Findings of Fact:

The Department finds that the proposed changes as set forth in the January 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Division of Child Support Enforcement provisions of the Food Stamp Program is adopted and shall be final effective March 10, 2008.

Vincent P. Meconi, Secretary, DHSS, February 13, 2008

DSS PROPOSED REGULATION #08-09 REVISION:

9076.2 SSN Disqualification, Child Support Sanctions and Ineligible ABAWDs

Determine ~~as follows~~ the eligibility and benefit level of remaining household members of a household containing individuals determined ineligible due to:

- ~~Because of~~ disqualification for refusal to obtain or provide an SSN; ~~or~~
- non-cooperation with the Division of Child Support Enforcement; or
- ~~Because of~~ meeting the time limit for able-bodied adults without dependents.

1) Resources - The resources of such ineligible members continue to count in ~~their entirety~~ full to the remaining household members.

2) Income - Count a prorata share of the income of such ineligible members as income to the remaining members. ~~This prorata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible member's share is counted as income for the remaining household members. To get the prorated share, subtract the allowable income exclusions from the ineligible member's income, divide the amount by the household size, and use all the income except for the prorated share of the ineligible household member.~~

3) Deductible expenses - ~~The Allow the earned income deduction applies to for the prorated share of income used by the remaining household members, earned by such ineligible members which is attributed to their households. That portion of~~ Divide the household's allowable child support payment, shelter (except any utility allowances), and dependent care expenses, which are either paid by or billed to the excluded members, ~~will be divided evenly among the household's members including the ineligible members. Allow All but the ineligible member's share is counted~~ as a deductible child support payment, shelter (except any utility allowances), or minor care expense for the remaining household members.

4) Eligibility and benefit level - ~~Such ineligible members will not be included when in~~ determining their household's size ~~for the purposes of~~ when:

- a) Assigning a benefit level to the household;
- b) Comparing the household's monthly income with the income eligibility standards; or
- c) Comparing the household's resources with the resource eligibility limits.

(Break in Continuity of Sections)

9094 Cooperation with the Division of Child Support Enforcement (DCSE)

Cooperation as Condition of Eligibility

In order to get food stamp benefits, all applicants must cooperate with the Division of Child Support Enforcement (DCSE) to receive child support for minor children in their care. Custodial parents/caretakers cannot get food stamps if they fail to cooperate with DCSE. A custodial parent is a natural or adoptive parent who lives with his or her child, or a person who is living with and exercises parental control over a child under the age of 18.

Both applicants and recipients must cooperate, unless they can show good cause, in:

1. Identifying and locating absent parents;
2. Proving paternity for minor children born out of wedlock; and
3. Getting support payments and/or other properties for the minor child(ren).

DCSE is the single State agency that:

- Establishes paternity of and secures support for children born out of wedlock;
- Gets support from parents who have abandoned or deserted their children; and
- Enters into cooperative arrangements with appropriate courts and law enforcement officials in order to get support.

Applicants and recipients will be told of this requirement in writing at the time of application and recertification for continued benefits. DSS will refer caretakers to DCSE based on the following:

- DSS will refer a person to DCSE who is receiving food stamps and the food stamp assistance unit has children under the age of 18 with an absent parent(s).
- DSS will refer a person to DCSE who is receiving TANF or Child Care and the food stamp assistance unit has children not included in the TANF or Child Care case.
- DSS will not refer a person who is receiving TANF or Child Care and has cooperated as long as the assistance units contain the same persons.
- DSS will not refer a person who had good cause for not cooperating or made a good faith effort to cooperate as long as the assistance units contain the same persons.

Cooperation Responsibilities

Clients must cooperate with DCSE to get food stamp benefits. All families are required to provide enough information to permit DCSE to get child support on behalf of the family.

DCSE can make exceptions when the caretaker can prove that trying to get child support would create a danger to the caretaker or the children. This is called a good cause claim. The client is responsible to get proof to verify good cause claims.

DCSE can also determine a caretaker has cooperated when he/she makes a good faith effort to provide all the information he/she can about the non-custodial parent.

To cooperate with DCSE, applicants or recipients of food stamps must participate in the following activities, if required:

- To appear at an office of DSS or DCSE to give verbal or written information or written documents known to or possessed by the applicant or recipient;
- To appear as a witness in court or other hearings or proceedings; or
- To provide information or to confirm to the lack of information under penalty of perjury.

Penalties for Non-Cooperation

When a caretaker fails to cooperate with DCSE without good cause or fails to make a good faith effort to cooperate, that person will not get food stamp benefits. The sanction applies only to the caretaker, not the entire household.

Income, Expenses and Resources of Sanctioned Household Member

All resources of the sanctioned caretaker count toward the food stamp benefits. Income and expenses are prorated and count toward the food stamp benefits. See policy under 9076.2.

Curing the Child Support Sanction

To cure the child support sanction, the caretaker will provide enough information to permit DCSE to pursue child support collections on behalf of the minor children in his/her care. Once it is determined that the caretaker has cooperated, DSS will add him/her to the case.

Reopening the Sanctioned Person

Once DCSE provides proof that the caretaker cooperated, DSS will reopen him/her. The caretaker will be added to the case effective the month after the month he/she cooperated. The household's certification period is not shortened or extended because of the sanction.

Good Faith Effort

If the applicant or recipient cannot provide the minimum information required about the absent parent, DCSE may still determine the person as cooperating if the person completes a Good Faith Affidavit. The Affidavit lists the steps the caretaker took to get the information and what barriers the person faced.

Good Cause Determination

DCSE is responsible to determine if good cause for refusing to cooperate exists. When good cause exists, the person may get food stamp benefits and will not have to cooperate in support collection activities. [When DCSE does not determine there is good cause for refusing to cooperate, DSS will review the case to ensure good cause does not exist before sanctioning the individual.]

Claiming Good Cause for Non-Cooperation

DSS will tell applicants and recipients, at application and recertification, of the right to good cause as an exception to the cooperation requirement. DSS will also tell applicants and recipients about the reasons they have to claim good cause.

Caretakers will not have to cooperate if they believe that their cooperation would not be in the best interest of their child. They must give proof to support their claim.

DCSE may decide that a person has good cause for refusing to cooperate if one or more of the following conditions exist:

- Cooperation is likely to result in serious physical or emotional harm to the child;
- Cooperation is likely to cause physical or emotional harm to the person which is so serious as to reduce his/her capacity to care for the child adequately;
- The child was conceived as a result of incest or forcible rape;
- Legal proceedings for adoption of the child are pending before a court;
- The person is currently being assisted by a public or licensed private social agency to resolve the

issue of whether to keep his/her child or give the child up for adoption:

- Cooperating with DCSE would make it more difficult for the person to escape domestic violence or unfairly penalize the person who is or has been victimized by such violence, or the person is at risk of further domestic violence. (Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.); sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual acts or activities; threats of, or attempts at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.)
- The individual meets the good cause criteria outlined for the Temporary Assistance for Needy Families (TANF) policy outlined in DSSM 3010.2.2 – 3010.2.4]

Proof of Good Cause Claim

It is the custodial parent's or responsible persons' responsibility to provide DCSE with the proof needed to determine whether they have good cause for refusing to cooperate. If the reason for claiming good cause is a fear of physical harm and it is impossible to obtain proof, DCSE may still be able to make a good cause decision after reviewing the claim.

The following are examples of acceptable kinds of proof DCSE can use to decide if good cause exists:

- A birth certificate or medical or law enforcement record which indicates that the child was conceived as the result of incest or forcible rape;
- A court document or other record which indicates the legal proceedings for adoption are pending before a court;
- A court, medical, criminal, psychological, child protection services, social services or law enforcement record which indicates that the putative father or absent parent might inflict physical or emotional harm on the child or person;
- A medical record which indicates the emotional health history and present emotional health status of the person or the child; or, a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the person or child;
- A written statement from a public or licensed private social agency that the person is being assisted by the agency to resolve the issue of whether to keep the child or give him/her up for adoption; and
- Sworn statements from persons, including friends, neighbors, clergymen, social workers, and medical professionals who might know the conditions providing the basis of the good cause claim.

When requested, DCSE will try to help persons obtain necessary documents to support their claim.

Investigations of Good Cause Claim

The caretaker must give the necessary proof to DCSE within 20 days after claiming good cause. DCSE will give the parent or person more time if they decide that more than 20 days are required because of the difficulty in getting the proof.

DCSE may decide on the claim based on the proof which is given, or conduct a review to verify the claim. If DCSE decides they need to review the claim, DCSE may require the person to give information, such as the absent parent's name and address, to help the review. The DCSE will not contact the absent parent without first telling the person.

Delayed finding of good cause

DSS will not deny, delay, or discontinue assistance when DCSE has not made a decision on the good cause claim as long as the caretaker has given proof and other information needed by DCSE. DSS will follow the normal processing standards for these cases.

Administrative Hearings

Applicants and recipients have the right to request an administrative hearing if they disagree with the decision of non-cooperation made by DCSE. When caretakers request an administrative hearing regarding the decision of non-cooperation or failure by DCSE to accept good cause claims, DCSE will schedule and conduct the administrative hearing.

The caretaker can ask for a hearing by sending in his or her request in writing within 20 days to:

Administrative Hearing Officer – DCSE
P.O. Box 11564
Wilmington, DE 19805

The request should include the caretaker's name, case number, social security number and daytime telephone number.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311, 2501, 2304(15)(c) and 2312
(18 Del.C. §§311, 2501, 2304(15)(c) & 2312)
18 DE Admin. Code 906

ORDER

906 Use of Credit Information [Formerly Regulation 87]

Proposed Regulation 906 relating to the use of credit scores in setting insurance premiums in automobile, motorcycle, boat and personal watercraft, snowmobiles and other recreational vehicles, homeowners, mobile-homeowners, manufactured homes and non-commercial dwelling fire insurance for personal or family protection, was first published in the *Delaware Register of Regulations* on November 1, 2007 with the original comment period open until December 4, 2007 and a public hearing on that same date. Public notice of proposed Regulation 906 was given in the *Register of Regulations* and two newspapers of general circulation in conformity with Delaware law. As a result of the public comment received, substantive changes were made to the proposed regulation and it was resubmitted for public comment. An amended proposed Regulation 906 was published in the *Delaware Register of Regulations* on January 1, 2008 with the comment period open until February 3, 2008.

Summary of the Evidence and Information Submitted

Public comment was received from the State Council for Persons with Disabilities, which endorsed the proposed regulations subject to two grammatical changes which are non-substantive and have been made.

The following summaries include comments received from Property Casualty Insurers Association of America, Nationwide Insurance, and State Farm Mutual Automobile Insurance Company:

1. The language of Section 5.1 of the regulation regarding not using credit reports that are more than two years old may be misinterpreted to prohibit insurers from relying on the residual effect of an insurance score based on a credit report obtained when the policyholder applied for coverage.
2. The phrase "credit information" is undefined and should be replaced with the phrase "consumer report" or "credit score," and the phrase "credit report" should in some cases be replaced with the terms "credit score" or "insurance score."
3. Notice of a consumer's right to request an insurance score review should be provided when the policy is issued and not at the time of application.
4. The requirement that annual notice of a policyholder's right to request an insurance score review be included with the policyholder's insurance renewal may be confusing, since the proposed regulation refers to

Regulation 608 for the renewal requirement, and Regulation 608 applies to policies issued for less than six months, not annually.

5. Policyholders should not have to wait until their next renewal notice to find out that their request for an insurance score review was performed and did not result in changes to their premium. Such a notification system "keeps the policyholder in the dark." In addition, changing the renewal notices would require significant programming changes that could delay implementation of the regulation.

6. Policyholders should be permitted to request that their insurance score be reviewed by whatever means they choose, rather than having to use the form developed by the insurer. Policyholders should not have a time limit on when to submit the request.

7. Insurers who do not use insurance scores in their rating plan should not have to annually inform policyholders that they do not have the right to request a review of their insurance score.

8. The references to renewal notices required under Regulation 608 are incorrect, as Regulation 608 applies to automobile insurance, while this regulation applies to auto and homeowners insurance.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The language of the Regulation does not prohibit relying on the residual effect of an insurance score developed at the time of application and in fact recognizes that some insurers will rely on the residual effect from an initial insurance score, noting that such reliance triggers the Regulation's notice provisions. See §8.5. Further, the industry comments received after the November publication of the proposed changes raised this same concern and requested changes to three sections -- including Section 5.1 -- to accommodate the concern. Changes to all three of those sections were made as a result of the comments received and were included in the amended proposed Regulation 906 published on January 1, 2008. With regard to Section 5.1, the changes made were virtually identical to the language changes requested by industry members. Therefore, no additional change is warranted.

2. The phrase "credit information" is in fact defined -- although not found in the regulation, it is defined in the underlying statute, 29 **Del.C.** §8301(b). Further, many of the uses of the phrases "credit information," "consumer report," and "credit score" referenced in the comment were not changed by this amendment. The suggested changes in the use of these terms do not warrant changes to the proposed regulation as published.

3. The requirement that notification of the right to request an insurance score review be given at the time of application mirrors the requirement in current regulation that at the time of application, insurers must notify the applicant if they intend to obtain their credit information. There is no reason to not provide this additional information to an applicant at the same time.

4. Section 6.1.3 of the regulation specifically states that the notification of the right to request an insurance score review must be provided "[o]n an annual basis." While I believe that this language is sufficient to clarify the frequency, I have removed the incorrect reference to Regulation 608, which applies only to automobile policies issued for a period of less than six months.

5. In terms of keeping the policyholder in the dark, there is nothing in the regulation to prevent an insurer from informing a policyholder of the outcome of their request for an insurance score review whenever the insurer desires to do so. The requirement that the outcome of the prior year's insurance score review be provided in the next renewal notice does not mean that additional, more timely notice cannot be provided. The regulation permits the insurers to wait until the next renewal notice to inform the consumer of the outcome of the review in order to address a concern raised by insurers during discussions prior to publication of the proposed regulation that requiring separate notices would increase costs by, among other things, adding mailing costs. But if an insurer is willing to take on that expense in order to better inform their policyholders, there is nothing in this regulation that would prevent them from doing so. Additionally, since the Regulation requires notification to a policyholder within 90 days of a request for an insurance score review in the event that the review results in a lowered premium, insurers may wish to inform policyholders in the annual notification that if they do not hear from the insurer within 90 days of their request, the review did not result in any change to the premium.

Further, regarding the required programming changes and potential delay in implementation, since this notification would not be required until the first renewal notice after an insurance score review is requested, it should not be necessary to provide the notice until at least six months after such a request is received, which seems a sufficient amount of time to make any changes.

6. Providing consumers with a simple form that they can complete and mail back to the insurer to request an insurance score review does not seem onerous and will better ensure the receipt of the information needed to perform the review. Further, the imposition of a 2-week period in which to submit the form protects both the consumer and the insurer and allows the consumer to receive the benefit of any change in premium sooner rather than later.

7. Informing policyholders of an insurers exemption from the requirements of notice and a right to review of their insurance score will assist consumers in understanding why they are not getting the same notifications that other consumers are. The information required to be provided to the policyholder is not that there is a right that they do not have -- rather, it is to let them know that their insurer is exempt from these requirement because the insurer does not use credit scoring in determining premiums.

8. Agreed that the references to Regulation 608 were in error. The references did not add anything of substance to the regulation and have been removed.

9. It is in the public interest that insurance companies be prohibited from using consumer credit information in the setting of renewal premiums in insurance policies.

10. It is in the public interest that consumers whose credit information was relied upon in establishing premiums be able to request the use of credit information in renewals if such information would result in a reduction of premiums. It is further in the public interest that policyholders be made aware of their right to request a review of their credit information.

11. The reasons given for suggested changes to Regulation 906 as published are not sufficiently persuasive to require me to make changes to the proposed regulation as published for comment.

Decision and Effective Date

Based on the provisions of 18 Del.C. §§311(a) and the record in this docket, I hereby adopt amended Regulation 906 and as may more fully and at large appear in the version attached hereto to be effective on January 1, 2008, except that subsections 6.1.2 and 6.1.3 shall take effect on April 1, 2008.

IT IS SO ORDERED this 15th day of February 2008.
Matthew Denn, Insurance Commissioner

906 Use of Credit Information [Formerly Regulation 87]

(Break in Continuity of Sections)

6.0 Written Notice to Consumers

6.1 If an insurer uses credit information in underwriting or rating a consumer, the insurer ~~or its agent~~ shall make the following disclosures to the consumer:

~~6.1.1 disclose, e~~Either on the insurance application or at the time the insurance application is taken, ~~the insurer shall disclose to the applicant~~ that it may obtain credit information on the ~~consumer applicant~~, other persons residing in the ~~consumer's applicant's~~ home, or other persons whose credit information may affect the underwriting or rating of the policy in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. ~~The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement.~~ The use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based (credit) (insurance) score based on the information contained in that credit report. We may use a third party in connection with the development of your (credit) (insurance) score."

6.1.2 Either on the insurance application or at the time the insurance application is taken, the insurer shall inform the applicant that, if the application is approved and the applicant becomes a policyholder, he or she has the right to [have their insurance score reviewed an insurance score review] on an annual basis based on a new consumer report, in accordance with the procedures set forth in section 8 of this Regulation. The notice shall state that the review will be conducted for the sole purpose of determining whether the consumer's credit information would lead to a reduction in insurance premiums and will not be used for any other purpose, including an increase in premiums. The use of the following example disclosure statement constitutes compliance

with this section: "If we do use a credit based score, you will have the right on an annual basis to request that we obtain a current credit report for you and determine whether use of the new credit report would result in a decrease in your insurance premiums. If the new credit report that we receive would result in a decrease in your insurance premiums, we will make that reduction. If the new credit information would not reduce your insurance premiums, the credit report will not be used to impact your premiums in any way." This paragraph does not apply if an insurer's filed rating plan does not use any credit information for the purpose of rating renewals, including any residual effect from the use of credit at initial underwriting.

6.1.3. On an annual basis, the insurer shall inform its policyholders of their right to have their credit information reviewed to determine whether the use of the current credit report would result in a lower premium, in accordance with the procedures set forth in section 8 of this Regulation. This notification shall be prominently included in at least 18 point type in the renewal notification ~~[required by Department of Insurance Regulation 608, Section 3]~~. The notification shall be accompanied by a form that the policyholder must complete and send to the insured to request that the credit report be obtained and reviewed. The notification shall inform the policyholder that the policyholder must mail the request form within two weeks of the date of mailing of the renewal notification by the insurer in order for the re-rating to occur in time for a premium adjustment to be made for the upcoming policy period. The notification shall also inform the policyholder that they must comply with the renewal notice's requirements regarding the payment amount and due date regardless of whether they choose to request a review of their credit report, and that any decrease in premium as a result of the credit review will be effective as of the upcoming renewal date provided in the renewal notice. This subsection does not apply to any renewal for which the insurer's filed rating plan does not use any credit information, including residual effect from the use of credit information at initial underwriting. An insurer that is exempt from this subsection shall inform its policyholder of the exemption and the reason for the exemption in the ~~[policyholder's]~~ renewal notification ~~[required by Department of Insurance Regulation 608, Section 3]~~.

6.2 A notice denying an application for insurance ~~or a notice refusing to renew or cancel insurance~~ shall, to the extent that the insurer's action is based on information contained in a consumer report relating to the applicant, ~~insured and/or other named person~~, contain the following:

6.2.1 The name, address and toll free number of the institutional source from whom the insurer obtained the credit information;

6.2.2 A summary of the most significant reasons for the adverse action that relate to the ~~consumer's~~ applicant's credit history or to the credit factors of the credit score. The reasons need not exceed four, shall be specific and shall identify the information associated with each reason. The notice shall be sufficiently clear and specific that ~~a consumer~~ an applicant of reasonable intelligence can identify the basis for the insurer's decision without making further inquiry. For the purpose of the summary, the use of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not meet the requirement of a sufficiently clear and specific summary, however standardized credit explanations provided by consumer reporting agencies or other third party vendors that satisfy the requirements of this section are deemed to comply with this section.

6.2.3 A statement advising the applicant ~~or insured~~ that, if the ~~insured~~ applicant wishes to inquire further about the credit information on which the refusal, ~~denial or nonrenewal~~ is based and obtain a free copy of the "consumer report," the ~~insured~~ applicant may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than thirty days after the date on which the notice of refusal, ~~denial or nonrenewal~~ was mailed to the ~~insured~~ applicant.

6.2.4 A statement that the consumer reporting agency that provided the information upon which the credit score was based did not make the decision to take the adverse action and is unable to provide the applicant ~~or insured~~ the specific reasons why the adverse action was taken.

6.3 If the applicant ~~or insured~~ submits the written notification required under section 6.2.3, the refusal, ~~denial or nonrenewal~~ shall not become effective until thirty days after the accuracy of the credit information, which the applicant ~~or insured~~ has questioned and on which the refusal, ~~denial or nonrenewal~~ was based, has been verified and communicated to the applicant ~~or insured~~. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the applicant ~~or insured~~ has questioned and on which the refusal, ~~denial or nonrenewal~~ was based. The applicant ~~or insured~~ must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer or credit reporting agency no more than ten days after the date on which such communication subsequent to the notice required under section 6.2.3 was mailed to the applicant ~~or insured~~. If the applicant ~~or insured~~ fails to cooperate in the investigation of the credit information, the insurer may, after providing a minimum of fifteen days'

written notice to the applicant or insured, terminate such investigation and may refuse to insure the applicant or cancel or nonrenew the policy.

6.4 If the applicant or insured, after receipt of a notice under this section, and pursuant to procedures established under the FCRA, obtains changes, modifications or corrections to his/her credit information maintained by one or more credit reporting agencies, the insured shall notify the insurer who shall recalculate or obtain **[an]** new credit score. In that case, the provisions of section 7.2 shall apply to any adjustments to be made to the insured's premium.

6 DE Reg. 1706 (6/1/03)

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

[906 Use of Credit Information \[Formerly Regulation 87\]](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a), (7 **Del.C.** §903(e)(2)(a))
7 DE Admin. Code 3531

Secretary's Order No.: 2008-F-0006

3531 Tautog; Size Limits, Creel Limits and Seasons (Formerly Tidal Finfish Reg. 22)

Date of Issuance: February 13, 2008

Effective Date of the Amendment: March 11, 2008

I. Background:

A public hearing was held on Wednesday, January 23, 2008, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulation 3531 concerning tautog size limits, creel limits, and seasons. In order to come into compliance with Addendum V of the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan (FMP) for Tautog, Delaware Tidal Finfish Regulation 3531 must be changed to incorporate one of twelve management options, approved by the ASMFC Tautog Technical Committee. Each option would reduce tautog exploitation by a minimum of 25.6%, as mandated in Addendum V.

Both recreational and commercial fishermen will be affected, as commercial size limits, creel limits and seasons are identical to recreational management measures. Failure to comply with regional FMPs, as approved by the ASMFC, may result in the total closure of the tautog fishery in Delaware by order of the Secretary of Commerce. The Department has the statutory basis and legal authority to act with regard to this promulgation pursuant to 7 **Del.C.** §903(e)(2)(a). No other Delaware regulations are affected by this proposal.

After listening to the public comment received during all phases of this promulgation process, and performing an exhaustive review and consideration of all components of the fishery, economic impacts and conservation of the resource, the Department believes "Option 8b" best accomplishes the mandated 25.6% reduction with a shorter closure period, less economic impact, and greater fairness to the shore zone and free diver components of this important recreational fishery. The current Division of Fish and Wildlife Enforcement Chief also concurs with this judgment, and anticipates no major problem in enforcing these proposed revised regulations.

Numerous members of the public attended this hearing on January 23, 2008 to voice their concerns with regard to the Department's proposed changes to these regulations, and the same were taken into consideration during the Division's review of this proposed regulatory amendment. Afterwards, the Hearing Officer prepared her report regarding this matter and submitted the same to the Secretary for review and consideration. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of February 12, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would bring Delaware into compliance with Addendum V of the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan (FMP) for Tautog, by incorporation of Department Option 8b, which was previously approved by the ASMFC Tautog Technical Committee;
7. Option 8b will set the creel limit at 10 fish, size limit 14", from Jan.1st through March 31st; then, at 3 fish, size limit 15", from April 1st through May 11th; then, a spring closure from May 12th through June 30th; then, back to 10 fish, size limit 14", from July 1st through August 31st; then, a fall closure from September 1st through September 28th; then, back to 10 fish, size limit 14", from September 29th through December 31st;
8. By selection of Option 8b, tautog exploitation will be reduced in Delaware by a minimum of 25.6%, as mandated in Addendum V of the ASMFC's Interstate FMP for Tautog, with a shorter closure period, less economic impact and greater fairness to the shore zone and free diver components of this important recreational fishery;
9. The Department has reviewed this proposal and its components with the current Division of Fish and Wildlife Enforcement Chief, and said Chief concurs and anticipates no major problem with enforcement of the proposed revised regulations;
10. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
11. The Department's proposed regulation, as published in the January 1, 2007 *Delaware Register of Regulations* and set forth in Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
12. The Department's proposed amendments to Tidal Finfish Regulation 3531 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
13. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated February 12, 2008 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Tidal Finfish Regulation No. 3531 – Tautog Size Limits, Creel Limits, and Seasons - be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of State of Delaware Tidal Finfish Regulation No. 3531 will bring Delaware into compliance with Addendum V of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Tautog. This action, which incorporates Option 8b as Delaware's management plan for

tautog (as approved by the ASMFC Tautog Technical Committee) will reduce tautog exploitation by a minimum of 25.6%, as mandated by Addendum V noted above. It is incumbent upon Delaware to be in compliance with the Commission's plan, not only to avoid federal sanctions against Delaware and its fishery, but to protect this species with these conservation measures to ensure that tautog will continue to be found in Delaware waters in the future.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 **Del.C.** §903(e)(2)(a).

John A. Hughes, Secretary

3531 Tautog; Size Limits, Creel Limits and Seasons (Formerly Tidal Finfish Reg. 22)

(Penalty Section 7 **Del.C.** §936(b)(2))

1.0 It shall be unlawful for any person to possess any tautog, *Tautoga onitis*, less than fourteen (14) inches in total length during the period beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing.

2.0 It shall be unlawful for any person to possess any tautog less than fifteen (15) inches in total length during the period beginning at 12:01 a.m. on April 1 and ending at 12:00 p.m. on June 30, next ensuing.

3.0 Notwithstanding the provisions of 7 **Del.C.** §§938, 939, it shall be unlawful for any person to possess more than three (3) tautog during the period beginning at 12:01 on April 1 and ending at 12:00 p.m. on June 30, next ensuing, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

4.0 It shall be unlawful for any person to possess more than ten (10) tautog during the period beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

5.0 Notwithstanding the provisions of subsections 1.0[, **2.0, 3.0**] and 4.0 of this regulation, it shall be unlawful for any person to possess any tautog during the period beginning at 12:01 a.m. on **[May 12 and ending at 12:00 p.m. on June 30 and during the period beginning at 12:01 a.m. on]** September 1 and ending at 12:00 p.m. on September 28, next ensuing, except in said person's personal abode or temporary or transient place of lodging.

1 DE Reg 1771 (5/1/98)

6 DE Reg. 1360 (4/1/03)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a), (7 **Del.C.** §903(e)(2)(a))
7 DE Admin. Code 3553

Secretary's Order No.: 2008-F-0007

3553 River Herring Creel Limit

Date of Issuance: February 13, 2008

Effective Date of the Amendment: March 11, 2008

I. Background:

A public hearing was held on Thursday, January 24, 2008, at 7:00 p.m. at the University of Delaware, Hugh R. Sharp Campus, Cannon Laboratory, 700 Pilottown Road, Lewes, Delaware, to receive comment on proposed

amendments to the existing Delaware Tidal Finfish Regulation 3553 concerning river herring creel limits. The stocks of blueback herring (*Alosa aestivalis*) and alewife (*Alosa pseudoharengus*), both commonly referred to as river herring, are currently in steep decline throughout the Atlantic coast. Concern over the status of these stocks has prompted four states to close their river herring fisheries entirely. A significant harvest by recreational fishermen has recently developed in the spawning areas where river herring concentrate (at the base of spillways and dams), and are easily exploited. Most are captured using nets and transported alive to use as live bait for striped bass.

The existing regulation is a possession limit that allows for multiple trips per day with no daily cap on landings. The Department believes this regulation is insufficient to protect remaining stocks of river herring from over-exploitation, and is difficult to enforce. Therefore, the Department is proposing to amend that current regulation from a possession limit to a daily creel (harvest) limit, and to reduce that limit from 25 river herring per person to 10 fish per person per day. This action would be consistent with the intent of the current Fisheries Management Plan for Shad and River Herring, and should protect stocks from overfishing until new requirements are adopted by the Atlantic States Marine Fisheries Commission Management Board for Shad and River Herring.

No members of the public attended this hearing on February 13, 2008. After the hearing, the Hearing Officer prepared her report regarding this matter, and submitted the same to the Secretary for his review. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the proposed amendment to the Delaware regulations regarding River Herring and its creel limit, as reflected in the Hearing Officer's Report of February 13, 2008, which is attached hereto and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would amend the current regulation from a possession limit to a daily creel (harvest) limit, and would reduce that limit from 25 river herring per person to 10 fish per person per day;
7. The proposed amendment to the current river herring regulation would be consistent with the intent of the current Fisheries Management Plan for Shad and River Herring, and should protect stocks from overfishing until new requirements are adopted by the Atlantic States Marine Fisheries Commission Management Board for Shad and River Herring.
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
9. The Department's proposed regulation, as published in the January 1, 2008 *Delaware Register of Regulations* and set forth in Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
10. The Department's proposed amendments to Tidal Finfish Regulation 3553 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
11. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated February 13, 2008, and

expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Tidal Finfish Regulation No. 3553 – River Herring Creel Limits - be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of State of Delaware Tidal Finfish Regulation No. 3553 will amend that current regulation from a possession limit to a daily creel (harvest) limit, and will reduce that limit from 25 river herring per person to 10 fish per person per day. This action would be consistent with the intent of the current Fisheries Management Plan for Shad and River Herring, and should protect stocks from overfishing until new requirements are adopted by the Atlantic States Marine Fisheries Commission Management Board for Shad and River Herring.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.** §903 (e)(2)(a) and Chapter 15, respectively

John A. Hughes, Secretary

3553 River Herring Creel Limit

(Penalty Section 7 **Del.C.** 936(b)(2))

Unless otherwise authorized, it shall be unlawful for any person to have in possession, except a person with a valid Delaware commercial food fishing license, more than ~~twenty five (25)~~ ten (10) blueback herring and/or alewife (*Alosa aestivalis* and/or *Alosa pseudoharengus*), collectively known as river herring, ~~at or between the place caught and his/her personal abode or temporary or transient place of lodging;~~ or unless said person has a valid bill-of-sale or receipt for said river herring that indicates the date said river herring were received, the number of said river herring received and the name, address and signature of the commercial food fisherman who legally caught said river herring;, or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said river herring for resale.

8 DE Reg. 1315 (03/01/05)

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code Section 302, 2715(a), 3103(a), and Chapters 27 and 31
2 DE Admin. Code 2220

ORDER

2220 Determining Non-U.S. Citizen Driver License and Identification Card Expiration Dates

Proposed Regulation 2220 based on House Bill 147, which was passed by the 144th General Assembly. The regulation establishes and clarifies procedures used to determine driver license and identification card expiration dates for immigrant and non-immigrant applicants and specifies, by immigrant status codes, those non-immigrants who are eligible for these state-issued documents. The proposed regulation was published in the Delaware *Register of Regulations* on January 1, 2008. The comment period remained open until January 31, 2008. There was no public hearing on proposed Regulation 2220.

Summary of the Evidence and Information Submitted

The Department received no public comments on the proposed regulation. The Division made some non-substantial changes to the proposed regulation due to the Division's implementation of the Department of Homeland Security's Systematic Alien Verification System (SAVE.) The SAVE system allows the Division to verify

the legal status and authorized length of stay, thereby preventing fraud in the implementation of House Bill 147.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The proposed regulation meets the requirements of House Bill 147 and is not in conflict with Delaware law.

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §302, §2715(a), §3103(a) and Chapters 27 and 31, and the record in this docket, I hereby adopt Regulation 2220 and as may more fully and at large appear in the version attached hereto to be effective on February 15, 2008.

Text and Citation

IT IS SO ORDERED THIS _____ day of February 2008.

Carolann Wicks, Secretary of Transportation

2220 Determining Non-U.S. Citizen Driver License and Identification Card Expiration Dates

1.0 Authority

The authority to promulgate this regulation is 21 **Del.C.** Section 302, 21 **Del.C.** Section 2715(a), 21 **Del.C.** Section 3103(a), ~~and~~ Chapters 27 and 31 of Title 21[, and CFR 37].

2.0 Purpose

This regulation establishes procedures used to implement 21 **Del.C.** Section 2715(a) and Section 3103(a) that mandate the expiration date on driver license and identification cards issued to temporary foreign nationals be limited to the period of time they are authorized to be in the United States. This will ensure that State identification documents will not be valid if persons have overstayed their authorized visit to this country. Permanent resident foreign nationals may be issued a full 5-year driver license or 4-year identification card. Furthermore, this regulation designates~~[, by immigration status,]~~ those non-immigrants who are eligible for a Delaware-issued driver license or identification document.

3.0 Applicability

This regulation establishes and clarifies procedures used to determine driver license and identification card expiration dates for immigrant and non-immigrant applicants and specifies~~[, by immigrant status codes,]~~ those non-immigrants who are eligible for these State-issued documents.

4.0 Substance of Regulation

4.1 Definitions

"**Lawful status**": A person in lawful status is a citizen or national of the United States~~[, is or]~~ an alien lawfully admitted for permanent or temporary residence in the United States; has conditional permanent resident status in the United States; has an approved application for asylum in the United States or has entered into the United States in a refugee status; has a valid non-immigrant status in the United States; has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has a pending application for lawful permanent resident [(LPR)] or conditional permanent resident status.

"**Permanent resident foreign national**": A lawful immigrant having permanent resident status and Department of Homeland Security (DHS) or Immigration Naturalization Service issued [verifiable] immigration documents confirming his/her permanent immigration status.

“SAVE”: ~~refers to~~ **means** the Department of Homeland Security’s Systematic Alien Verification for Entitlements system or any such successor or alternative verification system authorized by the Secretary of the DHS.

“Temporary foreign national”: A lawful non-immigrant alien possessing unexpired passport with visa (if required) or Department of Homeland Security or Immigration and Naturalization Service (INS) document whose non-immigrant status, date of arrival in the United States and authorized length of stay in this country can be verified through a DHS database.

“Temporary lawful status: a person in temporary lawful status is a person who: has a valid non-immigration status in the United States; has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has a pending application for LPR or conditional permanent resident status.”

“United States Citizen”: A person who has the following documents will be considered a U.S. citizen: a valid unexpired United States passport; certified copy of a birth certificate issued by a U.S. State or local office of Public Health, Vital Records, Vital Statistics or equivalent office; Consular Report of Birth Abroad issued by the DOS, Form FS-240, DS-1350 or FS-5454; Certificate of naturalization issued by DHS, Form N-550 or Form N-570; or Certificate of Citizenship, Form N-560 or Form N-561 or other documents designated by the DHS to confirm citizenship status.

“Verify” means procedures to ensure: (1) the source document is genuine and has not been altered (i.e. "document authentication") and (2) the identity data contained on the document is valid ("data verification".)

4.2 Basic Immigration Terms and Concepts

4.2.1 Visa

4.2.1.1 Citizens of foreign countries (aliens) generally need visas to enter the United States. A visa is permission to apply to enter the United States. It is a document which is affixed to a page in the passport. The Department of State embassies and consulates abroad issue visas to foreign nationals. A visa does not permit entry to the United States. It simply indicates the application has been reviewed by a United States consular officer and that the officer determined this person is eligible to travel to a United States port-of-entry for a specific purpose. The immigration officer at the port-of-entry decides whether to allow aliens to enter and how long they may stay in this country.

4.2.1.2 **[Most]** Canadian citizens and **[many]** citizens from Visa Waiver Program countries may **[come to enter]** the United States without a visa if they meet certain requirements. As of October 26, 2004, visa waiver travelers from all 27 Visa Waiver Program countries must present either a machine-readable passport issued by their home country[, **or**] have a visa[, **or enter the United States under the Western Hemisphere Travel Initiative**].

4.2.1.3 There are two categories of United States visas: immigrant and non-immigrant.

4.2.1.3.1 *Immigrant visas* are for people who intend to live permanently in the United States

4.2.1.3.2 *Non-immigrant visas* are for people with permanent residence outside the United States but who wish to be in the United States on a temporary basis, for tourism, medical treatment, business, temporary work, study, etc.

4.2.2 Visa Issue and Visa Expiration Dates

4.2.2.1 The visa issue date and expiration date are shown on the visa. Depending on the alien’s nationality, visas may be issued for any number of entries, from as little as one entry to multiple (unlimited) entries, for the same purpose of travel. The visa remains valid from the date it is issued until the date it expires, or travel for the same purpose, when the visa is issued for multiple entries. For example, tourists with a multiple entry visa can travel to the United States many times without having to apply for a visa before each entry.

4.2.2.2 If an alien overstays the end date of his/her authorized stay, then this action will automatically void or cancel his/her visa. However, if the alien has filed an application in a timely manner for extension of stay or a change in status and that application is pending and not frivolous, and if he/she did not engage in unauthorized employment, then this normally does not automatically cancel his/her visa.

4.2.3 Visa Expiration Date as Opposed to the Authorized Length of Stay

The expiration date for the visa should not be confused with the authorized length of stay in the United States. The United States immigration inspector at port-of-entry determines the length of stay and records this information on the Arrival-Departure Record, Form I-94 or I-94W for the Visa Waiver Program. The

visa expiration date has nothing to do with the authorized length of stay in the United States for any given visit. [An applicant's legal status and authorized length of stay is verified using SAVE.]

4.2.4 Authorized Length of Stay

The United States immigration inspector may enter a date or "D/S" (duration of status) on the alien's I-94. In most cases, a specific date will be shown on the I-94 which means the alien must leave this country by that date. Some students, exchange program participants, and certain temporary workers (e.g., foreign diplomats) will be admitted for "duration of status." They may remain in the United States as long as they continue their courses of study or remain in the exchange program or qualifying employment.

4.3 [Verifying] Delaware Driver License and Identification Card Expiration Dates

4.3.1 Permanent resident foreign nationals may be issued a Delaware driver license that expires five (5) years after issuance or a Delaware identification card that expires four (4) years after issuance as long as the applicant has lawful status in the United States throughout the period the driver license or identification card is valid. [The applicant should have **A a**] Permanent Resident Card, Form I-551[. ~~must be renewed every 10 years and those with conditional resident status must apply for renewal every two (2) years. The Division will limit the expiration date on driver license and identification cards to ensure the State issued documents expire on or before the date the permanent resident card or conditional resident status card expires to ensure the applicant retains his/her legal status in this country.~~]

4.3.2 [Temporary lawful status:] A temporary foreign national's driver license or identification card will expire on the last day the [non-]immigrant is authorized to stay in the United States or the date determined by Delaware statute (21 Del.C. Section 2715 or Section 3103), whichever date is more restrictive. If the supporting immigration documents and/or USCIS databases do not designate an authorized length of stay in the United States or the authorized length of stay is annotated "duration of status[;]" or "indefinite,]" the Delaware driver license or identification card expiration date will be one year from the date of document issuance[, unless supporting documents establish a program end date].

4.3.3 The Delaware driver license or identification card expiration date may not exceed the date the applicant's legal status in this country expires.

[4.3.4 Verification procedure: Because lawful status can change over time, the period of admission will be primarily determined by documents themselves, but with the use of the SAVE system, which can best identify a person's lawful period of admission. However, if SAVE is not operational when the applicant is being issued an identification document, use the documents presented in place of the SAVE and verify the SAVE data a later date when SAVE is again available. To verify data through the SAVE, the applicant must present an immigration document containing an alien registration number or I-94 number.]

4.4 Fees

4.4.1 All driver license and identification card applicants will pay the standard fees in effect at the time of application (in accordance with 21 Del.C. Sections 2715 and Section 3103) which are currently \$25 for a 5-year license and \$20 for a 4-year identification card) even though the expiration dates may be limited based upon immigration status.

4.4.2 Should a non-citizen's lawful status or immigration document expiration date be extended, the driver license or identification card will be reissued, for no additional fee, to reflect the new authorized length of stay in this country. Adjust the State-issued document's expiration date to match the authorized length of stay in this country, not to exceed the expiration date established by statute in accordance with 21 Del.C. Section 2715 or Section 3103.

4.4.3 A non-citizen applicant may opt to renew his/her driver license for a full five (5) years or identification card for a full four (4) years in lieu of extending the expiration dates of his/her originally issued documents provided he/she pays the appropriate document fee. The new expiration date will be based upon current statute provided the immigrant's authorized length of stay in the country is not exceeded.

4.5 DHS and INS Immigration documents

4.5.1 Since every alien over the age of 18 is required to carry his/her immigration documents at all times, Division staff will confirm the immigration status of all non-United States citizens upon initial issuance, renewal and re-issuance of all driver licenses and identification cards. All non-United States citizen driver license and identification card applicants must present the appropriate Immigration and Naturalization Service (INS), United States Citizenship and Immigration Services (USCIS), or other U.S. governmental documents which indicate their current immigration status or application status. The document presented must be valid and not

expired. Non-United States citizens must **[prove verify]** his/her legal presence in this country before Delaware will issue a driver license, learner's permit, transfer an out-of-state driver license, or issue an identification card.

4.5.2 The following list of commonly used immigration documents may be used to **[determine verify]** an alien's immigration status and authorized length of stay in the United States. A complete list of immigration documents will be updated and circulated to the staff under separate memorandums.

4.5.2.1 Non-immigrant visa. Arrival-Departure Record, Form I-94 (white card) with unexpired passport and visa or I-94W (green card) for the Visa Waiver Program and unexpired foreign passport. The I-94 functions vary to authorize travel, residency, employment or education opportunities within the United States. This document must be accompanied by supporting documentation in accordance with the status descriptions established by the Department of Homeland Security. If the non-immigrant's authorized length of stay is not annotated on the I-94, verify document with a USCIS office or its database.

4.5.2.2 Students. Foreign students having non-immigrant F-1/F-2, or M-1 visa classification should have an I-20 Certificate of Eligibility for Non-immigrant Student Status form along with their unexpired foreign passport and I-94 card. J-1/J-2- visa holders must present a valid DS-201[9] or IAP-66.

4.5.2.3 Refugee, asylee and parolee classifications must be accompanied by additional documentation and I-94 stating their immigration status.

4.5.2.4 Permanent Residents. Permanent resident foreign nationals have a Permanent Resident Card (I-551) with a machine-readable immigrant visa with the unexpired foreign passport.

4.5.2.5 I-94 stamped with "processed for I-551."

4.5.2.6 Attached unexpired temporary I-551 visa.

4.5.2.7 Valid I-551 Resident Alien or Permanent Resident card. Border Crosser cards and USA B-1/B-2 visa BCC cards are not acceptable.

4.5.2.8 Valid I-766, I-688A, I-688B photo Employment Authorization card or I-688 photo Temporary Resident card.

4.5.3 United States citizens must present one of the following documents to prove citizenship: a valid unexpired United States passport; certified copy of a birth certificate issued by a United States, State or local office of Public Health, Vital Records, Vital Statistics or equivalent office; Consular Report of Birth Abroad issued by Department of State, Form FS-240, DS-1350 or FS-5454; Certificate of naturalization issued by DHS, Form N-550 or Form N-570; or Certificate of Citizenship, Form N-560 or Form N-561, or other documents designated by DHS to confirm citizenship status. Once verified, citizens do not have to reconfirm their citizenship status when renewing or being re-issued a driver's license or identification card document. Except for birth certificates issued by the State, all other documents can be electronically verified through SAVE.

4.6 Electronically Verify Immigration Document Data

4.6.1 The Department of Homeland Security Systematic Alien Verification or Entitlements System (SAVE), if available, or any such successor or alternative verification system will be used by Division staff to verify an immigrant or non-immigrant legal status, name, date of birth, arrival date and authorized length of stay in this country. Federal government documents used to establish citizenship can also be verified using SAVE.

4.6.2 Should a discrepancy exist between the data in SAVE and immigration documents provided by the driver license or identification card applicant, the applicant will be denied a State-issued document and referred to the United States Citizenship and Immigration Service (USCIS) office to rectify the discrepancy.

4.7 Duration of Status (D/S) Procedures

Students, exchange program participants, and certain temporary workers (e.g., foreign diplomats) may be admitted for "duration of status." The State-issued identification document will expire on the date the education, exchange, or worker program terminates or on the date established by 21 Del.C. Section 2715 or Section 3103, whichever is more stringent. If the applicant is unable to provide a firm date when the program ends, the driver license's or identification card's expiration date will be one (1) year from the date of the application and renewable as long as the applicant provides documentation showing he/she is still enrolled in the program. Note: Foreign diplomat driver licenses are issued by the U.S. Department of State and not by the State of Delaware.

4.8 Ineligible Immigration Statuses. Those applicants who are legally in the United States under the following immigration status or holding invalid or expired documents are not eligible for a Delaware-issued driver license or identification card, even if they have established residency in this State:

4.8.1 Those with invalid or expired immigration or passport documents.

4.8.2 Those I-94 holders without a valid INS or USCIS stamp.

4.8.3 Immigration status A-1. Ambassador, public minister, career diplomatic or consular officer

and dependents are ineligible, because an "A" status may only be issued a driver's license from the United States State Department.

4.8.4 Immigration status A-2 for other foreign government officials or employees and dependents unless they are foreign military official and/or their dependents. Foreign military members and their dependents must provide a valid passport, I-94, visa, or assignment orders to be eligible.

4.8.5 Immigration status B-1. Visitor for business.

4.8.6 Immigration status B-2. Visitor for pleasure (tourist.)

4.8.7 Immigration status C-1. Alien in transit through the United States.

4.8.8 Immigration status C-2. Alien in transit to United Nations Headquarters district. Travel limited to 25 miles radius of Columbus Circle in New York.

4.8.9 Immigration status C-3. Foreign government official coming to the United Nations, dependents, attendants, servants, or other personal employees of official in transit through United States.

4.8.10 Immigration status D-1. Alien crew members.

4.8.11 Immigration status G-1. Resident representative of a foreign government to an international organization, plus staff and dependents.

4.8.12 Immigration status WB. Visitor for business (visa waiver program.)

4.8.13 Immigration status WT. Visitor for pleasure (tourist in visa waiver (program.)

4.9 Amending this Regulation. The Division of Motor Vehicles is authorized to publish memorandums to the staff identifying specific immigration documents and forms currently being used by the United States Citizenship and Immigration Services (USICS) regulate immigration procedures and to establish procedures for managing new USCIS programs without revising this regulation. Changes to the ineligibility status list in Section 4.8 must be made by amending this regulation.

5.0 Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portions shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed, and it is published in final form in the Register of Regulations in accordance with 29 Del.C. Section 10118(e).

STATE OF DELAWARE
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER

NUMBER ONE HUNDRED SIX

RE: Reallocation Of State Private Activity Bond Volume Cap For Calendar Year 2007 And Initial Suballocation Of State Private Activity Bond Volume Cap For Calendar Year 2008

WHEREAS, pursuant to 29 **Del.C.**§5091, the State's private activity bond volume cap ("Volume Cap") for 2007 under §103 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

WHEREAS, pursuant to Executive Order Number Ninety-Six, \$128,115,000 of the Volume Cap for 2007 which had been allocated to the State of Delaware was further sub-allocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, the allocation of Volume Cap in Executive Order Number Ninety-Six is subject to modification by further Executive Order; and

WHEREAS, the State's Volume Cap for 2007 and 2008 is allocated among the various State and local government issuers by 29 **Del.C.** §5091 (a); and

WHEREAS, New Castle County has reassigned \$44,840,000 of its unallocated Volume Cap for 2007 to the State of Delaware; and

WHEREAS, Kent County has reassigned \$25,625,000 of its unallocated Volume Cap for 2007 to the State of Delaware; and

WHEREAS, Sussex County has reassigned \$25,625,000 of its unallocated Volume Cap for 2007 to the State of Delaware; and

WHEREAS, the City of Wilmington has reassigned \$5,000,000 of its unallocated Volume Cap for 2007 to the State of Delaware; and

WHEREAS, the Delaware Economic Development Authority has \$64,057,500 of unused Volume Cap for 2007, previously allocated by Executive Order Ninety-Six; and

WHEREAS, pursuant to 29 **Del.C.** §5091 (b), the State's \$131,050,000 Volume Cap for 2008 is to be sub-allocated by the Governor between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, the Secretary of Finance recommends (i) that the \$101,090,000 unallocated Volume Cap for 2007 reassigned to the State of Delaware by other issuers be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) that the \$64,057,500 of unallocated Volume Cap reassigned by the Delaware Economic Development Authority be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the State's Volume Cap for 2008 of \$131,050,000 be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendations of the Secretary of Finance,

NOW, THEREFORE, I, RUTH ANN MINNER, by the authority vested in me as Governor of the State of

Delaware, do hereby declare and order as follows:

1. The \$101,090,000 of unallocated Volume Cap for 2007 that has been reassigned by New Castle County, Kent County, Sussex County and the City of Wilmington to the State of Delaware is hereby sub-allocated to the Delaware State Housing Authority for carry forward use, in addition to the \$64,057,500 previously sub-allocated to the Delaware State Housing Authority for 2007 under Executive Order Ninety-Six. Additionally, the \$64,057,500 of Volume Cap for 2007 previously allocated to the Delaware Economic Development Authority is allocated to the Delaware State Housing Authority, providing the Delaware State Housing Authority with a total carry forward amount of \$229,205,000.

2. The \$131,050,000 allocation to the State of Delaware of the 2008 Volume Cap is hereby sub-allocated: \$65,525,000 to the Delaware State Housing Authority and \$65,525,000 to the Delaware Economic Development Authority.

3. The aforesaid sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.

Approved February 1, 2008.

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

DELAWARE RIVER BASIN COMMISSION

NOTICE OF PUBLIC HEARING AND BUSINESS MEETING

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, March 12, 2008 beginning at 1:30 p.m. at the Commission's offices, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, March 20, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

NOTICE OF PUBLIC COMMENT PERIOD

School-Based Wellness Center Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) with 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan to add specific reimbursement methodology language for School-Based Wellness Center Services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by March 31, 2008.

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

NOTICE OF PUBLIC COMMENT PERIOD

Fair Hearing Procedures

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Fair Hearing procedures.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 31, 2008.

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
NOTICE OF PUBLIC COMMENT PERIOD
Long Term Care Resource Exclusions - Automobiles

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care Resource Exclusions – Automobiles.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2008.

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 SOCIAL SERVICES
NOTICE OF PUBLIC COMMENT PERIOD
Child Care Subsidy Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy 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 Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 31, 2008.

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.

DEPARTMENT OF INSURANCE
606 Proof of Automobile Insurance [Formerly Regulation 31]
NOTICE OF PUBLIC COMMENT PERIOD

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 606 relating to the standardization of insurance identification cards and notification to the Department of Motor Vehicles of the termination of automobile insurance. The docket number for this proposed amendment is 638.

The purpose of the proposed amendment to regulation is to eliminate the requirement that insurance identification cards be issued for periods of less than six months when the payment period is for a period of less than six months. The text of the proposed amendment is reproduced in the March 2008 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday April 7, 2008, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or

sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
NOTICE OF PUBLIC HEARING
1342 Health Care Provider Certification
Workers Compensation Regulations

The Health Care Advisory Panel, in accordance with 19 **Del.C.** §2322D, has proposed a certification process for the Health Care Provider Application for Certification ("Certification"). This proposal sets forth the Certification process and form.

A public hearing will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on April 14, 2008, at the Delaware Department of Labor, Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed Certification and form may obtain a copy from John Kirk, Administrator, Delaware Workers' Compensation Division, Department of Labor, P.O. Box 9828, 4425 N. Market Street, Wilmington, DE 19809-9954. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE
REGISTER NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)

Title of the Regulations:

Tidal Finfish Regulations

Brief Synopsis of the Subject, Substance and Issues:

The Summer Flounder Fishery Management Plan (FMP) details the annual process that the Atlantic States Marine Fisheries Commission's Summer Flounder Fishery Management Board, the Mid-Atlantic Fisheries Management Council and the National Marine Fisheries Service are to use for establishing conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2008. Delaware is obligated to cap the summer flounder recreational harvest at 64,000 fish for 2008. The harvest cap has been adjusted downward from the previous year's level of 76,608 fish because of slower than projected rebuilding in the stock. Although Delaware and all the coastal states in the management regime must adjust their harvest cap downward, estimates of Delaware's 2007 harvest (109,696 fish) indicated that landings of summer flounder exceeded the harvest cap imposed for 2007. As such, it is anticipated that management measures for summer flounder in 2008 will need to achieve a 41.3 percent harvest reduction from the estimated harvest in 2007. It is proposed that a suite of management options will be developed that take into consideration measures that have been successfully employed in the past to achieve reductions in harvest while attempting to meet the needs of the fishing public. These options will include potential minimum size limits ranging between 18.5 and 19.5 inches in combination with various creel limits that can range from 1 to 4 fish per day and also incorporate seasonal closures. Five management options for Delaware have been reviewed by the ASMFC Summer Flounder Technical Committee to determine if the correct data sets and analyses were used to project landings under the various options. All five options were deemed technically valid by the ASMFC Summer Flounder technical committee and were also approved by the ASMFC Summer Flounder Board on February 7, 2008. These approved options will be presented at a public hearing on March 27, 2008 in order to receive input from the fishing community on the various management strategies.

Notice of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on these proposed amendments will be held on March 27, 2008 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, April 2, 2008.

Prepared By:

Richard Cole, (302) 739-4782, February 6, 2008.

DIVISION OF FISH AND WILDLIFE
REGISTER NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

3716 Crab Pot Number Buoys and Vessel Panel Color Code and Number Requirements, and 3771 Oyster Harvesting Licensee Requirements

Brief Synopsis of the Subject, Substance and Issues:

This proposed revision of Shellfish Regulation 3716 would allow only one color code to be used per vessel even if the allowable limit of up to three crab pot licensees fish their pots from the same vessel. This proposed change will facilitate enforcement of the pot limits and will simplify painting and retrieving of crab pot floats for those crabbers who routinely partner to fish from the same vessel. There is no proposed change to the numbering system for each crabber except that if two or three crabbers fish from the same vessel, then all numbers must be displayed on the 2' by 2' marker panel displayed on the vessel. One of the numbers from a crabber on that vessel must be displayed on a color-coded buoy attached to each crab pot fished from that vessel. This regulation is proposed to go into effect January 1, 2009 in order to give the crabbers an opportunity to re-paint their floats if necessary to comply with the new regulation.

The proposed revision to Shellfish Regulation 3771 would modify the required procedures for applying oyster harvesting tags. Each tag issued by the Department shall be cinched around the top of the oyster bag and locked such that the bag may not be opened nor oysters removed from the bag without breaking the tag or seal. Bags shall be tagged prior to the vessel leaving the shellfish harvest grounds and returning to port. This change will facilitate enforcement of tagging requirements and should discourage the illegal, yet common practice of re-using oyster tags after the bags are emptied. This regulation would go into effect immediately upon promulgation.

Possible Terms of the Agency Action:

Changes to regulation 3716 would not go into effect until January 1, 2009. Changes to regulation 3771 would take effect immediately upon promulgation. These regulation revisions would remain in effect indefinitely or until changed.

Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302)739-3441. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on March 31, 2008. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to Lisa.Vest@state.de.us. The hearing record will remain open for written or e-mail comments until 4:30 PM April 2, 2008.

Prepared By:

Roy W. Miller, 302-739-9914, February 12, 2008.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2700 Board of Professional Land Surveyors
NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Chapter 27, Section 2706(a)(1), the Delaware Board of Professional Land Surveyors proposes to revise its Rules and Regulations. The proposed Rules and Regulations are being updated to change references to the Board Chair, better define the field experience requirement for those seeking licensure, adopt a process for foreign credentialing, eliminate a table dealing with the licensure process, and other items.

A public hearing will be held on the proposed Rules and Regulations on Thursday, April 17th, 2008 at 9:00 a.m. in Conference Room A, second floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments shall be submitted to the Board in care of the Division of Professional Regulation at the above address. The final date to submit written comments shall be at the above scheduled Public Hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or make comments at the Public Hearing should notify the Division of Professional Regulation at (302) 744-4500.

DIVISION OF PROFESSIONAL REGULATION
3500 Board of Examiners of Psychologists
NOTICE OF PUBLIC HEARING

The Delaware Board of Examiners of Psychologists, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3506(a)(1), proposes amendments to its regulation 11.0. Specifically, the proposed modification of regulation **11.0 Professional Conduct** would require licensees to adhere to the American Psychological Association's current Record Keeping Guidelines.

A public hearing is scheduled for Thursday, April 7, 2008 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Nancy Fields at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Nancy Fields at the above address or by calling (302) 744-4500.

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

DIVISION OF PROFESSIONAL REGULATION
Controlled Substance Committee
NOTICE OF PUBLIC HEARING

Consistent with a recent statutory amendment which relocated the Office of Controlled Substances to the Division of Professional Regulation, Department of State, the Delaware Controlled Substance Committee, in accordance with 29 **Del.C.** Chapter 101 and 16 **Del.C.** §4731, proposes amendments to its controlled substance regulations.

The public hearing has been rescheduled for Tuesday, March 11, 2008 at 1:00 p.m. in the Conference Room of the Medical Examiners Office, 200 South Adams Street, Wilmington, DE 19801. The Controlled Substance Committee will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Committee care of David Dryden, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact David Dryden at the above address or by calling (302) 677-7313.

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