
Delaware Register of Regulations

Issue Date: September 1, 2020

Volume 24 - Issue 3, Pages 200 - 293



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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 August 15, 2020.

The Delaware Breakwater East
End Lighthouse
Lewes, Delaware

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 16	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.

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Statutory Authority: 7 Delaware Code, Sections 901(b), (c) and (d); 903(a), (b) and (e)(2)b. (7 Del.C. §§901(b), (c) and (d); 903(a), (b) & (e)(2)b.)
7 DE Admin. Code 3503 & 3504

Amendment to Secretary's Order No: 2020-F-0024

**3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit
3504 Striped Bass Possession Size Limit; Exceptions**

***Please Note:** The Secretary's Order that approved *Final Regulations of 7 DE Admin. Code 3503 - Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit and 7 DE Admin. Code 3504 - Striped Bass Possession Size Limit; Exceptions*, as published in the August 1, 2020 issue of the *Delaware Register of Regulations* (24 DE Reg. 175) by the State Registrar's Office, contained the following clerical error:

- (1) Under the first section of the Order, "**Background, Procedural History and Findings of Fact**", the first sentence of the fourteenth paragraph contains a clerical error. The sentence containing the error is reprinted below, with the error corrected:

Following receipt of the Department's TRM as noted above, the Hearing Officer prepared her Hearing Officer's Report dated ~~June~~ **July** 13, 2020 ("Report"), which expressly incorporated both the Department's proposed Amendments and the TRM into the Record generated in this matter.

The regulatory text itself, as previously published by the State Registrar as referenced above, is accurate.

Date: August 26, 2020

Shawn M. Garvin
Secretary

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303(a)-(c); 29 Delaware Code, Section 10119 (14 **Del.C.** §§122(b)(15) & 303(a)-(c) & 29 **Del.C.** §10119)

ORDER**1010 Interscholastic Athletics during the COVID-19 Pandemic**

WHEREAS, pursuant to 14 **Del.C.** §§303(a) and (b), the Delaware Interscholastic Athletic Association (“DIAA”) is a unit of the Delaware Department of Education that works in consultation and cooperation with the Department of Education to develop regulations relating to interscholastic athletics for middle and secondary schools in Delaware; and

WHEREAS, pursuant to 14 **Del.C.** §303(c), DIAA adopts regulations as to the sports over which it has jurisdiction; and

WHEREAS, pursuant to 14 **Del.C.** §301, DIAA was established, in part, to preserve and promote the educational significance of interscholastic athletics, provide for fair competition between member schools, protect the physical well-being of student athletes, and promote healthy adolescent lifestyles; and

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

WHEREAS, on June 1, 2020, DIAA’s Sports Medicine Advisory Committee (“SMAC”) issued recommendations to the DIAA Board of Directors for returning to play once interscholastic athletics resumes; and

WHEREAS, on June 4, 2020, DIAA’s Rules and Regulations Committee recommended the DIAA Board of Directors develop a new regulation regarding COVID-19 that includes SMAC’s recommendations for returning to play; and

WHEREAS, on June 14, 2020, the Governor issued the Twenty-First Modification of the State of Emergency

Order, which permits youth sports and other types of physical activity for children to resume during Phase 2 of the State's economic reopening, beginning on June 15, 2020; and

WHEREAS, the Delaware Department of Health and Social Services' Division of Public Health issued guidance concerning youth sports and suggested guidelines for returning to sports safely during COVID-19; and

WHEREAS, on June 24, 2020, the DIAA Board of Directors determined that the adoption of an emergency regulation was necessary to protect the physical well-being of student athletes and promote healthy adolescent lifestyles during the State of Emergency and proposed that the adoption of the regulation to the Delaware Department of Education ("DOE"), subject to the State Board of Education's approval, occur on an emergency basis (the "Emergency Regulation"); and

WHEREAS, on June 30, 2020, the State Board of Education approved the adoption of the Emergency Regulation and the Emergency Regulation went into effect on July 1, 2020.

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

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

WHEREAS, on August 6, 2020, the DIAA Board of Directors determined that amendments to the Emergency Regulation were necessary to promote the educational significance of interscholastic athletics, provide for fair competition between member schools, protect the physical well-being of student athletes, and promote healthy adolescent lifestyles during the State of Emergency and proposed that the adoption of the amendments to the Emergency Regulation to the Department of Education, subject to the State Board of Education's approval, occur on an emergency basis; and

WHEREAS, in accordance with 29 Del.C. §10119(4), the DIAA Board of Directors will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the attention of the DIAA Board of Directors, Delaware Department of Education, 35 Commerce Way, Suite 1, Dover, DE 19904 or emailing the petitions to DIAA@doe.k12.de.us.

WHEREAS, in accordance with 29 Del.C. §10119(3), the Emergency Regulation shall be effective for 120 days from July 1, 2020 and may be renewed once for a period not exceeding 60 days; and

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

NOW, THEREFORE, IT IS ORDERED this 14th day of August, 2020 that the following amendments to the Emergency Regulation, Interscholastic Athletics during the COVID-19 Pandemic, attached hereto as Exhibit A shall take effect immediately.

IT IS SO ORDERED the 14th day of August, 2020.

Department of Education

Susan S. Bunting, Ed., Secretary of Education

Approved this 14th day of August, 2020.

State Board of Education

/s/ Whitney Sweeney, President

/s/ Vincent Lofink

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

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

Nina Lou Bunting (Voted no)

/s/ Provey Powell, Jr.

Candace Fifer (Voted no)

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

Exhibit A**1010 Interscholastic Athletics during the COVID-19 Pandemic****1.0 Applicability**

The Delaware Interscholastic Athletic Association was established, in part, to protect the physical well-being of student athletes and promote healthy adolescent lifestyles (14 **Del.C.** §301). This regulation shall apply to Interscholastic Athletics at Member Schools during the public health emergency due to the COVID-19 pandemic.

2.0 Definitions

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

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

“Competition” means a contest between two schools in which student athletes compete.

“Conditioning Program” means a voluntary conditioning program that is available to all interested, enrolled students at a Member School, is not restricted to members of a particular team, and in which sport-specific equipment and organized drills in the skills and techniques of a particular sport are prohibited as provided in subsection 6.5 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009.

“Department” means the Delaware Department of Education.

“Interscholastic Athletics” means sports engaged in by middle and high school student athletes who represent Member Schools. Interscholastic athletics is education-based. Interscholastic athletic programs are designed to support the academic mission of Member Schools and serve as an extension of the classroom that provides learning experiences to student athletes.

“Member School” means a full or associate member school of the Delaware Interscholastic Athletic Association and includes all Delaware public schools and nonpublic Delaware schools that elect to become member schools.

“Open Gym Program” means a voluntary program that is available to all interested, enrolled students at a Member School in which the Member School opens its gymnasium or other facility for informal, recreational activities as provided in subsection 6.4 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009.

“Play Day” is a preseason event involving a series of Scrimmages held during the legal practice period for that sport season involving multiple schools.

“PPE Form” means the DIAA-approved pre-participation physical evaluation form that a student athlete is required to submit to the student athlete’s Member School prior to participating in interscholastic tryouts, practices, scrimmages, and games.

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

“Qualified Healthcare Professional” means a Doctor of Medicine (MD); a Doctor of Osteopathic Medicine (DO); or a school nurse, a nurse practitioner, a physician assistant, or an athletic trainer. Qualified Healthcare Professionals shall be licensed in good standing in the state in which they practice.

“Reexamination” means the limited reexamination in order to medically clear a student athlete who had a pre-participation physical and evaluation and was subsequently treated for an injury during the preceding sports season, absent from school for an illness other than the usual minor upper respiratory or gastrointestinal upset during the preceding sports season, had an operation performed during the preceding sports season, or has a remedial defect as required by subsection 3.1.3 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009.

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

“**Tournament**” means a series of competitions between a number of Member Schools in a DIAA-recognized sport.

“**Vulnerable Individual**” means a person who qualifies as vulnerable and is strongly advised to shelter in place based on the Delaware Division of Public Health’s guidance, including a person who is over the age of 65, a person who is immunocompromised, and a person with an underlying health condition. Conditions that can cause a person to be immunocompromised include cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications. Underlying health conditions include chronic lung disease, moderate to severe asthma, a serious heart condition, severe obesity (body mass index of 40 or higher), and diabetes.

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

3.0 Pre-Participation Physical Examination

3.1 New Student Athletes and Out-of-State Transfer Student Athletes

3.1.1 A student athlete who enters sixth or ninth grade, seeks to participate in Interscholastic Athletics for the first time at the middle or high school level, or transfers from another state and enrolls in middle or high school at a Member School for the 2020-2021 school year shall obtain a physical and evaluation and submit the completed 2020-2021 PPE Form before trying out, practicing, scrimmaging, and competing.

3.2 Returning Student Athletes Who Obtained a Physical for the 2020-2021 School Year

3.2.1 If a student athlete obtained a physical and evaluation after April 1, 2020 and prior to the effective date of this regulation, the student athlete may submit a completed 2019-2020 PPE Form and ~~2020-2021 Supplemental PPE Form~~ 2020-2021 History Form and Athlete Medical Card to be eligible to participate in tryouts, practices, scrimmages, and competitions during the 2020-2021 school year.

3.2.2 The student athlete is not required to submit a completed 2020-2021 PPE Form unless the student athlete requires a Reexamination.

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

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

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

3.3.3 If a Member School’s Qualified Healthcare Professional does not make a determination as provided in subsections 3.3.1 and 3.3.2, the student athlete shall obtain a physical and evaluation

and submit the completed 2020-2021 PPE Form before trying out, practicing, scrimmaging, or competing.

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

- 4.1 Member Schools, student athletes, coaches, administrators, officials, and spectators shall comply with the requirements of this regulation and of all orders and guidance applicable to sports, exercise facilities, and pools issued by the State related to the COVID-19 pandemic. The Board may investigate, conduct hearings, and impose penalties for failure to comply with any of the requirements of this regulation.
- 4.2 ~~If in-person instruction is not permitted by the State and school buildings are closed statewide under a State order, interscholastic athletic activities, including tryouts, practices, scrimmages, competitions, and tournament events, shall be suspended. If the State determines there is significant community spread of COVID-19, school buildings are closed, and only remote learning is permitted, all interscholastic athletic activities, including tryouts, Practices, Scrimmages, Competitions, and tournament events, shall be suspended for all Member Schools.~~ Member Schools shall not offer or permit interscholastic athletic activities of any kind. Member Schools that offer or permit interscholastic athletic activities in violation of this subsection gain an unfair advantage over other Member Schools once Interscholastic Athletics resume and may have penalties imposed against them.
- 4.3 ~~If in-person instruction is not permitted by the State at some schools or school buildings are closed in some areas of the State (e.g., COVID-19 hotspots or a Member School chooses to be closed), interscholastic athletic activities, including tryouts, practices, scrimmages, competitions, and tournament events, shall be suspended for the Member Schools that are not permitted to provide in-person instruction or whose school buildings are closed. Member Schools that are permitted to provide in-person instruction and whose buildings are open may provide interscholastic athletic activities subject to the requirements in subsection 4.4. If the State determines there is minimal-to-moderate community spread of COVID-19 and a hybrid model of remote instruction and in-person learning options with precautions in place is permitted, Member Schools whose buildings are open may provide interscholastic athletic activities subject to the requirements in subsection 4.5.~~
- 4.4 ~~If the State determines there is minimal community spread of COVID-19 and schools are open for in-person instruction, Member Schools whose buildings are open may provide interscholastic athletic activities subject to the requirements in subsection 4.5.~~
- 4.4.5 ~~If in-person instruction is permitted by the State and school buildings are open at some or all Member Schools, If subsection 4.3 or 4.4 applies, the Board shall determine the applicable DIAA Return to Play Stage for Member Schools that choose to have Interscholastic Athletics.~~
- 4.4.14.5.1 ~~DIAA Return to Play Stages are different from the State's Economic Reopening Phases. DIAA may establish and enforce requirements for Interscholastic Athletics that are stricter than the Delaware Division of Public Health's guidance and the State's Economic Reopening Phases guidelines applicable to sports.~~
- 4.4.24.5.2 ~~How the Applicable DIAA Return to Play Stage Is Determined~~
- 4.4.2.14.5.2.1 ~~Movement from and between the DIAA Return to Play Stages will be determined by the Board in consultation with the Delaware Division of Public Health and subject to the State's orders.~~
- 4.4.2.24.5.2.2 ~~The Board's Executive Director shall provide notice to Member Schools of the applicable DIAA Return to Play Stage.~~
- 4.4.34.5.3 ~~Requirements That Apply to DIAA Return to Play Stages 1, 2, and 3~~
- 4.4.3.14.5.3.1 ~~Member Schools may establish and enforce stricter requirements than the requirements provided in this regulation.~~
- 4.4.3.24.5.3.2 ~~Member Schools shall perform screenings for COVID-19 symptoms before every activity, including team meetings.~~
- 4.4.3.2.14.5.3.2.1 ~~Screenings shall include a temperature check.~~

- ~~4.4.3.2~~~~24.5.3.2.2~~ The Member School shall record the temperatures and responses to the screening questions of each person on the DIAA COVID-19 Screening Form. The responses shall be recorded and stored by the Member School.
- ~~4.4.3.2~~~~34.5.3.2.3~~ The person conducting the screenings shall immediately report any person whose temperature is above 100.4°F or who had a positive response to one of the screening questions to the Member School's Qualified Healthcare Professional. The Member School's Qualified Healthcare Professional shall confirm if the person has any symptoms of COVID-19. A person who has any symptoms of COVID-19 shall not participate in the activity, shall leave the school premises immediately, and shall not return to any interscholastic athletic activities until the Member School receives written verification of the person's negative polymerase chain reaction (PCR) test for COVID-19 and the person is cleared by the Delaware Division of Public Health.
- ~~4.4.3.3~~~~34.5.3.3~~ Student athletes shall wear cloth face coverings based on the Delaware Division of Public Health's current guidance applicable to sports. All other individuals, including coaches, administrators, officials, and spectators, shall wear cloth face coverings as required by the State's emergency order and modifications thereto.
- ~~4.4.3.4~~~~44.5.3.4~~ Social distancing shall be maintained based on the Delaware Division of Public Health's guidance applicable to sports, including at facilities and on buses. Member Schools shall ensure social distancing by student athletes during non-playing time, including arranging alternate seating so student athletes are not clustered together on bleachers and benches.
- ~~4.4.3.5~~~~54.5.3.5~~ Member Schools shall organize and stagger student athletes' arrival and departure procedures to reduce close contact and mixing of teams.
- ~~4.4.3.6~~~~64.5.3.6~~ Student athletes shall not gather in enclosed spaces, such as dugouts, unless they can maintain social distancing based on the Delaware Division of Public Health's current guidance applicable to sports.
- ~~4.4.3.7~~~~74.5.3.7~~ Member Schools shall make hand sanitizer or hand washing stations readily available to individuals throughout the facilities where Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, and Open Gym Programs are held, including at each entry and exit. Hand sanitizer shall be composed of 60% ethanol or 70% isopropanol.
- ~~4.4.3.8~~~~84.5.3.8~~ Hydration stations are prohibited. Student athletes shall bring their own water bottles to interscholastic athletic activities but they shall not share their water bottles with others.
- ~~4.4.3.9~~~~94.5.3.9~~ Spitting of all types is prohibited, including chewing sunflower seeds, chewing gum, spitting of water post-rinsing, and general spitting.
- ~~4.4.3.10~~~~104.5.3.10~~ Coaches and officials shall bring their own clothing, towels, and drinks.
- ~~4.4.3.11~~~~114.5.3.11~~ Officials shall use artificial noisemakers, such as an electronic whistle, instead of traditional whistles.
- ~~4.4.3.12~~~~124.5.3.12~~ Member Schools shall follow the Delaware Division of Public Health's and the Center for Disease Control's infection control guidelines for cleaning of bodily fluids.
- ~~4.4.3.13~~~~134.5.3.13~~ Handshakes, high-fives, and fist bumps are discouraged.
- ~~4.4.3.14~~~~144.5.3.14~~ Spectators shall adhere to the restrictions on gatherings based on the State's orders.
- ~~4.4.3.15~~~~154.5.3.15~~ Scrimmages and Competitions against a school in a different state should be avoided. If a Member School's team travels to a Scrimmage or Competition against a school in a different state, the team shall follow all of the requirements in this regulation and any applicable requirements of the other state.
- ~~4.4.3.16~~~~164.5.3.16~~ Hosting Scrimmages and Competitions for a school from a different state is discouraged. If a member school hosts a Scrimmage or Competition with a school from a different state, the out-of-state school is required to follow applicable guidance and orders.

- 4.4.3.174.5.3.17 Member Schools are required to post extensive signage for student athletes, coaches, administrators, officials, and spectators about wearing required face coverings, maintaining social distancing, hand washing, covering coughs and sneezes, and staying home if experiencing COVID-19 symptoms.
- 4.4.3.184.5.3.18 Member Schools shall ensure student athletes, coaches, administrators, officials, and spectators are informed and routinely reminded of team infection control measures and of the expectation to stay home when sick.
- 4.4.3.194.5.3.19 Coaching out of season, as provided in subsection 7.6 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 is permitted in DIAA Return to Play Stages 1, 2, and 3.
- 4.4.44.5.4 DIAA Return to Play Stage 1 – During DIAA Return to Play Stage 1, Workouts are permitted subject to the limitations in subsection 4.4.4.4.5.4.4. Practices, Scrimmages, Competitions, Play Days, Tournament events, Conditioning Programs, and Open Gym Programs are not permitted.
- 4.4.4.14.5.4.1 Vulnerable Individuals shall not attend Workouts.
- 4.4.4.24.5.4.2 All coaches and student athletes shall be screened by their Member School for COVID-19 symptoms prior to every Workout.
- 4.4.4.34.5.4.3 Member Schools shall keep a record of all persons present at every Workout.
- 4.4.4.44.5.4.4 Limitations on DIAA Return to Play Stage 1 Workouts
- 4.4.4.4.14.5.4.4.1 Workouts shall be held outdoors only.
- 4.4.4.4.24.5.4.4.2 Workouts shall be limited to no more than 10 student athletes at a time and shall be conducted in pods of five to 10 with the same student athletes working out together during each Workout.
- 4.4.4.4.34.5.4.4.3 Individuals shall maintain social distancing at all times based on the Delaware Division of Public Health's guidance applicable to sports. If individuals cannot maintain the minimum distance, the maximum number of individuals shall be decreased until proper social distancing occurs.
- 4.4.4.4.44.5.4.4.4 Individual drills requiring the use of athletic equipment are permitted.
- 4.4.4.4.54.5.4.4.5 Resistance training is permitted and shall be emphasized with bodyweight based, sub-maximal lifts and use of resistance bands.
- 4.4.4.54.5.4.5 Athletic Equipment
- 4.4.4.5.14.5.4.5.1 Athletic equipment, including towels, clothing, shoes, and sports specific equipment, shall not be shared between student athletes.
- 4.4.4.5.24.5.4.5.2 Clothing and towels shall be washed after each Workout.
- 4.4.4.5.34.5.4.5.3 All athletic equipment, including balls and equipment for individual drills and resistance training, shall be cleaned after each use and prior to use by the next individual.
- 4.4.4.64.5.4.6 Additional Health and Safety Requirements
- 4.4.4.6.14.5.4.6.1 Locker rooms shall be closed.
- 4.4.4.6.24.5.4.6.2 Member Schools shall adequately clean bathrooms with an EPA List 6 approved disinfectant.
- 4.4.4.6.34.5.4.6.3 Coaches shall limit the number of individuals in the bathroom in order to maintain social distancing.
- 4.4.4.6.44.5.4.6.4 Student athletes and coaches shall clean their hands based on the Delaware Division of Public Health's guidance before touching any surfaces and before and after participating in Workouts.
- 4.4.4.6.54.5.4.6.5 Member Schools shall cover equipment that has holes with exposed foam, such as athletic pads.
- 4.4.4.6.64.5.4.6.6 Student athletes shall report to Workouts in proper gear, should return home to shower at the end of Workouts, and should wash their Workout clothing immediately upon returning home.

4.5.4.7 Notwithstanding subsections 7.6.1 and 7.6.1.3 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009, if the Board determines DIAA Return to Play Stage 1 is applicable, a certified, emergency, or volunteer coach may provide instruction out of the designated season in his or her assigned sport to any student registered in the school at which he or she coaches, including providing instruction or coaching during the designated season in his or her sport to current members of the varsity or subvarsity teams of the school at which he or she coaches outside of school-sponsored Practices, Scrimmages, and Competitions, subject to the conditions in subsection 7.6.1.1 and 7.6.1.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009.

~~4.4.5.4.5.5~~ DIAA Return to Play Stage 2 – During DIAA Return to Play Stage 2, Workouts; Practices in the sports specified in subsection ~~4.4.5.4~~ 4.5.5.4; and Practices, Scrimmages, and Competitions in the sports specified in subsection ~~4.4.5.5~~ 4.5.5.5 are permitted subject to the limitations in subsection ~~4.4.5.6~~ 4.5.5.6. Play Days and Tournament events are not permitted. Conditioning Programs and Open Gym Programs that are held outdoors are permitted.

~~4.4.5.14.5.5.1~~ Vulnerable Individuals shall not attend Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, or Open Gym Programs.

~~4.4.5.24.5.5.2~~ All coaches and student athletes shall be screened by their Member School for COVID-19 symptoms prior to every Workout, Practice, Scrimmage, Competition, Conditioning Program, or Open Gym Program. Officials shall be screened by the host Member School prior to officiating.

~~4.4.5.34.5.5.3~~ Member Schools shall keep a record of all persons present at every Workout, Practice, Scrimmage, Competition, Conditioning Program, and Open Gym Program.

~~4.4.5.44.5.5.4~~ Practices are permitted in the following sports during Stage 2: baseball; ~~outdoor~~ basketball; cross country with staggered starts; field hockey; girls' lacrosse; soccer; softball; swimming - individual and relays; tennis; track and field – high jump, individual running events, long jump, pole vault, and throwing events; and volleyball.

~~4.4.5.54.5.5.5~~ Practices, Scrimmages, and Competitions are permitted in the following sports during Stage 2: ~~Cross country with staggered starts; golf;~~ golf and track and field – individual running events and throwing events only.

~~4.4.5.64.5.5.6~~ Limitations on DIAA Return to Play Stage 2 Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, and Open Gym Programs

~~4.4.5.6.14.5.5.6.1~~ ~~Workouts, Practices, Scrimmages, and Competitions, Conditioning Programs, and Open Gym Programs~~ shall be held outdoors only except that volleyball Practices may be held indoors if permitted by the Delaware Division of Public Health's guidance applicable to youth sports. Workouts, Conditioning Programs, and Open Gym Programs may be held indoors or outdoors if permitted by the Delaware Division of Public Health's guidance applicable to sports.

~~4.4.5.6.24.5.5.6.2~~ The number of individuals participating in a Workout, Practice, Scrimmage, Competition, Conditioning Program, or Open Gym Program shall be limited based on the Delaware Division of Public Health's guidance.

~~4.4.5.6.34.5.5.6.3~~ Workouts shall be conducted in pods of five to 10 student athletes with the same student athletes working out together during each Workout.

~~4.4.5.6.44.5.5.6.4~~ Individuals shall maintain social distancing at all times, including on sidelines and benches, based on the Delaware Division of Public Health's guidance applicable to sports. If individuals cannot maintain the minimum distance, the maximum number of individuals shall be decreased until proper social distancing occurs.

~~4.4.5.6.54.5.5.6.5~~ Teams should remain stable from one day to the next. The same student athletes and staff should make up one team. Student athletes and staff should not switch between teams. Member Schools should restrict interaction between teams as much as possible to reduce the risk of spread of COVID-19. Staggered scheduling by team is encouraged.

- ~~4.4.5.74~~5.5.7 Athletic Equipment
- ~~4.4.5.7.14~~5.5.7.1 Athletic equipment, including towels, clothing, shoes, and sports specific equipment, shall not be shared between student athletes.
- ~~4.4.5.7.24~~5.5.7.2 Clothing and towels shall be washed after each Workout, Practice, Scrimmage, Competition, Conditioning Program, and Open Gym Program.
- ~~4.4.5.7.34~~5.5.7.3 All sports specific athletic equipment, including balls, shall be intermittently cleaned during practices and contests.
- ~~4.4.5.744~~5.5.7.4 Athletic equipment for individuals, such as bats, batting helmets, and catcher's gear, shall be cleaned between uses.
- ~~4.4.5.84~~5.5.8 Additional Health and Safety Requirements
- ~~4.4.5.8.14~~5.5.8.1 Locker rooms shall be closed.
- ~~4.4.5.8.24~~5.5.8.2 Member Schools shall sanitize all hard surfaces with an EPA List 6 approved disinfectant, including equipment, bathrooms, and benches, of the facility where the Workout, Practice, Scrimmage, Competition, Conditioning Program, and Open Gym Program will be held prior to an individual or group entering the facility.
- ~~4.4.5.8.34~~5.5.8.3 Individuals shall clean their hands based on the Delaware Division of Public Health's guidance before touching any surfaces and before and after participating in Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, and Open Gym Programs.
- ~~4.4.5.8.44~~5.5.8.4 Member Schools shall cover equipment that has holes with exposed foam, such as athletic pads.
- ~~4.4.5.8.54~~5.5.8.5 Student athletes shall report to Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, and Open Gym Programs in proper gear, should return home to shower at the end of the Workout, Practice, Scrimmage, Competition, Conditioning Program, or Open Gym Program, and should wash their Workout, Practice, Scrimmage, Competition, Conditioning Program, or Open Gym Program clothing immediately upon returning home.
- ~~4.5.5.9~~ Notwithstanding subsections 7.6.1 and 7.6.1.3 of 14 DE Admin. Code 1008 and 14 DE Admin. Code 1009, if the Board determines DIAA Return to Play Stage 2 is applicable, a certified, emergency, or volunteer coach may provide instruction out of the designated season in his or her assigned sport to any student registered in the school at which he or she coaches, including providing instruction or coaching during the designated season in his or her sport to current members of the varsity or subvarsity teams of the school at which he or she coaches outside of school-sponsored Practices, Scrimmages, and Competitions, subject to the conditions in subsection 7.6.1.1 and 7.6.1.2 of 14 DE Admin. Code 1008 and 14 DE Admin. Code 1009.
- ~~4.4.6.4~~5.6 DIAA Return to Play Stage 3 – During DIAA Return to Play Stage 3, Workouts; modified Practices in the sports specified in subsection ~~4.4.6.4~~ 4.5.6.4; and Practices, Scrimmages, and Competitions in the sports specified in subsection ~~4.4.6.5~~ 4.5.6.5 are permitted subject to the limitations in subsection ~~4.4.6.6~~ 4.5.6.6. Play Days and Tournament events are not permitted. Conditioning Programs and Open Gym Programs (indoors and outdoors) are permitted.
- ~~4.4.6.14~~5.6.1 Vulnerable Individuals may attend Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, and Open Gym Programs if permitted by the Delaware Division of Public Health's guidelines.
- ~~4.4.6.24~~5.6.2 All coaches and student athletes shall be screened by their Member School for COVID-19 symptoms prior to every Workout, Practice, Scrimmage, Competition, Conditioning Program, and Open Gym Program. Officials shall be screened by the host Member School prior to officiating.
- ~~4.4.6.34~~5.6.3 Member Schools shall keep a record of all persons present at every Workout, Practice, Scrimmage, Competition, Conditioning Program, and Open Gym Program.

- ~~4.4.6.44.5.6.4~~ Modified Practices that comply with the Delaware Division of Public Health's guidelines for social distancing are permitted in the following sports during Stage 3: ~~football, boys' lacrosse, and wrestling~~ lacrosse.
- ~~4.4.6.54.5.6.5~~ Practices, Scrimmages, and Competitions are permitted in the following sports during Stage 3: baseball; basketball; cross country with staggered starts; field hockey; golf; girls' lacrosse; soccer; softball; swimming - individual and relays; tennis; track and field – high jump, individual running events, long jump, pole vault, and throwing events; and volleyball.
- ~~4.4.6.64.5.6.6~~ Limitations on DIAA Return to Play Stage 3 Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, and Open Gym Programs
- ~~4.4.6.6.14.5.6.6.1~~ Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, and Open Gym Programs may be held indoors or outdoors if permitted by the Delaware Division of Public Health's guidance applicable to sports.
- ~~4.4.6.6.24.5.6.6.2~~ The number of individuals participating in a Workout, Practice, Scrimmage, Competition, Conditioning Program, or Open Gym Program shall be limited based on the Delaware Division of Public Health's guidance.
- ~~4.4.6.6.34.5.6.6.3~~ Individuals shall maintain social distancing at all times, including on sidelines and benches, based on the Delaware Division of Public Health's guidance applicable to sports. If individuals cannot maintain the minimum distance, the maximum number of individuals shall be decreased until proper social distancing occurs.
- ~~4.4.6.6.44.5.6.6.4~~ Teams should remain stable from one day to the next. The same student athletes and staff should make up one team. Student athletes and staff should not switch between teams. Member Schools should restrict interaction between teams as much as possible to reduce the risk of spread of COVID-19. Staggered scheduling by team is encouraged.
- ~~4.4.6.74.5.6.7~~ Athletic Equipment
- ~~4.4.6.7.14.5.6.7.1~~ Towels, clothing, and shoes shall not be shared between student athletes.
- ~~4.4.6.7.24.5.6.7.2~~ Clothing and towels shall be washed after each Workout, Practice, Scrimmage, Competition, Conditioning Program, and Open Gym Program.
- ~~4.4.6.7.34.5.6.7.3~~ Athletic equipment for individuals, such as bats, batting helmets, and catcher's gear, shall be cleaned between uses. Other equipment, such as football helmet/pads, hockey helmets/pads, lacrosse helmets/pads/gloves/eyewear, and wrestling ear guards, shall be worn by only one individual and not shared.
- ~~4.4.6.7.44.5.6.7.4~~ Weight equipment shall be wiped down thoroughly before and after an individual's use.
- ~~4.4.6.7.54.5.6.7.5~~ Maximum lifts shall be limited and power cages shall be used for squats and bench presses. Spotters may stand at the end of the bar.
- ~~4.4.6.84.5.6.8~~ Additional Health and Safety Requirements
- ~~4.4.6.8.14.5.6.8.1~~ Staggered use of indoor communal spaces may begin in the weight room, locker room, and athletic training room. Member Schools shall increase ventilation in indoor communal spaces by using fans or opening windows or doors if it is safe to open them.
- ~~4.4.6.8.24.5.6.8.2~~ Member Schools shall sanitize all hard surfaces with an EPA List 6 approved disinfectant, including chairs, furniture in meeting rooms, locker rooms, weight room equipment, bathrooms, and athletic training room tables, of the facility where the Workout, Practice, Scrimmage, Competition, Conditioning Program, or Open Gym Program will be held prior to an individual or group entering the facility.
- ~~4.4.6.8.34.5.6.8.3~~ Individuals shall clean their hands based on the Delaware Division of Public Health's guidance before touching any surfaces and before and after participating in Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, and Open Gym Programs.

- ~~4.4.6.8.44~~5.6.8.4 Member Schools shall cover equipment that has holes with exposed foam, such as athletic pads and weight benches.
- ~~4.4.6.8.54~~5.6.8.5 Student athletes shall report to Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, and Open Gym Programs in proper gear, should return home to shower at the end of Workouts, Practices, Scrimmages, Competitions, Conditioning Programs, and Open Gym Programs, and should wash their Workout, Practice, Scrimmage, Competition, Conditioning Program, and Open Gym Program clothing immediately upon returning home.
- ~~4.4.6.8.64~~5.6.8.6 Student athletes shall wear appropriate clothing and shoes at all times in the weight room to minimize sweat from transmitting onto equipment and other hard surfaces.

5.0 2020-2021 Fall, Winter, and Spring Sports Seasons

- 5.1 Notwithstanding subsection 4.1.1 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009, the start and end dates of the 2020-2021 sports seasons shall be as follows:
- 5.1.1 Season 1 (Winter) start and end dates shall be determined by the Board.
- 5.1.2 Season 2 (Fall) start and end dates shall be determined by the Board.
- 5.1.3 Season 3 (Spring) start and end dates shall be determined by the Board.
- 5.2 Notwithstanding subsections 4.1.1 and 4.2.1.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009, the start date and end dates for Practices for the 2020-2021 sports seasons shall be as follows:
- 5.2.1 Season 1 (Winter) start and end dates for Practices shall be determined by the Board.
- 5.2.2 Season 2 (Fall) start and end dates for Practices shall be determined by the Board.
- 5.2.3 Season 3 (Spring) start and end dates for Practices shall be determined by the Board.
- 5.3 Notwithstanding subsection 4.1.1 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009, the start date and end dates for Scrimmages and Competitions for 2020-2021 sports seasons shall be as follows:
- 5.3.1 Season 1 (Winter) start and end dates for Scrimmages and Competitions shall be determined by the Board.
- 5.3.2 Season 2 (Fall) start and end dates for Scrimmages and Competitions shall be determined by the Board.
- 5.3.3 Season 3 (Spring) start and end dates for Scrimmages and Competitions shall be determined by the Board.
- 5.4 The following sports are permitted during the 2020-2021 school year if the Board determines DIAA Return to Play Stage 2 or 3 applies:
- 5.4.1 Season 1 (Winter): Basketball (boys', girls', and Unified), indoor track, and swimming and diving are permitted. Individual and dual team wrestling is not permitted.
- 5.4.2 Season 2 (Fall): Cross country, field hockey, boys' soccer, and volleyball are the fall sports that are permitted. Football and Unified flag football are not permitted.
- 5.4.3 Season 3 (Spring): Baseball, golf, lacrosse (boys' and girls'), outdoor track, Unified track, girls' soccer, softball, and tennis are permitted.

5.06.0 Effective Date

This regulation shall be effective on July 1, 2020 and shall be in effect for 120 days unless it is renewed, amended, or repealed. The amendments to this regulation shall be effective upon the signing of the Emergency Order on August 14, 2020 and shall not effect the 120-day period this regulation is in effect.

Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**

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

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

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the proposed regulations is to amend Rule 15 by amending Rules 15.1.3.1.5 and 15.1.3.1.6 relating to phenylbutazone and oxphenbutazone and amending Rule 15.2.1.4 relating to Furosemide (Salix). Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the September 1, 2020 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before October 1, 2020. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after October 1, 2020, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Thoroughbred Racing Commission, the amendments to Rules 15.1.3.1.5 and 15.1.3.1.6 shall take effect ten days after being published as final in the *Delaware Register of Regulations*. The amendment to Rule 15.2.1.4 shall not be in effect during the running of the 2020 race meet and rather shall take effect on January 1, 2021.

Delaware Thoroughbred Racing Commission
Sarah A. Crane, Acting Executive Director

***Please Note:**

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 219RFA 09-01-20.pdf>

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

[1001 Thoroughbred Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

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

PUBLIC NOTICE**Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****505 High School Graduation Requirements and Diplomas****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the

address above.

C. IMPACT CRITERIA

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

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 220RFA 09-01-20.pdf>

505 High School Graduation Requirements and Diplomas**1.0 Definitions**

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

"Career Pathway" means the three (3) credits of ~~pre-planned~~ pre-planned and sequential courses required for graduation designed to develop knowledge and skills in a particular career or academic area.

(Break in Continuity Within Section)

"English Language Arts" means those four (4) components of reading, writing, language, and speaking and listening that are included in the State Content Standards for high school English Language Arts as required in 14 DE Admin. Code 501.

(Break in Continuity Within Section)

"Homeless Youth" as defined by the provisions of 42 U.S.C. §11434a(2), means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)), and includes:

- Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or similar reason; are living in motels, hotels, trailer parks, or camping

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- grounds due to the lack of alternative adequate accommodations; or are living in emergency or transitional shelters; or are abandoned in hospitals:
- Children and youths who have a primary nighttime residence that is a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. §11302(a)(2)(C));
 - Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - Migratory children (as such term is defined in 20 U.S.C. §6399 of the Elementary and Secondary Education Act of 1965, as amended) who qualify as homeless because the children are living in circumstances described above.

(Break in Continuity Within Section)

"**Physical Education**" means those components that are included in the State Content Standards for high school physical education as required in 14 **DE Admin. Code** 501 and 503. In addition to the one (1) credit required for high school graduation, only one (1) additional elective credit in physical education such as weightlifting, yoga, fitness, running, or tennis may be used to fulfill the graduation requirements.

(Break in Continuity Within Section)

"**Student in DSCYF custody**" means a student, who is or was in the custody of the Department of Services for Children, Youth & Their Families ("DSCYF") (DSCYF), including the Division of Family Services (DFS), the Division of Prevention and Behavioral Health (PBH) and the Division of Youth Rehabilitative Services (YRS), for any length of time, during his or her enrollment in high school.

(Break in Continuity Within Section)

"**World Languages**" means any language other than English that is used by ~~peoples~~ persons around the world for communicating information and ideas and transmitting its ~~culture(s)~~, cultures, including American Sign Language (ASL), Latin and Ancient Greek.

2.0 Credit Requirements for the Graduation Class of 2011 (Freshman Class of 2007-2008) through the Graduation Class of 2014 (Freshman Class of 2010-2011)

- 2.1 For the graduating class of 2011, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two (22) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics; three (3) credits in Science, three (3) credits in Social Studies, one (1) credit in Physical Education, ~~one-half~~ one-half (1/2) credit in Health Education, three (3) credits in a Career Pathway, and three and ~~one-half~~ one-half (3 ½) credits in elective courses.
- 2.1.1 Students shall complete Mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses.
- 2.1.2 Scientific investigations related to the State Science Standards shall be included in all three (3) Science course requirements.

3.0 Credit Requirements Beginning with the Graduation Class of 2015 (Freshman Class of 2011-2012)

- 3.1 For the graduating class of 2015, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in Physical Education, ~~one-half~~ one-half (1/2) credit in Health Education, three (3) credits in a Career Pathway, and three and ~~one-half~~ one-half (3 ½) credits in elective courses.
- 3.1.1 The student shall complete Mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses.
- 3.1.2 Scientific investigations related to the State Science Standards shall be included in all three (3) Science course requirements.

4.0 Credit Requirements Beginning with the Graduation Class of 2016 (Freshman Class of 2012-2013)

- 4.1 Beginning with the graduating class of 2016, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in Physical Education, ~~one-half~~ one-half (1/2) credit in Health Education, three (3) credits in a Career Pathway, and three and ~~one-half~~ one-half (3 ½) credits in elective courses.

(Break in Continuity Within Section)

- 4.1.2 Scientific investigations related to the State Science Standards shall be included in all three (3) Science course requirements. The student shall complete a Biology course as one (1) of the Science credits.
- 4.1.3 The student shall complete a U. S. History course as one (1) of the Social Studies credits.

(Break in Continuity Within Section)

- 4.2 World Language:

(Break in Continuity Within Section)

- 4.2.2 Any student enrolling in a Delaware public High School from an out-of-state school or nonpublic Delaware High School between and including October 1st of the 11th grade year and September 30th of the 12th grade year with one (1) World Language credit from a previous school shall be required to earn the second credit in that language unless the language is not offered at the enrolling school. In such case, the student shall earn one (1) credit in an additional language for a total of two (2) credits or pursue available options in Section 8.0 to earn the second credit of the original language.

5.0 Credit Requirements for State of Delaware Diploma - Beginning with the Graduation Class of 2019 (Freshman Class of 2015-2016)

- 5.1 Beginning with the graduating class of 2019, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty-four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in Physical Education, ~~one-half~~ one-half (1/2) credit in Health Education, three (3) credits in a Career Pathway, and three and ~~one-half~~ one-half (3 ½) credits in elective courses.

(Break in Continuity Within Section)

- 5.1.2 Scientific investigations related to the State Science Standards shall be included in all three (3) Science course requirements. The student shall complete a Biology course as one (1) of the Science credits.
- 5.1.3 The student shall complete a U. S. History course as one (1) of the Social Studies credits.

6.0 Requirements for State of Delaware - Diploma of Alternate Achievement Standards - Beginning with the Graduation Class of 2019 (Freshman Class of 2015-2016)

Beginning with the graduating class of 2019, a public school student shall be granted a State of Delaware - Diploma of Alternate Achievement Standards when such student has met the requirements of the student's Individualized Education Program (~~IEP~~) (IEP), but will not complete the High School graduation course credit requirements established by the State, district, or charter school for a State of Delaware High School Diploma.

(Break in Continuity of Sections)**8.0 Options for Awarding Credit Toward High School Graduation**

- 8.1 District and charter school ~~boards~~ boards, and the Department of Services for Children, Youth and their Families (DSCYF) as provided in 29 Del.C. §9003(8), are authorized to award credit toward High School graduation for the following ~~activities~~, activities on the condition that the activities incorporate any applicable state content standards. Before awarding credit for any of the following activities, the

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districts and charter school boards shall have adopted a policy approving the activity for credit and establishing any specific conditions for the award of credit for the activity. Such policy shall be applicable to each school within the district or each charter High School.

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

(Break in Continuity Within Section)

- 8.1.6 High School courses taken while in ~~the~~ middle school in conjunction with an articulated agreement between the district middle school and the district High ~~School(s)~~ School. Such credit shall also transfer to a High School in another district or to a charter school.
- 8.1.7 Course credit transferred from another High School.
- 8.1.8 Course credit earned through summer or evening school classes, as a member of the military ~~service-service~~, or as part of the James H. Groves Adult High School.

(Break in Continuity of Sections)

10.0 State of Delaware Diplomas and State of Delaware – Diplomas of Alternate Achievement Standards

- 10.1 Diplomas from one (1) school year shall not be issued after September 15 of the next school year.
- 10.2 Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of the diploma or the certificate of performance will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware High Schools should be directed to the High School the student was attending at the time of graduation. If the school does not have the ~~records then~~ records, the student should contact the Department in ~~Dever~~ for a notarized letter of certification that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available).

11.0 Exceptions for Homeless Youth and Students in DSCYF Custody

- 11.1 A Homeless Youth or a Student in DSCYF custody who transfers into a district or charter school shall be permitted to graduate based on the successful completion of the Department's graduation requirements as defined in this regulation in lieu of the district's or charter school's specific requirements permitted by Section 9.0.
- 11.2 When a Homeless Youth or a Student in DSCYF custody transfers into a district or charter school, the district or charter school shall use policies developed pursuant to Section 8.0 to review the student's prior transcript and award values for credit earned through:
- 11.2.1 Distance learning courses. These courses may be delivered by the teacher to the learner in real time, online or by video;
- 11.2.2 Courses completed in mental health or rehabilitative facilities;
- 11.2.3 Courses completed in other districts or charter schools that use a different standard of awarding credits; or
- 11.2.4 Any other means as approved by the Chief School Officer of the district or charter school in accordance with policy and the law.

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

505 High School Graduation Requirements and Diplomas

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 738

PUBLIC NOTICE

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

738 Financial Goals for Instruction and Instruction-related Expenditures

A. TYPE OF REGULATORY ACTION REQUIRED

Repealing of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education seeks to repeal 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures. This regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? The regulation does not specifically address the improvement of student achievement as measured against state achievement standards. It is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

2. Will the regulation help ensure that all students receive an equitable education? The regulation does not ensure all students receive an equitable education. The regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The regulation does not help ensure all students' health and safety are adequately protected. The regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

4. Will the regulation help to ensure that all students' legal rights are respected? The regulation does not continue to help ensure that all students' legal rights are respected. The regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation does not change the decision making at the local board and school level. The regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers. The regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly,

otherwise known as the Fiscal Year 2021 Budget Bill.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation does not change the decision making authority and accountability for addressing the subject to be regulated. The regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

8. Will the 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 consistent with and not an impediment to the implementation of other state educational policies. The regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation. The regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to comply with this regulation. The regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 225RFA 09-01-20.pdf>

738 Financial Goals for Instruction and Instruction-related Expenditures

1.0 Purpose

The purpose of this regulation is to outline goals for Delaware's local school districts and charter schools with respect to the percentage of cumulative revenues that shall be used for instruction and instruction related expenditures, as those terms are used by the National Center for Educational Statistics or its successor organization, as required pursuant to 14 **Del.C.** §1510.

2.0 Definitions

"Charter School" shall mean a school pursuant to 14 **Del.C.**, Chapter 5.

"Expenditures" shall mean all amounts of money paid out by a school system, net of recoveries and other correcting transactions, other than for retirement of debt, purchase of securities, and extension of loans. Expenditures include only external transactions of a school system and exclude noncash transactions such as the provision of prerequisites or other in-kind payments. Definition from the National Center for Education Statistics NCES-2009-338 Sept 2009.

"Instruction and instruction related expenditure" shall mean payments for instruction and instruction staff support services. These are expenditures that are directly related to providing instruction and for activities that assist with classroom instruction. These include salaries and benefits for teachers, teaching assistants, librarians and library aides, in-service teacher trainers, curriculum development, student assessment, technology (for students but outside the classroom), and supplies and purchased services related to these activities. Definition from the National Center for Education Statistics NCES-2009-338 Sept. 2009.

"Local Educational Agency" or **"LEA"** means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district, or for a combination of school districts. The term includes an educational service agency, as defined in this section, and any

~~other public institution or agency having administrative control and direction of a public elementary school or secondary school.~~

~~"Local School District" shall mean a reorganized school district or vocational technical school district established pursuant to 14 Del.C., Chapter 10.~~

~~"Total revenues" is the sum of revenue contributions emerging from local, state, and federal sources. Revenue received from bond sales or the sale of property or equipment is not included. Definition from the National Center for Education Statistics NCES 2009-338 Sept. 2009.~~

~~3.0 Goals for Instruction and Instruction-Related Expenditures~~

- ~~3.1 Each local school district shall increase Instruction and Instruction-related expenditures as a percentage of Total Revenues to exceed the national average by at least 5% from the most current data available from the U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences. The baseline shall be 54.9%. This represents data from FY07 which is the latest information available from the National Center for Education Statistics.~~
- ~~3.2 Each charter school shall increase Instruction and Instruction-related expenditures as a percentage of Total Revenues to meet the national average from the most current data available by the U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences. The baseline for the 2010-2011 school year shall be 52.3%. This represents data from FY07 which is the latest information available from the National Center for Education Statistics.~~
- ~~3.3 Beginning with the 2009-2010 school year, local school districts and charter schools shall provide data as required by NCES for that current school year to the Department as required by timelines imposed by NCES, but no later than July 15th following the end of the school year.~~
- ~~3.4 Beginning with the 2010-11 school year, the goal for each local school district and charter school shall be to budget to reflect 3.1 and 3.2.~~

~~4.0 Department Review and Oversight~~

- ~~4.1 By December 1st of each year, the Department shall notify the local school district and charter schools the goals, based the latest NCES data, for 3.1 and 3.2.~~
- ~~4.2 By March 1, 2010 for the 2008-2009 school year, and December 31st following the end of each school year thereafter, the Department shall provide a report on its website describing each local school district's and charter school's status with respect to the goals in 3.1 and 3.2. For charter schools, the description shall at a minimum include any expenses associated with facilities.~~

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1520

PUBLIC NOTICE

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

1520 Early Childhood Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE

Admin. Code 1520 Early Childhood Teacher. The regulation concerns the requirements for an Early Childhood Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing an Early Childhood Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining an Early Childhood Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of an Early Childhood Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

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

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

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for an Early Childhood Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

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

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

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

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

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

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 227RFA 09-01-20.pdf>

1520 Early Childhood Teacher

1.0 Content

- 4-1 This regulation shall apply to the issuance of a an Early Childhood Teacher Standard Certificate, pursuant pursuant to 14 Del.C. §1220(a), for Early Childhood Teacher. This certification is valid for birth to grade two (2); however, certification as an Elementary Teacher may also be used in K to grade 2. The Early Childhood Teacher Standard Certificate is required for Birth to Grade 2 in Delaware public schools. Notwithstanding the foregoing requirement, the Elementary Teacher Standard Certificate (14 DE Admin. Code 1521) may be used for grades K to 2 in lieu of the Early Childhood Teacher Standard Certificate.
- 4-2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2-1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2-2 The following ~~word~~ words and term terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise:~~
- "Department" means the Delaware Department of Education.
- "Educator" means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.
- "Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.
- "Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.
- "License" means a credential which authorizes the holder to engage in the practice for which the license is issued.
- "Major or Its Equivalent" means a minimum of 30 semester hours of coursework in a particular content area.
- "Passing Score" means a minimum score as established by the ~~Professional Standards Board, Board~~ in consultation with the Department and with the approval of the State Board of Education.
- "Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.
- "Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.
- "Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.
- "Valid and Current License or Certificate" means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all

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of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 **Issuance of a Standard Certificate**

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

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

- 4.1 ~~An educator shall have also met the following:~~
- 4.1.1 ~~achieved on the Praxis Subject Assessment – Education of Young Children (ETS Test # 5024) a Passing Score of 160.~~
- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have:
- 4.1.1.1 Obtained and currently maintain an Early Childhood Generalist certificate from the National Board for Professional Teaching Standards; or
- 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a Major or Its Equivalent in early childhood education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach early childhood education as provided in 14 **Del.C.** §§1260 – 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in early childhood education.
- 4.1.2 The applicant shall have achieved a Passing Score of 160 on the Praxis Subject Assessment – Education of Young Children (ETS Test Code # 5024).
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a Passing Score on an examination as provided in subsection 4.1.2.

5.0 **Application Requirements**

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for an Early Childhood Teacher Standard Certificate:
- 5.2.1 Evidence of obtaining and maintaining an Early Childhood Generalist certificate from the National Board for Professional Teaching Standards, if applicable; and
- 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
- 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
- 5.2.2.2 Sealed paper transcripts may be submitted.
- 5.2.2.3 The Department will not accept copies of transcripts; and
- 5.2.3 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and
- 5.2.4 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for an Early Childhood Teacher Standard Certificate:
- 5.3.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and
- 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate as an early childhood teacher, the following documentation is required in the application for an Early Childhood Teacher Standard Certificate:
- 5.4.1 An official copy of the Valid and Current License or Certificate; and
- 5.4.2 Additional documentation as required by the Department.
- 6.0 Validity of a Standard Certificate**
- 6.1 An Early Childhood Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 An Early Childhood Teacher Standard Certificate is not subject to renewal.
- 7.0 Disciplinary Action**
- 7.1 An Educator's Early Childhood Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's Early Childhood Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.
- 8.0 Secretary of Education Review**
- 8.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for an Early Childhood Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for an Early Childhood Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.
- 8.1.1 For school districts, requests shall be approved by the superintendent of the school district.

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

9.0 Past Certificate Recognized

The Department shall recognize an Early Childhood Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach early childhood education.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1591

PUBLIC NOTICE

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

1591 School Principal and Assistant School Principal

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

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

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

receive an equitable education.

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a School Principal and Assistant School Principal Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 9.0 is consistent with the statute.

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

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

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

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

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

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 232RFA 09-01-20.pdf>

1591 School Principal and Assistant School Principal

1.0 Content

1.1 This regulation shall apply to the issuance of a School Principal and Assistant School Principal Standard Certificate, Certificate pursuant to 14 **Del.C.** §1220(a) for ~~School Principal and Assistant Principal~~. This ~~certification~~ Standard Certificate is required for all ~~School Principals and Assistant School Principals working in Delaware's public school system~~ principals and assistant principals who are working in Delaware public schools.

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:~~

PROPOSED REGULATIONS

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

“Department” means the Delaware Department of Education.

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

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

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

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

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

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

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

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

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

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

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

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a School Principal and Assistant School Principal Standard Certificate as ~~a School Principal or an Assistant School Principal~~ to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License or a Standard or Professional Status Certificate issued by the Department prior to August 31, ~~2003~~; 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a school principal or assistant school principal from another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or

3.1.3 ~~Has satisfied the additional requirements in this regulation. Has met the requirements for licensure in Delaware and meets the requirements set forth in Section 5.0 of this regulation.~~

3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a School Principal and Assistant School Principal Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

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

An educator must also have met the following additional requirements.

4.1 ~~Education requirements.~~

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

4.1.1.1 ~~A master's or doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or~~

4.1.1.2 ~~A master's or doctoral degree from a regionally accredited college or university in any field and the successful completion of one of the following:~~

4.1.1.2.1 ~~A School Principal Course of Study, as defined in 14 ~~DE Admin. Code~~ 1595 Certification Programs for Leaders in Education; or~~

4.1.1.2.2 ~~A School Principal Certification Program pursuant to 14 ~~DE Admin. Code~~ 1595 Certification Programs for Leaders in Education.~~

4.2 ~~Experience requirements.~~

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

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

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

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

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

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

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

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

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

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

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

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

5.0 Procedures for School Principal Preparation Programs

5.1 Program Application Procedures

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

5.2 Program Evaluation Procedure

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

5.0 Reciprocity

5.1 If an applicant is already licensed or certified as a school principal or assistant school principal in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.3 in order for the Department to issue a School Principal and Assistant School Principal Standard Certificate:

5.1.1 The applicant shall hold a Valid and Current License or Certificate as a school principal or assistant school principal.

5.1.2 The applicant shall have earned a master's or doctoral degree in a Pre-K to 12 education-related field from a Regionally Accredited college or university.

5.1.3 If the applicant has less than five years' experience working as a principal or assistant principal in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department, the applicant shall have achieved a Passing Score on one of the following examinations:

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

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

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

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

6.0 Validity Application Requirements

~~6.1 This regulation shall be effective no less than ten (10) days from the date the Order amending the regulation has been published in its final form in the Delaware Register of Regulations.~~

~~6.1.1 Educators currently enrolled in a school leader course of study prior to the effective date of this regulation will have eighteen (18) months subsequent to the effective date to apply for the previous School Principal or Assistant Principal Standard Certificate. Educators are responsible for providing the Department evidence of enrollment via submission of appropriate transcripts.~~

~~6.2 An Emergency Certificate for a School Principal or Assistant Principal is not available.~~

~~6.3 The Department shall also recognize a Standard Certificate for School Principal or Assistant Principal issued by the Department prior to the effective date of this regulation.~~

6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with an application for an Initial License, and the applicant shall also provide all required documentation for the License.

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

7.0 Validity of a Standard Certificate

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

8.0 Disciplinary Action

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

PROPOSED REGULATIONS

9.0 Secretary of Education Review

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

10.0 Past Certificate Recognized

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

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

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

1592 Certified Central Office Personnel

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1592 Certified Central Office Personnel. The regulation concerns the requirements for a Certified Central Office Personnel Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Certified Central Office Personnel Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Certified Central Office Personnel Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a Certified Central Office Personnel Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 10.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address

above.

C. IMPACT CRITERIA

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

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

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Certified Central Office Personnel Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 9.0 is consistent with the statute.

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

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

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

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

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

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 238RFA 09-01-20.pdf>

1592 Certified Central Office Personnel**1.0 Content**

4.4 This regulation shall apply to the issuance of a Certified Central Office Personnel Standard Certificate, Certificate pursuant to 14 **Del.C.** §1220(a), ~~for Certified Central Office Personnel. This Standard Certificate is required for all instructional administrators who are working in Delaware public schools, including directors, supervisors, administrative assistants, coordinators, and managers, except for~~

PROPOSED REGULATIONS

special education directors who are subject to the requirements set forth in 14 DE Admin. Code 1594 Special Education Director.

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

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

2.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~“**Valid and Current License or Certificate**” means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good~~

standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 **Issuance of a Standard Certificate**

- 3.1 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Certified Central Office Personnel Standard Certificate ~~as Certified Central Office Personnel to an educator who has met the following to an applicant who:~~
- 3.1.1 ~~Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and and meets the requirements set forth in Section 4.0 of this regulation; or~~
- 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as central office personnel from another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
- 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~ Has met the requirements for licensure in Delaware and meets the requirements set forth in Section 5.0 of this regulation.

3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Certified Central Office Personnel Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

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

An educator must also have met the following additional requirements:

4.1 Education requirements:

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

4.2 Experience requirements:

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

4.1 The Department may issue a Certified Central Office Personnel Standard Certificate to an applicant who has satisfied the requirements in subsections 4.1.1 through 4.1.3.

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

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

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Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP); or

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

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

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

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

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

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

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

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

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

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

5.0 Validity

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

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

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

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

5.0 Reciprocity

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

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

6.0 **Application Requirements**

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

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

7.0 Validity of a Standard Certificate

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

8.0 Disciplinary Action

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

9.0 Secretary of Education Review

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

10.0 Past Certificate Recognized

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

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

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

1593 Superintendent or Assistant Superintendent

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1593 Superintendent or Assistant Superintendent. The regulation concerns the requirements for a Superintendent and Assistant Superintendent Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Superintendent and Assistant Superintendent Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Superintendent and Assistant Superintendent Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a Superintendent and Assistant Superintendent Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 10.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

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

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

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

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

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

Superintendent and Assistant Superintendent Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 9.0 is consistent with the statute.

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

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

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

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

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

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 245RFA 09-01-20.pdf>

1593 Superintendent ~~or~~ and Assistant Superintendent

1.0 Content

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

2.0 Definitions

- 2.1 ~~The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- ~~“**Certified Central Office Experience**” means being certified and employed as a Director, Supervisor, Administrative Assistant, Coordinator or Manager in an instructional area in an employing authority’s central office.~~
- “**Department**” means the Delaware Department of Education.
- ~~“**Education Experience**” means working with students under a State credential in any PreK to 12 public school setting or the equivalent as approved by the Department.~~
- “**Educator**” means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term “educator” does not include substitute teachers.

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

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

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

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

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

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

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

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

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

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

3.0 Issuance of a Standard Certificate

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

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4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

An educator must also have met the following additional requirements:

4.1 Education requirements.

~~4.1.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:~~

~~4.1.1.1 A doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or~~

~~4.1.1.2 A masters or doctoral degree from a regionally accredited college or university in any field and one of the following:~~

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

~~4.1.1.2.2 Holding a Standard Certificate Certified Central Office Personnel or a Standard Certificate Special Education Director; and successful completion of an additional nine (9) graduate level credit hours from a regionally accredited college or university in educational leadership or the equivalent in professional development approved by the Department.~~

4.2 Experience requirements.

~~4.2.1 An educator must have a minimum of seven (7) years of education experience consisting of the following:~~

~~4.2.1.1 A minimum of five (5) years of teaching experience; and~~

~~4.2.1.2 A minimum of two (2) years of full time leadership experience working in any of the following areas:~~

~~4.2.1.2.1 A School Principal or an Assistant School Principal; or~~

~~4.2.1.2.2 A Certified Central Office Personnel educator; or~~

~~4.2.1.2.3 A Special Education Director; or~~

~~4.2.1.2.4 Other leadership position.~~

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

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

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

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

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

4.1.1.4 Earned a master's or doctoral degree in any content area from a Regionally Accredited college or university; holds Certified Central Office Personnel Standard Certificate (14 **DE Admin. Code** 1592) or Special Education Director Standard Certificate (14 **DE Admin. Code** 1594) that was issued by the Department; and satisfactorily completed an additional nine graduate-level credit hours in Pre-K to 12 educational leadership from a Regionally Accredited college or university or the equivalent in Professional Development approved by the Department. The additional nine graduate-level credit hours must be completed after the applicant was issued his or her Certified Central Office Personnel Standard

Certificate (14 DE Admin. Code 1592) or Special Education Director Standard Certificate (14 DE Admin. Code 1594).

- 4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:
- 4.1.2.1 A Passing Score of 160 on the School Superintendent Assessment (ETS Test Code # 6021); or
 - 4.1.2.2 A Passing Score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).
- 4.1.3 The applicant shall have completed a minimum of seven years of education experience as provided in subsections 4.1.3.1 and 4.1.3.2.
- 4.1.3.1 The applicant shall have completed a minimum of five years of experience as an educator with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system under a state credential in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department; and
 - 4.1.3.2 The applicant shall have completed a minimum of two years of one of the following full-time leadership experience requirements with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system under a state credential in any Pre-K to 12 public school setting as approved by the Department:
 - 4.1.3.2.1 Working as a school principal or assistant school principal; or
 - 4.1.3.2.2 Working as a certified central office administrator; or
 - 4.1.3.2.3 Working as a special education director; or
 - 4.1.3.2.4 Working in another administrative instructional leadership position; or
 - 4.1.3.2.5 Any combination of the leadership experience requirements in subsections 4.1.3.2.1 through 4.1.3.2.4.

5.0 Validity

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

5.0 Reciprocity

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

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

6.0 Application Requirements

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

7.0 Validity of a Standard Certificate

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

8.0 Disciplinary Action

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

9.0 Secretary of Education Review

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

10.0 Past Certificate Recognized

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

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

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

1594 Special Education Director

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1594 Special Education Director. The regulation concerns the requirements for a Special Education Director Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Special Education Director Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Special

Education Director Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a Special Education Director Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 10.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

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

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

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Special Education Director Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 9.0 is consistent with the statute.

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

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

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

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

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

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 251RFA 09-01-20.pdf>

1594 Special Education Director

1.0 Content

- 4-1 This regulation shall apply to the issuance of a Special Education Director Standard Certificate for Director of Special Education, pursuant to 14 **Del.C.** §1220(a). This Standard Certificate is required for all special education directors who are working in Delaware public schools.
- 4-2 ~~Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2-1 ~~The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2-2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

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

"Department" means the Delaware Department of Education.

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

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

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

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

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

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

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

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

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

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

PROPOSED REGULATIONS

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

3.0 **Issuance of a Standard Certificate**

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

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

An educator must also have met the following additional requirements:

4.1 Education requirements.

- 4.1.1 ~~An educator shall also have satisfied at least one (1) of the following additional education requirements:~~
- 4.1.1.1 ~~A master’s or doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; and~~
- 4.1.1.1.1 ~~Thirty (30) graduate level semester hours from a regionally accredited college or university in Special Education taken either as part of a degree program or in addition to it, or the equivalent in professional development pre-approved by the Department; or~~
- 4.1.1.2 ~~A master’s or doctoral degree from a regionally accredited college or university in Special Education offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NCATE specialty organization standards; and~~
- 4.1.1.2.1 ~~The successful completion of any approved Program pursuant to 14 DE Admin. Code 1505 Certification Programs for Leaders in Education; or~~
- 4.1.1.3 ~~A master’s or doctoral degree from a regionally accredited college or university in any field; and~~

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

~~4.2 Experience requirements:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROPOSED REGULATIONS

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

5.0 **Validity**

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

5.0 **Reciprocity**

- 5.1 If an applicant is already licensed or certified as a special education director in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.4 in order for the Department to issue a Special Education Director Standard Certificate:
- 5.1.1 The applicant shall hold a Valid and Current License or Certificate as a special education director.
- 5.1.2 The applicant shall have earned a master's or doctoral degree in a Pre-K to 12 education-related field from a Regionally Accredited college or university.
- 5.1.3 If the applicant has less than five years' experience working as a special education director or supervisor in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department, the applicant shall have achieved a Passing Score on one of the following examinations:
- 5.1.3.1 A Passing Score of 146 on the Educational Leadership: Administration and Supervision Assessment (ETS Test Code # 5412); or
- 5.1.3.2 A Passing Score of 160 on the School Leaders Licensure Assessment (ETS Test Code # 6011); or
- 5.1.3.3 A Passing Score of 160 on the School Superintendent Assessment (ETS Test Code # 6021); or
- 5.1.3.4 A Passing Score of 151 on the School Leaders Licensure Assessment (ETS Test Code # 6990); or

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

6.0 Application Requirements

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

7.0 Validity of a Standard Certificate

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

8.0 Disciplinary Action

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

PROPOSED REGULATIONS

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

9.0 Secretary of Education Review

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

10.0 Past Certificate Recognized

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Chapter 49A (16 Del.C. Ch. 49A)
16 DE Admin. Code 4470

PUBLIC NOTICE

4470 State of Delaware Medical Marijuana Code

Pursuant to 16 Del. C. §49A, Office of Medical Marijuana, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the State of Delaware Medical Marijuana Code. On September 1, 2020, the Division of Public Health plans to publish as "proposed" revisions to the State of Delaware Medical Marijuana Code. The revisions include the establishment of a Cannabidiol-Rich (CBD-Rich) registry identification card, requirements for CBD-Rich medical marijuana profile concentrations, regulations for home delivery services, the addition of anxiety to the list of qualifying conditions (restricted to CBD-Rich cards), and technical changes.

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

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Thursday, October 1, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901

Email: Alanna.Mozeik@delaware.gov

Phone: (302) 744-4951

***Please Note:**

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 258RFA 09-01-20.pdf>

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

[4470 State of Delaware Medical Marijuana Code](#)

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Terminating Food Benefits due to Substantial Lottery or Gambling Winnings

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 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 Social Services (DSS) is proposing to amend Division of Social Services Manual regarding the Food Stamp Program, specifically, Terminating Food Benefits due to Substantial Lottery or Gambling Winnings.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2020. Please identify in the subject line: Terminating Food Benefits due to Substantial Lottery or Gambling Winnings.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend Division of Social Services Manual regarding the Food Stamp Program, specifically, Terminating Food Benefits due to Substantial Lottery or Gambling Winnings.

Statutory Authority

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

Background

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

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

Summary of Proposal

Purpose

To explain the Supplemental Nutrition Assistance Program (SNAP) requirement that prohibits individuals with substantial lottery or gambling winnings from receiving food benefits.

Summary of Proposed Changes

Effective for services provided on and after November 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend Division of Social Service Manual regarding the Food Stamp Program, specifically, Terminating Food Benefits due to Substantial Lottery or Gambling Winnings.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on October 1, 2020.

Fiscal Impact

DSS estimates that this new policy will result in a cost of \$796,010 due to required enhancements to the DHSS benefit eligibility system. Changes will be made to the system's eligibility processing and client notification functions and to the online self-service benefit application (ASSIST). DSS will also add a lottery and gambling data interface to the eligibility system to comply with the federal requirements found at 7 CFR 272.17 that mandate State agencies, to the maximum extent practicable, establish agreements with gaming entities in order to identify individuals within the State with substantial winnings who are members of a SNAP household. This new data interface will allow DSS and DMMA staff to receive direct, unaltered information regarding SNAP households' substantial lottery or gambling winnings in Delaware to determine if a household meets the disqualification criteria according to DSSM 9072. This data match will also reduce the amount of verification required from households and will result in fewer case processing errors.

	Federal Fiscal Year 2021
General (State) funds	\$398,005
Federal funds	\$398,005*

*50% Federal funding is contingent upon approval by the U.S. Department of Agriculture

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 259RFA 09-01-20.pdf>

POLICY – AMENDMENT

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

9072 RESERVED Terminating Food Benefits due to Substantial Lottery or Gambling Winnings

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

Food Food benefit households that receive substantial lottery or gambling winnings will not be eligible for the Supplement Program upon receipt of the winnings.

1. Substantial lottery or gambling winnings are a cash prize won in a single game with a gross value equal to or greater than the maximum limit for lottery and gambling winnings for the Food Supplement Program.

- A. Substantial lottery or gambling winnings include, but are not limited to, cash prizes from:
- : Scratch off tickets
 - : Video lottery
 - : Lottery drawings, such as Powerball
 - : Table games, such as blackjack or roulette
 - : Slot machines
 - : Sports betting
 - : Horse racing
 - : Keno
 - : Bingo
 - : Internet gambling
- B. DSS and DMMA will assess the value of lottery and gambling winnings before taxes or other withholdings are deducted.
- C. If multiple individuals shared in the purchase of a ticket, hand, or similar bet, then DSS or DMMA will use only the portion of the winnings given to a member of the food benefit household to determine if the household's winnings are equal to or greater than the maximum limit for lottery and gambling winnings.
- D. The maximum limit for lottery and gambling winnings applies to all food benefit households, including elderly or disabled households and categorically eligible households.
- E. The Food and Nutrition Service (FNS) determines the maximum limit for lottery and gambling winnings each year. DSS publishes the maximum limit in the annual October Cost of Living Adjustments Administrative Notice.

Note: The maximum limit for lottery and gambling winnings is set to the same amount as the maximum financial resource limit for elderly or disabled food benefit households.

2. Food benefit households are required to report to DSS or DMMA when a household member receives substantial lottery or gambling winnings.

- A. Households that have received substantial lottery or gambling winnings must report the total winnings to DSS or DMMA within 10 days of the date the household received the winnings.
- i. This reporting requirement also applies to households that spent or gave away the winnings prior to reporting to DSS or DMMA.
 - ii. Households must report in-state and out-of-state winnings.

3. DSS and DMMA case workers must verify food benefit households' lottery and gambling winnings.

- A. DSS and DMMA will accept verification of households' lottery or gambling winnings, including,

PROPOSED REGULATIONS

but not limited to:

- i. A receipt or notice from the Delaware Department of Finance;
- ii. A receipt or form from the payer of the winnings;
- iii. A copy of the household member's bank statement; or
- iv. Information from a data match for lottery and gambling winnings.

- B. DSS and DMMA case workers will follow the procedures for questionable or unclear information per DSSM 9033 and DSSM 9085.5 when:
 - i. Information or verification of a household member's lottery or gambling winnings is unclear, questionable, or missing; or
 - ii. A third party reports a household member's lottery or gambling winnings without providing acceptable verification.

Note: If DSS or DMMA receives information about the household's winnings from the lottery and gambling data match in the eligibility system, the household's food benefit case can be closed without contacting the household if the match meets the following conditions:

- The household's reported winnings are equal to or greater than the maximum limit for lottery and gambling winnings; and
- The data match information is clear and complete.

If the information received from the lottery and gambling data match is questionable, DSS and DMMA case workers will follow the procedures for unclear information per DSSM 9085.5. For example, the spelling of the household member's name on the data match is different from the spelling of the name in the case file.

4. Any food benefit household with a member who receives substantial lottery or gambling winnings will no longer be eligible for food benefits immediately upon receipt and verification of the winnings.

- A. The DSS or DMMA case worker must immediately close or deny the food benefit case for the entire household once a household member's winnings are verified.
- B. If the DSS or DMMA case worker issued a request for contact to the household and the household fails to respond or refuses to provide sufficient information or verification about the winnings, the case worker will follow the procedure to close the food benefit case per DSSM 9085.5.
- C. DSS or DMMA will send a notice of adverse action to the household prior to terminating food benefits for substantial lottery or gambling winnings.
- D. DSS or DMMA will send a notice of denial to the household if DSS or DMMA discovers during the recertification process that the household received substantial lottery or gambling winnings.
- E. The DSS or DMMA case worker will process an overpayment for the food benefit case if benefits were issued to the household following the household's receipt of winnings that exceeded the maximum limit for lottery and gambling winnings.

5. Households that were determined ineligible for food benefits because of substantial lottery or gambling winnings will remain ineligible until the household meets the resource and income eligibility requirements for the Food Supplement Program.

- A. A household can re-apply for food benefits at any time after the household's case is closed.

- B. DSS and DMMA will determine eligibility using the regular resource and income limits for the Food Supplement Program for households that re-apply for benefits after their case closed due to substantial lottery or gambling winnings.
- i. DSS or DMMA will count any winnings kept by the household as a resource at re-application.
 - ii. The household cannot be determined categorically eligible at re-application, even if the household was previously categorically eligible per DSSM 9042. This requirement applies only the first time the household re-applies for food benefits.
- C. If at re-application the food benefit household's composition has changed since the case closed, DSS or DMMA will consider the household to be a new food benefit household and not a household that was closed due to substantial lottery or gambling winnings, regardless of who left or entered the household.
- i. A household that has changed after case closure may be determined categorically eligible at re-application and does not have to meet the conditions in section (5)(B) of this policy.
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DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 Del.C. §2604(a)(1))
24 DE Admin. Code 2600

PUBLIC NOTICE

2600 Examining Board of Physical Therapists and Athletic Trainers

Pursuant to 24 Del.C. §2604(a)(1), the Delaware Examining Board of Physical Therapists and Athletic Trainers ("Board") has proposed revisions to its rules and regulations.

Revisions to Section 14.0, pertaining to telehealth, are designed to increase patient access to physical therapy and athletic training services. Subsection 14.2.4.4 has been stricken to permit all evaluations, including initial evaluations, re-evaluations and scheduled discharges, to be performed via telehealth. Subsection 14.2.4.5 has been stricken to permit supervisory visits to be performed via telehealth. Finally, amendments to subsection 1.2 provide that supervising physical therapists may conduct supervision either in person or by telehealth.

A public hearing will be held on September 22, 2020 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at danielle.cross@delaware.gov.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be **October 7, 2020** which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 263RFA 09-01-20.pdf>

2600 Examining Board of Physical Therapists and Athletic Trainers

1.0 Definitions

1.1 Consultation (24 Del.C. §2612)

- 1.1.1 Consultation in direct access. A licensed health practitioner who has been granted prescriptive authority must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made electronically, including but not limited to text and email, by telephone, fax, in writing, or in person. There is nothing in these Rules and Regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal licensed health practitioner. If the patient does not have a personal licensed health practitioner, the Physical Therapist is to offer the patient at least three licensed health practitioners from which to choose. The referral to a licensed health practitioner after the initial thirty day period must not be in conflict with 24 Del.C. §2616(a)(8) which deals with referral for profit. If no licensed health practitioner consult has been made in this initial thirty day period, treatment must be terminated and no treatment may be resumed without a licensed health practitioner consult.
- 1.1.2 Consultation with written prescription from a licensed health practitioner. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made electronically, including but not limited to text and email, by telephone, fax, in writing, or in person.

1.2 Direct Supervision

(Break in Continuity Within Section)

- 1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that the supervising Physical Therapist must see the ~~patient~~ patient, in person or by telehealth, at least once every sixth treatment day, and the Physical Therapist Assistant must receive ~~on-site, face to face supervision~~ supervision, in person or by telehealth, at least once every twelfth treatment day. The initial evaluation counts as a "treatment day." When not providing direct supervision on the premises, the supervising Physical Therapist must have at least one (1) year clinical experience and must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.
- 1.2.4 Direct supervision in relation to an Athletic Trainer treating an injury not defined as an 'athletic injury,' which must be a musculoskeletal disorder if seen for physical therapy, when the Athletic Trainer has one (1) year or more experience, means that the supervising Physical Therapist must see the ~~patient~~ patient, in person or by telehealth, at least once every sixth treatment day, and the Athletic Trainer must receive ~~on-site, face to face supervision~~ supervision, in person or by telehealth, at least once every twelfth treatment day. The initial evaluation counts as a "treatment day." When not providing direct supervision on the premises, the supervising Physical Therapist must have at least one (1) year clinical experience and must be available and accessible by telecommunications to the Athletic Trainer during all working hours of the Athletic Trainer.

(Break in Continuity Within Section)

- 1.2.7 Direct supervision in relation to an Athletic Trainer with one (1) year or more experience, who is treating a non-athletic injury, means that an Athletic Trainer must receive ~~on-site, face to face supervision~~ supervision, in person or by telehealth, at least once every fifth treatment day or once every three weeks, whichever occurs first. The Supervising Physical Therapist must have at least one (1) year experience. The Supervising Physical Therapist must be available and accessible by telecommunications to the Athletic Trainer during all working hours.
- 1.2.8 At any given time, a Physical Therapist shall not supervise more than: 2 Physical Therapist Assistants; or 2 Athletic Trainers; or 1 Physical Therapist Assistant and 1 Athletic Trainer. ~~While a Physical Therapist may supervise up to two Physical Therapist Assistants, only one of those Physical Therapist Assistants may be off-site.~~

(Break in Continuity of Sections)

14.0 Telehealth (29 Del.C. §2602(13))

(Break in Continuity Within Section)

- 14.2 The Physical Therapist, Athletic Trainer or Physical Therapist Assistant (referred to as "licensee" for the purpose of this regulation) who provides treatment through telehealth shall meet the following requirements:

(Break in Continuity Within Section)

14.2.2 Informed consent

- 14.2.2.1 Before services are provided through telehealth, the licensee shall obtain written, informed consent from the patient, or other appropriate person with authority to make health care treatment decisions for the patient. For the purpose of this subsection, written consent includes an electronic signature. At minimum, the informed consent shall inform the patient and document acknowledgement of the risk and limitations of:

(Break in Continuity Within Section)

14.2.4 Competence and scope of practice

(Break in Continuity Within Section)

- ~~14.2.4.4 All evaluations, including initial evaluations, and re-evaluations and scheduled discharges shall be performed face-to-face and not through telehealth.~~
- ~~14.2.4.5 Subject to the supervision requirements of subsection 1.2, every other supervisory visit may be performed via telehealth with the other alternating visit performed face-to-face.~~
- ~~14.2.4.6~~ 14.2.4.4 The licensee shall document in the file or record which services were provided by telehealth.

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

2600 Examining Board of Physical Therapists and Athletic Trainers

**DIVISION OF PROFESSIONAL REGULATION
2930 COUNCIL ON REAL ESTATE APPRAISERS**

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))
24 **DE Admin. Code** 2930

PUBLIC NOTICE

2930 Council on Real Estate Appraisers

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to value limitations for Licensed Residential Real Property Appraisers and AQB approved continuing education are proposed to be amended.

A public hearing will be held on October 20, 2020 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board by November 4, 2020, at the above address in accordance with 29 **Del.C.** §10118(a).

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

<http://regulations.delaware.gov/register/september2020/proposed/24 DE Reg 265RFA 09-01-20.pdf>

2930 Council on Real Estate Appraisers
(Break in Continuity of Sections)

2.0 Appraiser Licensing and Certification

2.1 Qualifications for Appraiser Licensure and Certification

(Break in Continuity Within Section)

2.1.4 Licensed residential real property appraiser: The qualifications for licensure of a licensed residential real property appraiser shall be the criteria established by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation as follows:

2.1.4.1 General:

2.1.4.1.1 The Licensed Residential Real Property Appraiser classification applies to the appraisal of non-complex one-to-four residential units having a transaction value less than \$1,000,000, and complex one-to-four residential units having a transaction value less than ~~\$250,000~~ \$400,000.

(Break in Continuity Within Section)

2.12 A written, proctored examination is required for all qualifying education distance course offerings. AQB approved courses are automatically approved and do not need to be submitted for approval. The term written refers to an examination that might be written on paper or administered electronically on a computer workstation or other device.

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

2930 Council on Real Estate Appraisers

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 9003(a)(7) and 14 Delaware Code, Sections 3001A-3005A (29 **Del.C.** §9003(a)(7) & 14 **Del.C.** §§3001A-3005A)
9 **DE Admin. Code** 101

REGULATORY IMPLEMENTING ORDER

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

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A, the Secretary of Education wishes to transfer 9 **DE Admin. Code** DELACARE: 101 Regulations for Early Care and Education and School-Age Centers to 14 **DE Admin. Code** 933 Regulations for Early Care and Education and School-Age Centers. This amended regulation is being transferred from 9 **DE Admin. Code** 101 to 14 **DE Admin. Code** 933 in order to provide clarity regarding the movement of the Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

This amended regulation includes the following changes:

- Due to legislative change, OCCL is moving from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. Therefore, the definition of department was changed as well as references to the division director and the division's role;
- References to Title 31 were stricken and replaced with Title 14;
- To comply with the Childhood Lead Poisoning Prevention Act, proof of a blood lead test was added as a required component for each child's health appraisal when enrolled;
- For clarification, to comply with guidance provided by the Division of Public Health, the radon testing requirements were revised to state that testing must be performed in each room used for child care;

- For clarification, radon testing requirements and mitigation if necessary were added to the relocation procedures;
- To clarify inconsistent requirements regarding whether an appeal of an enforcement action could be made verbally or in writing, the test was revised to allow for verbal requests for appeals of warning of probation or probation and to require written requests for all other appeal requests;
- Due to travel distance that may be required by licensing specialists, the 9AM delivery deadline for suspension orders was changed to 11AM;
- For clarification, the language was revised to include the requirement for the phone to be on-site at the center;
- For clarification, all the policies and procedures required for the employee handbook were grouped together;
- For clarification, text was added to ensure that the licensee is aware that participation in supervised experience must be approved by OCCL in advance;
- Substitutes who work less than 25 hours per week are exempt from annual training requirements and from having a professional development plan;
- For clarification, language was added that files for volunteers must be on-site;
- Clarification was added that school-age only programs operating in public schools are exempt from lead-risk assessments;
- For clarification, the text was revised regarding the differences between being trained and being certified in the administration of medication;
- In regard to the outdoor fencing requirement, language was added to clarify that a gate must move freely when opened and not be hindered by scraping the ground;
- The administration of medication self-training guide was revised to clarify regarding whether to administer the medication first or to call 9-1-1; and
- Typographical errors were corrected.

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

(1) The requirement to have a blood lead test for each child's health appraisal when enrolled, parents having to request this test, and the age at which it is required.

Agency Response: The Childhood Lead Poisoning Prevention Act requires children ages 12 months and older to have their blood lead level tested before enrolling into child care. This is a critical step to prevent young children who may be living in environments with lead hazards from repeatedly being exposed which increases the chances of harm to their development. OCCL is required to enforce this law to ensure the health, safety, and well-being of children in care. Subsection 41.1.5 will be revised to state, "Proof of blood lead level for children ages 12 months and older."

(2) That school-age only programs operating in public schools are exempt from lead-risk assessments.

Agency Response: After further consideration and to ensure the safety of all children in licensed child care sites, school-age programs located within public schools will be required to have a lead-risk assessment if the building was built before 1978. Early childhood programs located within public schools are required to have lead-risk assessments. The exemptions from lead-risk assessments for school-age only programs were stricken from Section 86.0 and subsection 45.2.4.

(3) The suggested time for radon testing being every two years as the Environmental Protection Agency suggests instead of the current five year testing cycle.

Agency Response: Delaware's Division of Public Health (DPH) recommends radon testing every five years, and since this is a state regulation, we adhere to state guidance. This section will remain as written.

(4) Center programs have to follow more strict guidelines than early childhood programs and public schools regarding lead risk assessments and radon testing.

Agency Response: There is no requirement for annual lead-risk assessments or radon testing. Radon testing is required every five years and after renovating the property. Radon testing is required for early childhood programs operating in a public school and the exemption from radon testing for school-age only programs was removed from Section 86.0.

(5) Pediatricians offices do not routinely ordering blood tests even though it is something that OCCL requires.

Agency Response: OCCL does not have the authority to regulate doctor's offices.

(6) The timeframe for when the blood lead level will be required and it being something additional parents will need to request from their doctor.

Agency Response: Currently, the lead blood level test is not required. This is a new requirement based on the Childhood Lead Poisoning Prevention Act that was passed in May 2019. OCCL will delay the enforcement of this requirement until December 1, 2021 due to the COVID-19 pandemic.

(7) That clarification is needed around "supervised experience."

Agency Response: Supervised experience reduces the amount of experience needed for many child care positions in order to help people become qualified more quickly so they can work independently in the classroom. This does not need to be added in the regulation.

(8) Section 67.0 being worded as it is inferred that school buses may no longer be used.

Agency Response: Section 67.0 has been revised for clarification to state, "Use of a vehicle, other than a school bus, with a rated capacity as defined by the manufacturer, to carry more than 10 passengers in addition to the driver to transport children is prohibited." After further review of Section 67.0 it was determined that the section needed to be rearranged to take into consideration the differences in requirements between staff members who are employed or volunteer at a center versus when the center contracts with a company to provide transportation. These changes were made in the regulation.

(9) That the Child Care Development Block Grant Act (CCDBG) should not be in the regulation and federal law should be cited instead.

Agency Response: Using the CCDBG informs the public where the specific requirements regarding background checks may be located. This subsection will remain as written.

(10) That reference to illicit drug should be removed from the regulation.

Agency Response: This statement helps communicate the need for a drug and alcohol free environment and for the employee to acknowledge that they are aware of the requirement. This subsection will remain as written.

(11) That "start date" be removed in subsection 30.1.9 and insert "before being left alone with children" be inserted.

Agency Response: The CCDBG requires fingerprinting before staff begin working at the center. The current modifications of this requirement are due to the COVID-19 health crisis and the inability to get a fingerprinting appointment promptly. This subsection will remain as written.

(12) That Health Insurance Portability and Accountability Act (HIPAA) rules nullify parts of this regulation (referencing subsection 30.1.12).

Agency Response: HIPAA refers to the transfer and storage of electronic protected health records and does not impact this regulation. Ensuring that a staff member is physically able to perform his or her job functions is critical to protecting the health, safety, and well-being of children. This subsection will remain as written.

(13) That in subsection 30.1.15 the words "initial and annual" be removed as this is excessive.

Agency Response: Reviewing the recognition and reporting procedures of child abuse and neglect initially and annually ensures staff members are aware of the requirements and reminds them they are required to report suspected child abuse or neglect. Due to the frequency of contact with children, it is vital that child care workers understand that they are required by law to report suspected abuse or neglect. In addition, the CCDBG requires this training. This subsection will remain as written.

(14) That in subsection 31.1.16 the word "annual" be removed as it believed to be excessive.

Agency Response: Failing to follow safe sleep practices is cited regularly as a noncompliance and annual training for the actively involved owner helps ensure the owner understands the requirements to provide guidance for the rest of the staff members. This subsection will remain as written.

(15) That the proposed language in Section 36.0 be removed as it is a redundant and unnecessary mandate requiring extra time.

Agency Response: This was added to lessen the likelihood of altered records and ensure correct staff-to-child ratios are maintained throughout the day. This subsection will be revised by removing the word "entered" and replacing it with the word "documented".

(16) That subsections 38.1.3.1 and 38.1.3.2 be removed regarding the requirement of logs to be kept as it is unnecessary, time consuming, and redundant. Forms are already part of child file which must be shown to licensing.

Agency Response: The requirement to provide a log to OCCL is to ensure that child care providers are providing the Parents Right To Know to children who may be enrolled in a center in order for parents to be aware of

the history of the child care facility before placing a child in care. This subsection will remain as written. However, numbering (38.1.3.3) has been added per the *Delaware Administrative Code Drafting and Style Manual*, to the last sentence “Once a log is provided to OCCL, a licensee is not required to keep that log on file at the center.”

(17) That the proposed change to subsection 40.1.2 implies two parents and two guardians.

Agency Response: This text was revised to comply with the drafting manual of the *Register of Regulations*. OCCL will accept one or two parents depending on the family’s situation. This subsection will remain as written.

(18) That subsection 40.1.3 be changed as it is not always possible to list two people as emergency contacts.

Agency Response: The requirement of having emergency contact information for two people which may include the parent or parents is necessary in case the parent cannot be reached. This subsection will be revised for clarification to state, “Names and emergency phone numbers for at least two people approved to pick up the child (may include child’s parent or guardian).”

(19) That subsection 40.1.9 be changed to remove the words “If provided by parent,” as this terminology makes the requirement moot.

Agency Response: This subsection will be changed to state, “If applicable, a statement of the child’s medical, developmental, or educational special needs including, but not limited to: copies of an IEP, IFSP, and Section 504 plan and information on allergies, current illnesses or injuries, previous serious illnesses or injuries, and needed medications;”

(20) That subsection 40.2 be amended to remove “without written permission unless” as beyond parental permission the state needs a subpoena or warrant.

Agency Response: The state does not need a warrant or subpoena to obtain information to conduct child abuse or neglect investigations. OCCL regularly conducts investigations and may need information to contact a parent or guardian and regularly reviews information contained within a child’s file. This subsection will remain as written.

(21) That subsection 41.2 be clarified as the current language suggests that an additional health exam report is required the next year if a child’s birthday is before September.

Agency Response: According to this regulation, health appraisals are valid for 13 months. If a child turns 5 during the year that he or she enters kindergarten, a new appraisal is not required until the previous one expires. This subsection will remain as written.

(22) That subsection 41.3 be clarified as it currently implies the licensee must enroll children who are not immunized.

Agency Response: This regulation allows for an exemption from the immunization requirement for centers to be able to enroll non-immunized children. It does not require the center to enroll a child without immunizations. This subsection will remain as written.

(23) That the words “for more than one day” be added to subsection 48.5.4.3 regarding notification to OCCL when a center loses electricity and the center closes early.

Agency Response: OCCL needs to be informed when the temperature cannot be maintained to ensure that the center works to restore the proper temperature in a timely manner and to address complaints that are reported by parents and guardians. In addition, section 14 requires notification to OCCL of equipment breakdown. This subsection will remain as written.

(24) That subsection 63.1 be clarified regarding written parental approval for emergency medications.

Agency Response: All medication requires written parent approval on a completed medication administration record. This section requires that someone who is medication certified is present in case a child has an allergic reaction or needs some other known approved emergency medication. This provides an extra level protection for children. This subsection will remain as written.

(25) That subsection 63.7 be clarified to deem who is responsible if a child does not self-administer medical care appropriately.

Agency Response: The licensee is required to monitor the self-administration of medication and document it. In addition, the child’s health care provider is required to ensure the child is able to self-administer the medication. In addition, the licensee may put a waiver of liability on non-intravenous injections in place to allow the self-administration of medication. This subsection will remain as written.

(26) That subsection 63.8 regarding administration of medication is not in the purview of the Office of Child Care Licensing and should not be in the regulation.

Agency Response: OCCL is required to ensure that child care centers follow applicable federal and state laws and are cited for non-compliance when laws are violated. This subsection will remain as written.

(27) That Section 74.0 is too specific, and do not allow for alternative early care; and that “accepted practices” are not accepted by all.

Agency Response: OCCL has not received any complaints from child care centers regarding their inability to have an alternative program using these parameters. This section will remain as written.

(28) That wording “at least 4 activities each day” in subsection 74.1.3 is excessive.

Agency Response: Including four activities each day helps keep children engaged and provides learning opportunities throughout the day. This section will remain as written.

(29) That subsection 74.2 is excessive in terms of required early care lesson plans.

Agency Response: Providing weekly opportunities for children provides children with new experiences which are an important part of development. This section will remain as written.

(30) That reference to “daily opportunities” is meaningless, redundant and not the appropriate word to use.

Agency Response: Requiring the activity areas to be included provides information to parents on the types of activities a child is provided with throughout the day. This also helps staff understand the how the classroom is to be set up. This section will remain as written.

Lastly, the Department added the word “the” in subsection 13.3.4 for readability.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to transfer 9 **DE Admin. Code** DELACARE: 101 Regulations for Early Care and Education and School-Age Centers to 14 **DE Admin. Code** 933 Regulations for Early Care and Education and School-Age Centers in order to provide clarity regarding the movement of the Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to transfer 9 **DE Admin. Code** DELACARE: 101 Regulations for Early Care and Education and School-Age Centers to 14 **DE Admin. Code** 933 Regulations for Early Care and Education and School-Age Centers. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 933 Regulations for Early Care and Education and School-Age Centers is attached hereto as *Exhibit “B”* and hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 933 Regulations for Early Care and Education and School-Age Centers 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 9 **DE Admin. Code** DELACARE: 101 Regulations for Early Care and Education and School-Age Centers which is being transferred to 14 **DE Admin. Code** 933 Regulations for Early Care and Education and School-Age Centers amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 933 Regulations for Early Care and Education and School-Age Centers in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 17, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of August 2020.

Department of Education

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

Approved this 17th day of August 2020

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

is available at:

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

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 9003(a)(7) and 14 Delaware Code, Sections 3001A-3005A (29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A)
9 **DE Admin. Code** 103

REGULATORY IMPLEMENTING ORDER

103 Regulations for Family and Large Family Child Care Homes

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A, the Secretary of Education wishes to transfer 9 **DE Admin. Code** 103 to 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes. This amended regulation is being transferred from 9 **DE Admin. Code** 103 to 14 **DE Admin. Code** 934 in order to provide clarity regarding the movement of the Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

This amended regulation includes the following changes:

- Due to legislative change, OCCL is moving from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. Therefore, the definition of department was changed as well as references to the division director and the division's role;
- References to Delaware Code Title 31 were stricken and replaced with the appropriate citations to Delaware Code Title 14;
- To comply with the Childhood Lead Poisoning Prevention Act, proof of a blood lead test was added as a required component for each child's health appraisal when enrolled;
- The definition of large family home located in a private home was revised to make it clear that the licensee must reside in that home and provide care there;
- To comply with guidance provided by the Division of Public Health, the radon testing requirements were revised to state that testing must be performed in each room used for child care;
- Radon testing requirements and mitigation if necessary were added to the relocation procedures;
- To clarify inconsistent requirements regarding whether an appeal of an enforcement action could be made verbally or in writing, the text was revised allow for verbal requests for appeals of warning of probation or probation and to require written requests for all other appeal requests;
- Due to travel distance that may be required by licensing specialists, the 9 AM delivery deadline of a written suspension order following a verbal suspension order was changed to 11 AM;
- For clarification, regarding general qualifications of a person working in child care, a statement regarding the expectation that the licensee shall require staff members to be truthful when providing information to parents/guardians and OCCL was added;
- For clarification, the text was revised regarding the differences between being trained and being certified in the administration of medication;
- The section regarding pets was revised to prohibit poisonous or aggressive animals from being kept in rooms used by children;
- In regard to outdoor fencing requirement, language was added to clarify that a gate must move freely when opened and not be hindered by scrapping the ground;
- The administration of medication self-training guide was revised because some sections provided confusing information regarding whether to administer the medication first or to call 9-1-1; and
- Typographical errors were corrected.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on July 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on July 1, 2020, in the form hereto attached as *Exhibit "A"*. One comment was received which was pertinent to the proposed amended

regulation which suggested the Department clarify the age for which proof of a blood level test is required for children to be enrolled in a child care home.

Agency Response: The requirement for proof of blood lead level is for children ages 12 months and older. Therefore subsection 23.1.5 was revised to state, "Proof of blood lead level for children ages 12 months and older."

Additionally, the Department added the word "the" prior to "associate secretary of early childhood support" in subsection 12.3.4 for readability. Also, the department edited Section 46.0 to include the words "other than a school bus" for further clarification.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to transfer 9 **DE Admin. Code** 103 to 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes. This amended regulation is being transferred from 9 **DE Admin. Code** 103 to 14 **DE Admin. Code** 934 in order to provide clarity regarding the movement of the Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to transfer 9 **DE Admin. Code** 103 Regulations for Family and Large Family Child Care Homes to 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes is attached hereto as *Exhibit "B"*, and hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes 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 9 **DE Admin. Code** 103 Regulations for Family and Large Family Child Care Homes which is being transferred to 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 17, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of August 2020.

Department of Education

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

Approved this 17th day of August 2020

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

103 Regulations for Family and Large Family Child Care Homes

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 9003(a)(7) and 14 Delaware Code, Sections 3001A-3005A (29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A)
9 **DE Admin. Code** 201

REGULATORY IMPLEMENTING ORDER

201 Child Placing Agencies

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A, the Secretary of Education wishes to transfer 9 **DE Admin. Code** 201 Child Placing Agencies to 14 **DE Admin. Code** 936 Child Placing Agencies. This amended regulation is being transferred in order to provide clarity regarding the movement of the Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020 per Senate Bill 187 of the 150th General Assembly. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

This amended regulation includes the following changes:

- Due to legislative change, OCCL is moving from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020. Therefore, the definition of department was changed as well as references to the division director, and the division's role;
- References to Title 31 were stricken and replaced with Title 14.

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

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to transfer 9 **DE Admin. Code** 201 Child Placing Agencies to 14 **DE Admin. Code** 936 Child Placing Agencies. This amended regulation is being transferred in order to provide clarity regarding the movement of the Office of Child Care Licensing (OCCL) from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020 per Senate Bill 187 of the 150th General Assembly. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to transfer 9 **DE Admin. Code** 201 Child Placing Agencies to 14 **DE Admin. Code** 936 Child Placing Agencies. Therefore, pursuant to 14 **Del.C.** §122, 936 Child Placing Agencies is attached hereto as *Exhibit "B"* and hereby amended. Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 936 Child Placing Agencies 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 9 **DE Admin. Code** 201 Child Placing Agencies which is being transferred to 14 **DE Admin. Code** 936 Child Placing Agencies amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 936 Child Placing Agencies 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 August 17, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of August 2020.

Department of Education

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

Approved this 17th day of August 2020

* Please note that no changes were made to the regulation as originally proposed and published in the July 2020 issue of the *Register* at page 18 (24 DE Reg. 18). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

201 Child Placing Agencies

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Sections 1124 and 1127, and 29 Delaware Code, Section 10113(b)(4) (16 **Del.C.** §§1124 & 1127, & 29 **Del.C.** §10113(b)(4))
16 **DE Admin. Code** 3102

FINAL EXEMPT ORDER

3102 Long Term Care Transfer, Discharge and Readmission Procedures

Date of Issuance: September 1, 2012

Effective Date of the Amendment: September 11, 2020

Under the authority vested in the Secretary of the Delaware Department of Health and Social Services ("Department") / Division of Health Care Quality (DHCQ), pursuant to 16 Del.C. §1124 and 29 Del.C. §10113(b)(4), DHSS hereby revises Section 3102 of Title 16 of the Delaware Administrative Code to correct clerical errors found subsequent to the final adoption of this regulation as set forth previously in the Final Order, September 1, 2012.

Findings of Fact

Based on Delaware law and the record as reflected in the prior Final Order referenced above, I make the following findings of fact:

1. The proposed regulation is not in conflict with Delaware law; and
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

Decision and Order Concerning the Regulation

NOW THEREFORE, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to 16 DE Admin. Code 3102: Long Term Care Transfer, Discharge and Readmission Procedures, be adopted and promulgated as follows, to wit:

1. Section 1.0 shall be modified by changing "regulation" to "regulations";
2. Section 2.0, definition "Division" shall be modified by changing "Long Term Care Residents Protection" to "Health Care Quality";
3. Section 2.0, definition "Legal representative" shall be modified by changing "'representative'" to "'authorized representative'";
4. Section 2.0, definition "Legal representative" shall be modified by changing "includes" to "means";
5. Section 2.0, definition "Legal representative" shall be modified by changing "Title 16 Del.C. §§1121(34) and 1122" to "16 Del.C. §1122";
6. Section 2.0, definition "Party" shall be modified by adding "legal or authorized" before "representative";
7. Section 2.0, definition "Transfer and discharge" shall be modified by striking "'Transfer and discharge'" as defined separately in Section 3.0 and 4.0.";

8. Subsection 3.1 shall be modified by changing “—” to “.”;
9. Subsection 3.2 shall be modified by changing “paragraphs” to “subsections”;
10. Subsection 3.2 shall be modified by changing “section” to “regulation”;
11. Subsection 3.2 shall be modified by changing “,” to “.”;
12. Subsection 3.2.1 shall be modified by changing “under paragraph” to “in subsection”;
13. Subsection 3.2.1 shall be modified by changing “paragraph” to “subsection”;
14. Subsection 3.2.1 shall be modified by changing “section” to “regulation”;
15. Subsection 3.2.2 shall be modified by changing “under paragraph” to “in subsection”;
16. Subsection 3.2.2 shall be modified by changing “section” to “regulation”;
17. Subsection 3.3 shall be modified by changing “—” to “.”;
18. Subsection 3.3.1 shall be modified by changing “.” to “,”;
19. Subsection 3.3.2 shall be modified by changing “LTC ombudsman” to “Long-Term Care (LTC) Ombudsman”;
20. Subsection 3.3.2 shall be modified by changing “APS” to “Adult Protective Services (APS)”;
21. Subsection 3.3.2 shall be modified by changing “Title 16 Del.C. §1102” to “16 Del.C. §1102(7)”;
22. Subsection 3.3.2 shall be modified by changing “.” to “,”;
23. Subsection 3.3.4 shall be modified by changing “paragraph” to “subsection”;
24. Subsection 3.3.4 shall be modified by changing “section” to “regulation”;
25. Subsection 3.4.1 shall be modified by changing “paragraphs” to “subsections”;
26. Subsection 3.4.1 shall be modified by changing “section” to “regulation”;
27. Subsection 3.4.1 shall be modified by changing “under paragraph” to “in subsection”;
28. Subsection 3.4.1 shall be modified by changing “section” to “regulation”;
29. Subsection 3.4.2.1 shall be modified by changing “under paragraph” to “in subsection”;
30. Subsection 3.4.2.1 shall be modified by changing “section” to “regulation”;
31. Subsection 3.4.2.2 shall be modified by changing “under paragraph” to “in subsection”;
32. Subsection 3.4.2.2 shall be modified by changing “section” to “regulation”;
33. Subsection 3.4.2.3 shall be modified by changing “under paragraph” to “in subsection”;
34. Subsection 3.4.2.3 shall be modified by changing “section” to “regulation; or”;
35. Subsection 3.4.2.4 shall be modified by changing “under paragraph” to “in subsection”;
36. Subsection 3.4.2.4 shall be modified by changing “section” to “regulation”;
37. Subsection 3.5 shall be modified by changing “paragraph” to “subsection”;
38. Subsection 3.5 shall be modified by changing “section” to “regulation”;
39. Subsection 3.5.1 shall be modified by changing “reason(s)” to “reason or reasons”;
40. Subsection 3.5.1.2 shall be modified by changing “.” to “,” and”;
41. Subsection 3.5.6 shall be modified by changing “.” to “,” and”;
42. Subsection 3.5.7 shall be modified by changing “long term care ombudsman” to “LTC Ombudsman”;
43. Subsection 3.7 shall be modified by changing “ombudsman” to “Ombudsman”;
44. Subsection 3.8 shall be modified by changing “Title 16 Del.C. §§121 (13) and (28)” to “16 Del.C. §1121(b)(34)”;
45. Subsection 3.9.1.2 shall be modified by changing “paragraph” to “subsection”;
46. Subsection 3.9.1.2 shall be modified by changing “section” to “regulation”;
47. Subsection 3.9.2 shall be modified by changing “paragraph” to “subsection”;
48. Subsection 3.9.2 shall be modified by changing “section” to “regulation”;
49. Subsection 3.9.3.3 shall be modified by changing “16 Del.C. §1121 (18)” to “16 Del.C. §1127(h).”;
50. Section 4.0 shall be modified by changing “Nursing Facility or Similar Facility as defined in 16 Del.C. 1102(4). See 16 Del.C. 1121” to “Long-Term Care Facility as defined in 16 Del.C. §1102(b)(4). See 16 Del.C. §1127”;
51. Subsection 4.2.4 shall be modified by adding “or” at the end of the existing sentence: “Nonpayment of justified charges, after appropriate notice;”;
52. Subsection 4.3 shall be modified by changing “paragraphs 4.1.1 or 4.1.2 of this section” to “subsection 4.2.1 or 4.2.2 of this regulation”;
53. Subsection 4.3.1 shall be modified by changing “under paragraph 4.1.1 or paragraph 4.1.2 of this section” to “in subsection 4.2.1 or 4.2.2 of this regulation”;
54. Subsection 4.3.2 shall be modified by changing “under paragraph 4.1.3 of this section” to “in subsection

4.2.3 of this regulation”;

55. Subsection 4.4.3 shall be modified by changing “paragraph 4.5 of this section” to “subsection 4.6 of this regulation”;

56. Subsection 4.5 shall be modified by striking “(i)”;

57. Subsection 4.5 shall be modified by changing “paragraphs 4.4.2 and 4.8 of this section” to “subsections 4.5.1 and 4.9 of this regulation”;

58. Subsection 4.5 shall be modified by changing “under paragraph 4.3 of this section” to “in subsection 4.4 of this regulation”;

59. Subsection 4.5.1.1 shall be modified by changing “under paragraph 3.1.3 of this section” to “in subsection 4.2.3 of this regulation; or”;

60. Subsection 4.5.1.2 shall be modified by changing “under paragraph 3.1.1 of this section” to “in subsection 4.2.1 of this regulation”;

61. Subsection 4.5.1.2 shall be modified by striking “or” at the end of the modified sentence: “An immediate transfer or discharge is required by the resident's urgent medical needs, ~~under paragraph 3.1.1 of this section in subsection 4.2.1 of this regulation;~~”;

62. Subsection 4.6 shall be modified by changing “paragraph 3.3 of this section” to “subsection 4.4 of this regulation”;

63. Subsection 4.6.1 shall be modified by changing “,” to “.”;

64. Subsection 4.6.1 shall be modified by changing “reason(s)” to “reason or reasons”;

65. Subsection 4.6.5 shall be modified by changing “long term care ombudsman” to “LTC Ombudsman”;

66. Subsection 4.6.5 shall be modified by adding “and” at the end of the modified sentence: “The name, address and telephone number of the State ~~long term care ombudsman~~ LTC Ombudsman”;

67. Subsection 4.6.6 shall be modified by changing “Title 16 Del.C. §1102” to “16 Del.C. §1102(7)”;

68. Subsection 4.8 shall be modified by changing “ombudsman” to “Ombudsman”;

69. Subsection 4.9.1 shall be modified by changing “Title 16 Del.C. §§1121(13) and (28)” to “16 Del.C. §1121(b)(34)”;

70. Subsection 4.10 shall be modified by changing “,” to “.”;

71. Section 5.0 shall be modified by changing “under” to “in”;

72. Subsection 5.1.1.2 shall be modified by adding “and” at the end of the existing sentence: “Be received by the facility within 30 days from the date that the discharge notice is received by the resident or the resident’s legal representative”;

73. Subsection 5.1.1.3 shall be modified by changing “ombudsman” to “Ombudsman”;

74. Subsection 5.3.3 shall be modified by adding “and” at the end of the existing sentence: “By an impartial fact-finder who has not been directly involved in the initial determination of the action in question”;

75. Subsection 5.5.6 shall be modified by changing “Residents” to “Exercise additional rights for residents”;

76. Subsection 5.5.6 shall be modified by adding “Section” prior to “3.0”;

77. Subsection 5.5.6 shall be modified by striking “have additional rights to”;

78. Subsection 5.5.6 shall be modified by changing “16 Del.C. §1121(19)” to “16 Del.C. §1121(b)(21)”;

79. Subsection 5.9.1 shall be modified by striking “and”;

80. Subsection 5.9.2 shall be modified by changing “and/or” to “or”;

81. Subsection 5.9.2 shall be modified by adding “,” at the end of the modified sentence: “Identify the statutes ~~and/or~~ or regulations pertinent to the decision”.

The effective date of this Order is 10 days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 Del.C. §10118(g).

Molly K. Magarik
Cabinet Secretary

3102 Long Term Care Transfer, Discharge and Readmission Procedures

1.0 Purpose

This regulation applies to decisions by licensed facilities to transfer or discharge a resident. It prescribes the process for providing an impartial hearing to a resident.

This regulation does not extend to decisions of DHSS, or any of its Divisions, to deny, suspend, delay, reduce, or terminate benefits. The ~~regulation~~ regulations governing appeals related to benefit eligibility are found at 16 **DE Admin. Code** §5000. Be aware that the appeal requirements are different from the requirements in this regulation.

2.0 Definitions

“**DHSS**” means the Department of Health and Social Services

“**Division**” means the Division of ~~Long Term Care Residents Protection~~ Health Care Quality.

“**Legal representative**” or “~~representative~~” includes “**authorized representative**” means a resident’s: guardian; agent pursuant to a power of attorney, advanced health care directive, or similar document; or authorized representative pursuant to ~~Title 16 Del.C. §§1121(34) and 1122~~ 16 Del.C. §1122.

“**Party**” means the resident or resident’s legal or authorized representative and the facility.

“**Resident**” means resident or patient.

“~~Transfer and discharge~~” is defined separately in Section 3.0 and 4.0.

3.0 Transfer, discharge and readmission rights of residents in a certified skilled nursing facility or a certified nursing facility as defined in 42 CFR §483.5 or an Intermediate Care facility (ICF/MR) as defined in 42 CFR §440.150.

3.1 Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility ~~unless—~~ unless:

3.1.1 The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility. If the resident appeals a notice of discharge based on this section, the facility will not be cited during the pendency of the appeal for housing a resident whose needs exceed the permitted level of care in that facility.

3.1.2 The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

3.1.3 The safety of individuals in the facility is endangered;

3.1.4 The health of individuals in the facility would otherwise be endangered;

3.1.5 The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

3.1.6 The facility ceases to operate.

3.2 Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in ~~paragraphs~~ subsections 3.1.1 through 3.1.5 of this ~~section~~ regulation, the resident's clinical record must be documented. The documentation must be made ~~by; by~~:

3.2.1 The resident's physician when transfer or discharge is necessary ~~under paragraph~~ in subsection 3.1.1 or ~~paragraph~~ subsection 3.1.2 of this ~~section~~ regulation; and

3.2.2 A physician when transfer or discharge is necessary ~~under paragraph~~ in subsection 3.1.4 of this ~~section~~ regulation.

3.3 Notice before transfer. Before a facility transfers or discharges a resident, the facility ~~must—~~ must:

3.3.1 Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they ~~understand—~~ understand;

3.3.2 Provide a copy of the notice to the Division; the State ~~LTC ombudsman~~ Long-Term Care (LTC) Ombudsman; the resident's Delaware Medicaid managed care organization (MCO), if any; any DHSS agency involved in the resident's placement in the facility, including APS Adult Protective Services (APS); and the protection and advocacy agency as defined in ~~Title 16 Del.C. §1102~~ 16 Del.C. §1102(7) if the resident is an individual with a developmental disability or mental ~~illness~~ illness;

3.3.3 Record the reasons in the resident's clinical record; and

3.3.4 Include in the notice the items described in ~~paragraph~~ subsection 3.5 of this ~~section~~ regulation.

- 3.4 Timing of the notice.
- 3.4.1 Except as specified in ~~paragraphs~~ subsections 3.4.2 and 3.8 of this ~~section~~ regulation, the notice of transfer or discharge required ~~under paragraph in subsection~~ subsection 3.3 of this ~~section~~ regulation must be made by the facility at least 30 days before the resident is transferred or discharged.
- 3.4.2 Notice may be made as soon as practicable before transfer or discharge when:
- 3.4.2.1 The safety of individuals in the facility would be endangered ~~under paragraph in subsection~~ subsection 3.1.3 of this ~~section~~ regulation;
- 3.4.2.2 The health of individuals in the facility would be endangered, ~~under paragraph in subsection~~ subsection 3.1.4 of this ~~section~~ regulation;
- 3.4.2.3 The resident's health improves sufficiently to allow a more immediate transfer or discharge, ~~under paragraph in subsection~~ subsection 3.1.2 of this ~~section~~ regulation; or
- 3.4.2.4 An immediate transfer or discharge is required by the resident's urgent medical needs ~~under paragraph in subsection~~ subsection 3.1.1 of this ~~section~~ regulation.
- 3.5 Contents of the notice. The written notice specified in ~~paragraph subsection~~ subsection 3.3 of this ~~section~~ regulation must include the following:
- 3.5.1 A detailed individualized explanation of the ~~reason(s)~~ reason or reasons for the action being taken which includes, in terms understandable to the resident:
- 3.5.1.1 A statement of what action the agency intends to take;
- 3.5.1.2 The reasons for the intended action, including any information needed for the resident to determine from the notice alone the accuracy of the facility's intended action. When the reason is non-payment, an itemized statement of the resident's account for the preceding ~~12 months.~~ months; and
- 3.5.1.3 The specific policy or regulation supporting such action.
- 3.5.2 The effective date of transfer or discharge;
- 3.5.3 The location to which the resident will be transferred or discharged;
- 3.5.4 A statement of the resident's right to a fair hearing as provided in this section;
- 3.5.5 The method by which the resident may request a fair hearing;
- 3.5.6 A statement that the resident may represent him or herself or may be represented by counsel or by another ~~person.~~ person; and
- 3.5.7 The name, address and telephone number of the State ~~long-term care ombudsman~~ LTC Ombudsman;
- 3.6 Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
- 3.7 Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the Secretary, the State LTC ~~ombudsman~~ Ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at 42 CFR §483.75(r).
- 3.8 Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part (as defined in 42 CFR §483.5(c)) must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations. A facility's discretion to transfer residents to another room is limited by ~~Title 16 Del.C. §§121 (13) and (28)~~ 16 Del.C. §1121(b)(34).
- 3.9 Notice of bed-hold policy and readmission.
- 3.9.1 Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies;
- 3.9.1.1 Notice of State bed-hold. The duration of the bed-hold policy under the State plan, if any during which the resident is permitted to return and resume residence in the nursing

- facility, See DHSS Long Term Care Institutional Provider Specific Policy Manual at Section 4.5; and
- 3.9.1.2 Facility policies. The nursing facility's policies regarding bed-hold periods, which must be consistent with ~~paragraph subsection~~ 3.9.3 of this ~~section regulation~~, permitting a resident to return.
- 3.9.2 Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative written notice which explains the bed-hold policy described in ~~paragraph subsection~~ 3.9.1.1 of this ~~section regulation~~.
- 3.9.3 Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:
- 3.9.3.1 Requires the services provided by the facility; and
- 3.9.3.2 Is eligible for Medicaid nursing facility services.
- 3.9.3.3 Additional protection for readmission is found at ~~16 Del.C. §1121 (18)~~ 16 Del.C. §1127(h).
- 3.10 Readmission to a composite distinct part. When the nursing facility to which a resident is readmitted is a composite distinct part (as defined in 42 CFR§483.5(c)), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of readmission, the resident must be given the option to return to that location upon the first availability of a bed there.

4.0 ~~Transfer, discharge and readmission rights of residents of a Nursing Facility and Similar Facility as defined in 16 Del.C. 1102(4). See 16 Del.C. 1124 Long-Term Care Facility as defined in 16 Del.C §1102(b)(4). See 16 Del.C. §1127.~~

- 4.1 "Transfer and discharge" includes movement of a resident to a location outside of the licensed facility.
- 4.2 Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility except for:
- 4.2.1 Medical needs which cannot be met in the facility;
- 4.2.2 The resident's own welfare;
- 4.2.3 The welfare of the other individuals in the facility;
- 4.2.4 Nonpayment of justified charges, after appropriate notice; or
- 4.2.5 Termination of facility operation.
- 4.3 Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in ~~paragraphs 4.1.1 or 4.1.2 of this section subsection 4.2.1 or 4.2.2 of this regulation~~, the resident's clinical record must be documented. The documentation must be made by:
- 4.3.1 The resident's physician when transfer or discharge is necessary ~~under paragraph 4.1.1 or paragraph 4.1.2 of this section in subsection 4.2.1 or 4.2.2 of this regulation~~; and
- 4.3.2 A physician when transfer or discharge is necessary ~~under paragraph 4.1.3 of this section in subsection 4.2.3 of this regulation~~.
- 4.4 Notice before transfer. Before a facility transfers or discharges a resident, the facility must:
- 4.4.1 Notify the resident and, if known, a family member or legal representative, of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
- 4.4.2 Record the reasons in the resident's clinical record; and
- 4.4.3 Include in the notice the items described in ~~paragraph 4.5 subsection 4.6 of this section regulation~~.
- 4.5 Timing of the notice. (i) Except as specified in ~~paragraphs 4.4.2 and 4.8 subsections 4.5.1 and 4.9 of this section regulation~~, the notice of transfer or discharge required ~~under paragraph 4.3 in subsection 4.4 of this section regulation~~ must be made by the facility at least 30 days before the resident is transferred or discharged.

- 4.5.1 Notice may be made as soon as practicable before or after transfer or discharge when:
- 4.5.1.1 The welfare of individuals in the facility would be endangered ~~under paragraph 3.1.3 in subsection 4.2.3 of this section regulation; or~~
 - 4.5.1.2 An immediate transfer or discharge is required by the resident's urgent medical needs, ~~under paragraph 3.1.1. in subsection 4.2.1 of this section regulation; or~~
- 4.6 Contents of the notice. The written notice specified in ~~paragraph 3.3 subsection 4.4 of this section regulation~~ must include the following:
- 4.6.1 The reason for transfer or ~~discharge; discharge.~~ A detailed individualized explanation of the ~~reason(s) reason or reasons~~ for the action being taken which includes, in terms understandable to the resident:
 - 4.6.1.1 A statement of what action the agency intends to take;
 - 4.6.1.2 The reasons for the intended action, including any information needed for the resident to determine from the notice alone the accuracy of the facilities intended action. When the reason is non-payment, an itemized statement of the resident's account for the preceding 12 months; and
 - 4.6.1.3 The specific policy or regulation supporting such action.
 - 4.6.2 The effective date of transfer or discharge;
 - 4.6.3 The location to which the resident will be transferred or discharged;
 - 4.6.4 A statement of the resident's right to a fair hearing as provided in this section:
 - 4.6.4.1 The method by which the resident may request a fair hearing; and
 - 4.6.4.2 A statement that the resident may represent him or herself or may be represented by counsel or by another person.
 - 4.6.5 The name, address and telephone number of the State ~~long term care ombudsman LTC Ombudsman; and~~
 - 4.6.6 For nursing facility residents with a developmental disability or mental illness, the mailing address and telephone number of the Delaware protection and advocacy agency as defined in ~~Title 16 Del.C. §1102 16 Del.C. §1102(7).~~
- 4.7 Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
- 4.8 Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to Division, the State LTC ~~ombudsman Ombudsman~~, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents. The notice shall be provided as far in advance of closure as possible.
- 4.9 Room changes.
- 4.9.1 Room changes in a facility must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another location. A facility's discretion to transfer residents to another room is limited by ~~Title 16 Del.C. §§1121 (13) and (28) 16 Del.C. §1121(b)(34).~~
 - 4.9.2 The facility must give reasonable notice before the resident's room or roommate is changed, except in emergencies.
 - 4.9.3 The facility shall endeavor to honor roommate requests whenever possible.
- 4.10 Notice of bed-hold policy and ~~readmission: readmission.~~
- 4.10.1 Notice before transfer. When a nursing facility transfers a resident out of a facility to an acute care facility it must provide written information to the resident and a family member or legal representative that specifies that the facility must accept the patient or resident back into the facility when the resident no longer needs acute care and there is space available in the facility. If no space is available, the resident shall be accepted into the next available bed.

4.10.2 Permitting resident to return to facility. A nursing facility must establish and follow a written policy for implementing its obligation to immediately offer the first available bed to a resident who is entitled to be readmitted to the facility when acute care is no longer required.

5.0 Fair Hearing Practice and Procedures which pertain to grievances ~~under~~ in either Section 3.0 or 4.0 of this regulation.

- 5.1 Right to hearing. An impartial hearing may be requested by a resident who believes a facility has erroneously determined that he or she must be transferred or discharged.
- 5.1.1 The hearing request must:
- 5.1.1.1 Be in writing;
- 5.1.1.2 Be received by the facility within 30 days from the date that the discharge notice is received by the resident or the resident's legal representative; and
- 5.1.1.3 Be copied to the Division and the State LTC ~~ombudsman~~ Ombudsman.
- 5.2 DHSS may deny or dismiss a request for a hearing if:
- 5.2.1 The resident withdraws the request in writing; or
- 5.2.2 The resident or his or her legal representative fails to appear at a scheduled hearing without good cause.
- 5.3 Impartial hearing must be conducted:
- 5.3.1 At a reasonable time, date and place;
- 5.3.2 After adequate written notice of the hearing;
- 5.3.3 By an impartial fact-finder who has not been directly involved in the initial determination of the action in question; and
- 5.3.4 With appropriate translation services available to parties or witnesses as needed to be provided at State expense.
- 5.4 If the hearing involves medical issues as the basis for the transfer or discharge and if the impartial fact finder considers it necessary to have a medical assessment other than that of the facility involved in making the transfer or discharge decision, such a medical assessment must be obtained at State expense and made part of the record.
- 5.5 Procedural rights. The parties must be given the opportunity to:
- 5.5.1 Examine at a reasonable time before the date of the hearing and during the hearing all documents and records to be used by either party at the hearing;
- 5.5.2 Bring witnesses;
- 5.5.3 Establish all pertinent facts and circumstances;
- 5.5.4 Present an argument without undue interference; and
- 5.5.5 Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
- 5.5.6 ~~Residents Exercise additional rights for residents within the scope of 3.0 have additional rights to Section 3.0, as provided in 42 CFR §483.10(b)(2). All residents have additional rights under 46 Del.C. §1121(19)-16 Del.C. §1121(b)(21).~~
- 5.6 Hearing decisions must be based exclusively on evidence introduced at the hearing.
- 5.7 The record must consist only of:
- 5.7.1 The transcript or recording of testimony and exhibits;
- 5.7.2 All papers and requests filed in the proceeding; and
- 5.7.3 The decision of the hearing officer.
- 5.8 The parties must have the access to the record at a convenient place and time in order to review or to secure a transcript at the party's expense.
- 5.9 The impartial decision must:
- 5.9.1 Summarize the facts; ~~and~~

- 5.9.2 Identify the statutes ~~and/or~~ or regulations pertinent to the ~~decision~~ decision;
- 5.9.3 Specify the reasons for the decisions; and
- 5.9.4 Identify the supporting evidence and apply the relevant legal principles.
- 5.10 The impartial fact-finder must:
- 5.10.1 Notify the parties of the decision, in writing.
- 5.10.2 Notify the parties that this is the final decision of DHSS with the right to an appeal pursuant to the Administrative Procedures Act, Title 29, Chapter 101.
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DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 520, 2304(16), and 2312 (18 **Del.C.** §§311, 520, 2304(16) & 2312)
18 **DE Admin. Code** 903

REGULATORY IMPLEMENTING ORDER

903 Prompt Payment of Settled Claims [Formerly Regulation 81]

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

A. The First Proposal

In the March 1, 2020 edition of the *Register of Regulations* at 23 **DE Reg.** 730 and again in the April 1, 2020 edition of the *Register of Regulations* at 23 **DE Reg.** 831 (collectively, the First Proposal), the Commissioner of the Delaware Department of Insurance (Commissioner) published a notice of intent to amend Regulation 903 Prompt Payment of Settled Claims to:

- Allow insurance carriers to pay settled insurance claims other than claims that are subject to the Workers Compensation Statute at 19 **Del.C.** §2344 by electronic means; and
- Make grammatical and formatting edits throughout the regulation.

The authority for the proposed amendments is 18 **Del.C.** §§311, 520, 2304(16), and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

The Department solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 **Del.C.** §10118(a) and for an additional 30 days at the discretion of the Department. The Department did not hold a public hearing on the proposal. The Department received comments from nine commenters, which are on file with the Department. Two commenters endorsed the Department's proposed amendments wholesale. The other seven commenters offered comments that suggested substantive changes that required further public comment.

B. The Second Proposal

In response to the comments received on the First proposal, the Department published the Second Proposal to affect the same purposes as the First Proposal, taking into consideration comments received on the First Proposal. The Department provided a summary of the comments received in connection with the First Proposal in a separate section of the introduction to the Second Proposal (see at 24 **DE Reg.** 32 (07/01/20)).

As with the First Proposal, the Department solicited written comments on the Second Proposal from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 **Del.C.** §10118(a). The Department did not hold a public hearing on the Second Proposal. The Department received comments on the Second Proposal from one commenter, which are on file with the Department. This commenter requested that the Department include payment cards in the list of allowable forms of electronic payment at subsection 5.2.

II. FINDINGS OF FACTS

1. The amendments to Regulation 903 Prompt Payment of Settled Claims modernize acceptable claims payment methodologies to recognize that electronic payment of claims is an acceptable form of claims payment.
2. The Department declines to make the edits to subsection 5.2 suggested by the commenter, which would allow electronic payment to be made by payment card. A claim should be paid in full without the payee risking

leaving residual cents and even dollars unused on a payment card.

3. The Department met the public notice requirements of the Administrative Procedures Act.

III. DECISION TO ADOPT PROPOSED AMENDMENTS TO REGULATION 903

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt the proposed amendments to 18 **DE Admin. Code** 903 regarding electronic payment of claims.

IV. EFFECTIVE DATE OF ORDER

The actions referred to hereinabove were taken by the Commissioner pursuant to 18 **Del.C.** §§311, 520, 2304(16), and 2312 on the date indicated below. The effective date of this Order and of the amendments to this regulation shall be September 11, 2020.

IT IS SO ORDERED.

The 17th day of August, 2020.

Trinidad Navarro
Commissioner, Delaware Department of Insurance

903 Prompt Payment of Settled Claims [Formerly Regulation 81]

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311, 520, 2304(16), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

2.0 Scope

This regulation ~~will apply~~ applies to all ~~insurers~~ persons that settle claims either pursuant to a legal action or otherwise.

3.0 Purpose

The purpose of this regulation is to ~~ensure prompt payment of claims pursuant to the settlement of claims by insurance carriers set forth requirements for prompt payment of settled insurance claims by persons~~ as required by 18 Del.C. §2304(16)(f).

4.0 Definitions

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

“Claimant” means a person covered under an insurance policy or a representative designated by such person and who is entitled to make claims on that person’s behalf including that person’s legal representative, but does not include any provider or other third party who has provided services to a claimant.

“Commissioner” means the Commissioner of the Delaware Department of Insurance.

“Person” shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society and other legal entity engaged in the business of insurance, including agents, brokers and adjusters. Person shall also mean medical service plans and hospital service plans as defined in 18 Del.C. §6302. For purposes of this regulation, medical hospital service plans shall be deemed to be engaged in the business of insurance.

4.05.0 Prompt Payment

- 5.1 Under 18 Del.C. §2304(16)(f), persons are required in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. A person shall make

~~prompt payment of a claim that has settled.~~ For the ~~purpose~~ purposes of this ~~regulation~~ regulation, prompt payment is defined as remittance of the check or electronic payment within 30 days from any one of the following dates:

- 5.1.1 ~~the~~ The date of agreement, memorialized in writing on which a settlement agreement is fully executed, including the settlement of a case prior to a hearing but pursuant to an action filed in court;
 - 5.1.2 The date a final order is issued by the court;
 - 5.1.3 The date that all of claimant's documentation has been received and investigation of the claim is complete; or
 - 5.1.4 ~~unappealed~~ The last day by which an arbitration award may be appealed as provided in applicable appellate court rules, when neither party to the arbitration has elected to file an appeal.
- 5.2 Payment shall be made in accordance with the following:
- 5.2.1 The person may allow a claimant to choose to receive the payment by check or by electronic payment;
 - 5.2.2 If the claimant chooses to receive an electronic payment, the person shall not:
 - 5.2.2.1 Use an institution or issuer to pay claims that imposes charges or fees upon the claimant that reduce the claim payment amount in any way; or
 - 5.2.2.2 Impose any charges or fees upon the claimant in connection with the electronic payment;
 - 5.2.3 For purposes of subsection 5.2 of this regulation, a fee that may be incurred by the claimant due to the claimant's election of certain means to access the funds, including but not limited to the following, shall not be considered a prohibited fee that reduces the claim payment amount:
 - Fees charged by the claimant's bank to accept a wire transfer;
 - Fees for multiple ATM withdrawals charged by the claimant's bank under the terms of the claimant's account; or
 - Fees charged by the financial institution used by the claimant to access monies (such as ATM fees charged by banks other than the bank in which the claimant has an account); and
 - 5.2.4 Notwithstanding anything in this regulation to the contrary, payments for settled workers compensation claims shall be made in the form required by 19 Del.C. §2344.

5.0 Settlement of Claims

- 5.1 ~~The language in 18 Del.C. §2304 (16)(f) requires good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. The aforementioned section also applies in those instances where a case is settled prior to a hearing but pursuant to an action filed in court. Once liability has been resolved and an amount agreed upon, or ordered by the court, or awarded by an arbitration panel, the carrier is required to make prompt payment.~~

6.0 Procedure and Penalties for Failure to Remit Prompt Payment of a Settled Claim

- 6.1 ~~In the event that an insurance carrier does not remit prompt payment pursuant to this regulation and If the Department has determined~~ determines that said carrier a person has done so failed to remit prompt payment of a settled claim as required by 18 Del.C. §2304(16)(f) and this regulation in bad faith and with such frequency as to indicate a general business practice, the Department shall may file an administrative action against the carrier pursuant to person in accordance with 18 Del.C. §323 and the Administrative Procedures Act. The commissioner If the Commissioner finds after a hearing that the person has violated 18 Del.C. §2304(16)(f) and this regulation, the Commissioner may take all of the following actions:
 - 6.1.1 Award interest to the claimant in an amount equal to the prime rate of interest plus 3% on the amount of the claim, which shall be calculated from the applicable date the claim was settled or ordered, in an amount equal to the prime rate of interest plus 3% listed in subsection 5.1 of this regulation;

- 6.1.2 Fine the ~~insurer~~ person according to the provisions outlined in 18 ~~Del.C. §329, §329~~ and impose other such penalties as provided in 18 ~~Del.C. §520~~.
- 6.1.3 Fine any ~~person(s)~~ person involved with the claim ~~and/or~~ or settlement according to the provisions outlined in 18 ~~Del.C. §2308(a)(1)~~.

7.0 General Business Practice

- 7.1 Within a ~~36-month~~ 36-month period, three instances of a ~~carrier's~~ person's failure to make prompt payment, as defined in ~~section 4.0 above~~ Section 5.0 of this regulation, shall give rise to a rebuttable presumption that the ~~insurer~~ person is in violation of 18 ~~Del.C. §2304 (16)(f)~~.
- 7.2 The ~~36-month~~ 36-month period established in ~~section 7.1 above~~ subsection 7.1 of this regulation shall be measured from the applicable date ~~the amount was agreed upon, ordered by the court, or awarded by arbitration~~ as set forth in subsection 5.1 of this regulation.

8.0 Separability

- ~~8.1~~ If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected and shall remain valid.

9.0 Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against ~~an insurer~~ a person or ~~the person's~~ the person's representative based upon a violation of 18 ~~Del.C. §2304(16)~~. In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 ~~Del.C. §2304(16)~~.

10.0 Effective Date

This regulation [~~shall become~~ became] effective [~~30 days after publication in the Delaware Register of Regulations on October 1, 2001~~]. The amendments to this regulation shall become effective on [the eleventh day after publication of a final order signed by the Commissioner adopting the amendments into this regulation] September 11, 2020.

DEPARTMENT OF LABOR DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10113(b)(2) (19 ~~Del.C. §3122 & 29 Del.C. §10113(b)(2)~~)
19 DE Admin. Code 1201

ORDER

1201 Unemployment Insurance Appeal Board Regulations

Pursuant to 29 *Del. C.* § 10118 and 19 *Del. C.* § 3122, the Unemployment Insurance Appeal Board ("Board") issues this Order adopting the below amendment to the Board's Regulations. Specifically, pursuant to 29 *Del. C.* § 10113(b)(2), regulation 4.2 may be changed without prior publication in order to codify existing agency practice and procedure during the ongoing State of Emergency declared by Governor Carney for the State of Delaware as a result of the serious public health threat from the novel coronavirus ("COVID-19").

SUMMARY OF THE EVIDENCE

1. Regulation 4.2 states "Presence of parties required. All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in the absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal."

2. In order to codify the practice and procedure used by the Board during the ongoing State of Emergency due to COVID-19, the Board amends Regulation 4.2 to add subsection 4.2.1 which states as follows (additions are underlined, removals are stricken through):

4.2 Presence of parties required. All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in the absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.

"4.2.1 The Board may consider conducting hearings telephonically, when it believes it would be practicable and efficient to do so and will promptly consider any written request by a party to change a hearing from being held in-person to a telephonic hearing. Absent any written request by a party, the Board may, on its own initiative, change a hearing from being in-person to a telephonic hearing."

The effective date of this Order will be ten (10) days from its publication in the *Delaware Register of Regulations* on September 1, 2020.

IT IS SO ORDERED this 14th day of August, 2020.

UNEMPLOYMENT INSURANCE APPEAL BOARD MEMBERS:

Elmer L. Newlin, Chairman
Beverly G. Bell
Sarah Buttner

Vance G. Daniels
Drew A. Dorak

1201 Unemployment Insurance Appeal Board Regulations

1.0 Definitions

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

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

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

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

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

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

2.0 Location of Unemployment Insurance Appeal Board

2.1 All correspondence or other papers or documents filed with the Board shall be filed, either by mail or by hand delivery, at the following address: Unemployment Insurance Appeal Board, Department of Labor, 4425 North Market Street, Wilmington, DE 19802. The Board phone number is (302) 761-8370 and the Board's fax number is (302) 761-6635.

2.2 Notices of Appeal to the Board may be filed, by mail or personal delivery, at any local Unemployment Office or at the Board Office listed at Rule 2.1. All notices of Appeal must be in writing.

3.0 Commencement

A hearing before the Board may be initiated by:

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

4.0 Hearings

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

4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.

4.7.4 The Board shall not receive into evidence any new testimony offered by means of a telephone or other electronic or electromagnetic device, however the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device.

4.8 Subpoenas.

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

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

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

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

5.0 Remand

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

6.0 Decisions

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

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

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

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

7.0 Rehearing

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

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

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

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

GENERAL NOTICES

DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))

PUBLIC NOTICE

8002 Rules to Establish an Excavation Damage Prevention Program

IN THE MATTER OF THE ADOPTION
OF RULES TO ESTABLISH AN
EXCAVATION DAMAGE PREVENTION
PROGRAM
(OPENED OCTOBER 22, 2019)

PSC DOCKET NO. 19-0713
(REGULATION DOCKET NO. 8002)

NOTICE OF PUBLIC HEARING

TO: ALL EXCAVATORS, OPERATORS OF UNDERGROUND UTILITY LINES AND OTHER INTERESTED PERSONS

The Delaware Public Service Commission ("Commission") has issued proposed regulations governing its enforcement of the *Underground Utility Damage Prevention and Safety Act*, which is codified at 26 *Del. C.* §§ 801-813 ("*Damage Prevention Act*"). The *Damage Prevention Act* provides, among other things, excavation requirements for excavators and utility line marking requirements for operators of underground utility lines. The Commission's proposed regulations, entitled *Rules to Establish an Excavation Damage Prevention Program*, establish its enforcement procedures under the *Damage Prevention Act*. The Commission will conduct a public hearing concerning its proposed regulations by teleconference and by live video streaming as follows:

DATE & TIME	ELECTRONIC ACCESS
Wednesday, September 30, 2020, at 1:00 p.m.	Teleconference: toll free 1-800-391-2548; access code 61157435#. Live streaming may be accessed using this link: https://depssc.delaware.gov/commission-meetings/

You can review the proposed regulations in the July 1, 2020 *Delaware Register of Regulations*. You can also review the proposed regulations in the Commission's electronic filing system DelaFile at <http://delafile.delaware.gov/> -- entering "19-0713" for the docket number. If you wish to obtain written copies of the proposed regulations or other documents, please contact the Commission at (302) 736-7500. Copies in excess of the first 20 pages are \$0.10 per page. Payment is expected at the time of copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you wish to retrieve them in person).

Pursuant to 29 *Del. C.* § 10118(a), the Commission will continue to accept written comments on the proposed regulations until **Thursday, October 15, 2020**. They can be filed electronically in DelaFile at <http://delafile.delaware.gov/> by completing the Public Comment form located under Public Links. Written comments can also be mailed to Samantha Hemphill, Public Service Commission, 861 Silver Lake Boulevard, Suite 100, Dover, DE 19904, or emailed to her at samantha.hemphill@delaware.gov with the subject line "Docket No. 19-0713."

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission held a public hearing on **Wednesday, August 12, 2020** beginning at **1:30 p.m.** In light of COVID-19 mitigation measures in effect for DRBC member states, the Commission conducted the public hearing remotely. Please check the Commission's website, www.drbc.gov, on or after July 29, 2020 for details regarding the resolutions and draft docket decisions that were the subjects of the public hearing.

The Commission's quarterly business meeting will be held on **Wednesday, September 10, 2020**, beginning at **10:30 a.m.** Again, due to COVID-19 mitigation measures in effect for DRBC member states, the meeting will be held remotely. Please check the Commission's website, www.drbc.gov, on or after July 29, 2020 for details about the meeting format and how to attend.

For additional information, please visit the DRBC website at www.drbc.gov or contact Denise McHugh at denise.mchugh@drbc.gov or Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the proposed regulations is to amend Rule 15 by amending Rules 15.1.3.1.5 and 15.1.3.1.6 relating to phenylbutazone and oxphenbutazone and amending Rule 15.2.1.4 relating to Furosemide (Salix). Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the September 1, 2020 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before October 1, 2020. Written materials submitted will be available for inspection at the above address.

On or after October 1, 2020, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

If adopted by the Thoroughbred Racing Commission, the amendments to Rules 15.1.3.1.5 and 15.1.3.1.6 shall take effect ten days after being published as final in the *Delaware Register of Regulations*. The amendment to Rule 15.2.1.4 shall not be in effect during the running of the 2020 race meet and rather shall take effect on January 1, 2021.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

On March 12, 2020, Governor Carney issued a declaration of a state of emergency for the state of Delaware due to a public health threat. The State of Emergency allows all public meetings of executive branch public bodies, including the SBE, to be conducted electronically, either by means of telephone conference call or video-conference call.

CALENDAR OF EVENTS/HEARING NOTICES

In accordance with the State of Emergency, the State Board of Education is currently holding meetings electronically. The meeting information can be accessed via the public meeting calendar (<https://publicmeetings.delaware.gov/Search?q=&AnyAll=Any&AgencyID=22&StartDateInclusive=2020-08-01>). Members of the public can join the meeting via the web or telephone.

Meeting materials are available on the State Board of Education's eBoard site (<https://simbli.eboardsolutions.com/index.aspx?s=190001>). (If you are having technical difficulties accessing the site, please try a different browser.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

PUBLIC NOTICE

4470 State of Delaware Medical Marijuana Code

Pursuant to 16 **Del. C.** §49A, Office of Medical Marijuana, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the State of Delaware Medical Marijuana Code. On September 1, 2020, the Division of Public Health plans to publish as "proposed" revisions to the State of Delaware Medical Marijuana Code. The revisions include the establishment of a Cannabidiol-Rich (CBD-Rich) registry identification card, requirements for CBD-Rich medical marijuana profile concentrations, regulations for home delivery services, the addition of anxiety to the list of qualifying conditions (restricted to CBD-Rich cards), and technical changes.

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

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Thursday, October 1, 2020, at:

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

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Terminating Food Benefits due to Substantial Lottery or Gambling Winnings

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 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 Social Services (DSS) is proposing to amend Division of Social Services Manual regarding the Food Stamp Program, specifically, Terminating Food Benefits due to Substantial Lottery or Gambling Winnings.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2020. Please identify in the subject line: Terminating Food Benefits due to Substantial Lottery or Gambling Winnings.

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 STATE
DIVISION OF PROFESSIONAL REGULATION
2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2604(a)(1), the Delaware Examining Board of Physical Therapists and Athletic Trainers ("Board") has proposed revisions to its rules and regulations.

Revisions to Section 14.0, pertaining to telehealth, are designed to increase patient access to physical therapy and athletic training services. Subsection 14.2.4.4 has been stricken to permit all evaluations, including initial evaluations, re-evaluations and scheduled discharges, to be performed via telehealth. Subsection 14.2.4.5 has been stricken to permit supervisory visits to be performed via telehealth. Finally, amendments to subsection 1.2 provide that supervising physical therapists may conduct supervision either in person or by telehealth.

A public hearing will be held on September 22, 2020 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at danielle.cross@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **October 7, 2020** which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION
2930 COUNCIL ON REAL ESTATE APPRAISERS
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to value limitations for Licensed Residential Real Property Appraisers and AQB approved continuing education are proposed to be amended.

A public hearing will be held on October 20, 2020 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board by November 4, 2020, at the above address in accordance with 29 **Del.C.** §10118(a).
