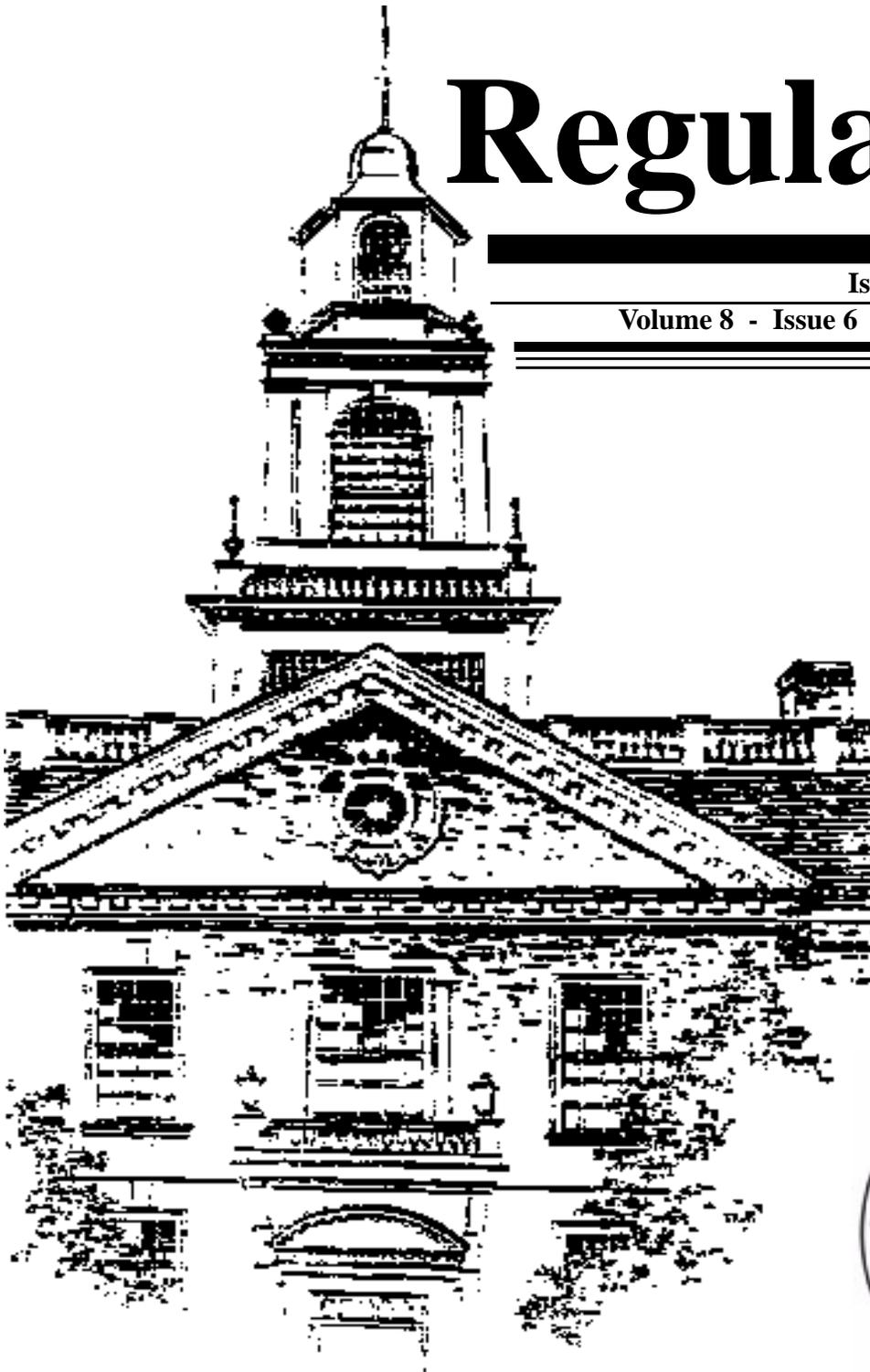

Delaware Register of Regulations

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Volume 8 - Issue 6

Pages 740 - 934



IN THIS ISSUE:

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- Errata
- Proposed
- Final

Governor

- Executive Orders
- Appointments
- General Notices
- Calendar of Events &
Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before November 15, 2004.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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
- Attorney General's Opinions in full text
- 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:

6 **DE Reg.** 1541-1542 (06/01/03)

Refers to Volume 6, pages 1541-1542 of the *Delaware Register* issued on June 1, 2003.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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 |
|---------------|-----------------|-----------------|
| JANUARY 1 | DECEMBER 15 | 4:30 P.M. |
| FEBRUARY 1 | JANUARY 17 | 4:30 P.M. |
| MARCH 1 | FEBRUARY 15 | 4:30 P.M. |
| APRIL 1 | MARCH 15 | 4:30 P.M. |
| MAY 1 | APRIL 15 | 4:30 P.M. |

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**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF MEDICAL PRACTICE**

Statutory Authority: 24 Delaware Code,
Section 1730(a)(12) (24 Del.C. §1730(a)(12))
24 DE Admin. Code 1700

*** PLEASE NOTE: THIS NOTICE OF PROPOSED REGULATORY ACTION WAS ORIGINALLY PUBLISHED IN THE NOVEMBER 2004 ISSUE OF THE REGISTER. HOWEVER, THE DATE, PLACE AND TIME OF THE PUBLIC HEARING WAS INADVERTENTLY LEFT OUT. IT IS BEING REPUBLISHED HERE WITH THE REQUIRED INFORMATION.**

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. 1730(a)(12), the Delaware Board of Medical Practice proposes to revise its Rules and Regulations as mandated by Senate Bill 229. The proposed revision will add a new section that specifically identifies those crimes which are substantially related to the practice of medicine and the practice of licensed respiratory care and practice as a licensed physician's assistant.

A public hearing will be held on the proposed Rule and Regulation on January 4, 2005 at 2:30 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed Rule and Regulation. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rule and Regulation or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling her at (302) 744-4520.

AUTHORITY

Pursuant to 74 Del. Laws c. 262, (Senate Bill No. 229 of the 142 General Assembly, 2004, as amended), the Board was directed to promulgate regulations specifically identifying those crimes which are substantially related to the practice of medicine and the practice of licensed respiratory care and practice as a licensed physician's assistant.

PURPOSE

The Board of Medical Practice believes that the State of

Delaware has a compelling public policy interest in ensuring that its licensed professionals not only have specified levels of educational and professional competence but also possess sufficient character and judgment necessary to practice safely in their chosen fields and to do so in a manner which will not undermine the community's confidence in the expertise and professionalism of the members of the profession. Licensed professionals, particularly those in health care related fields, often come into contact with clients and patients and other members of the public at times when they may be sick, infirmed or otherwise extremely vulnerable to undue influence or other forms of misuse, fraud and abuse. It is therefore critical that all reasonable steps are taken to determine, to the extent possible, that the regulation of such professionals takes into consideration not only the individual's technical competence but his or her demonstrated propensity to behave in a way that does not expose the client population to risk or diminish legitimate expectations of honest and honorable behavior by such licensed health care professionals.

1700 Board of Medical Practice

29.0 Crimes Substantially Related to the Practice of Medicine and the Practice of Licensed Respiratory Care and Practice as a Licensed Physician's Assistant

The Board finds that for purposes of licensing, renewal, reinstatement and discipline, the conviction of any of the following crimes, or of the attempt to commit or a conspiracy to commit or conceal the following crimes or substantially similar crimes in another state or jurisdiction, is deemed to be substantially related to the practice of Medicine, Respiratory Care and Physician's Assistants in the State of Delaware without regard to the place of conviction:

29.1 For the purposes of this section the following definitions shall apply:

"Conviction" means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a "Robinson" or "Alford" plea unless the individual has been discharged under §4218 of Title 11 of the Delaware Code (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program).

"Jurisdiction" Including all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

29.2 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the Delaware Code Annotated:

Assaults and Related Offenses

29.2.1 §601. Offensive touching;
 29.2.2 §602. Menacing;
 29.2.3 §603. Reckless endangering in the second degree;
 29.2.4 §604. Reckless endangering in the first degree;
 29.2.5 §605. Abuse of a pregnant female in the second degree;
 29.2.6 §606. Abuse of a pregnant female in the first degree;
 29.2.7 §611. Assault in the third degree;
 29.2.8 §612. Assault in the second degree;
 29.2.9 §613. Assault in the first degree;
 29.2.10 §614. Assault on a sports official.
 29.2.11 §615. Assault by abuse or neglect;
 29.2.12 §621. Terroristic threatening;
 29.2.13 §625. Unlawfully administering drugs;
 29.2.14 §626. Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;
 29.2.15 §627. Prohibited acts as to substances releasing vapors or fumes;
 29.2.16 §628. Vehicular assault in the second degree;
 29.2.17 §629. Vehicular assault in the first degree;
 29.2.18 §630. Vehicular homicide in the second degree;
 29.2.19 §630A. Vehicular homicide in the first degree;
 29.2.20 §631. Criminally negligent homicide;
 29.2.21 §632. Manslaughter;
 29.2.22 §633. Murder by abuse or neglect in the second degree;
 29.2.23 §634. Murder by abuse or neglect in the first degree;
 29.2.24 §635. Murder in the second degree;
 29.2.25 §636. Murder in the first degree;
 29.2.26 §645. Promoting suicide.
Abortion and Related Offenses
 29.2.27 §651. Abortion;
 29.2.28 §653. Issuing abortifacient articles.
Sexual Offenses
 29.2.29 §763. Sexual harassment;
 29.2.30 §764. Indecent exposure in the second degree;
 29.2.31 §765. Indecent exposure in the first degree;
 29.2.32 §766. Incest;
 29.2.33 §767. Unlawful sexual contact in the third degree;
 29.2.34 §768. Unlawful sexual contact in the second degree;
 29.2.35 §769. Unlawful sexual contact in the first degree;

29.2.36 §770. Rape in the fourth degree;
 29.2.37 §771. Rape in the third degree;
 29.2.38 §772. Rape in the second degree;
 29.2.39 §773. Rape in the first degree;
 29.2.40 §776. Sexual extortion;
 29.2.41 §777. Bestiality;
 29.2.42 §778. Continuous sexual abuse of a child;
 29.2.43 §780. Female genital mutilation.
Kidnapping and Related Offenses
 29.2.44 §781. Unlawful imprisonment in the second degree;
 29.2.45 §782. Unlawful imprisonment in the first degree;
 29.2.46 §783. Kidnapping in the second degree;
 29.2.47 §783A. Kidnapping in the first degree;
 29.2.48 §785. Interference with custody;
Coercion
 29.2.49 §791. Acts constituting coercion;
 29.3 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:
Arson and Related Offenses
 29.3.1 §801. Arson in the third degree;
 29.3.2 §802. Arson in the second degree;
 29.3.3 §803. Arson in the first degree;
 29.3.4 §804. Reckless burning or exploding;
 29.3.5 §805. Cross or religious symbol burning;
Criminal Trespass and Burglary
 29.3.6 §820. Trespassing with intent to peer or peep into a window or door of another;
 29.3.7 §821. Criminal trespass in the third degree;
 29.3.8 §822. Criminal trespass in the second degree;
 29.3.9 §823. Criminal trespass in the first degree;
 29.3.10 §824. Burglary in the third degree;
 29.3.11 §825. Burglary in the second degree;
 29.3.12 §826. Burglary in the first degree;
 29.3.13 §828. Possession of burglar's tools or instruments facilitating theft;
Robbery
 29.3.14 §831. Robbery in the second degree;
 29.3.15 §832. Robbery in the first degree;
 29.3.16 §835. Carjacking in the second degree;
 29.3.17 §836. Carjacking in the first degree;
Theft and Related Offenses
 29.3.18 §840. Shoplifting; class G felony;
 29.3.19 §840A. Use of illegitimate retail sales receipt or Universal Product Code Label.
 29.3.20 §841. Theft;
 29.3.21 §842. Theft; lost or mislaid property; mistaken delivery.
 29.3.22 §843. Theft; false pretense.

- 29.3.23 §844. Theft; false promise.
29.3.24 §845. Theft of services.
29.3.25 §846. Extortion;
29.3.26 §848. Misapplication of property;
29.3.27 §849. Theft of rented property;
29.3.28 §850. Use, possession, manufacture,
distribution and sale of unlawful telecommunication and
access devices.
29.3.29 §851. Receiving stolen property;
29.3.30 §853. Unauthorized use of a vehicle;
29.3.31 §854. Identity theft;
29.3.32 §859. Larceny of livestock;
29.3.33 §860. Possession of shoplifter's tools or
instruments facilitating theft;
Forgery and Related Offenses
29.3.34 §861. Forgery; class F felony;
29.3.35 §862. Possession of forgery devices;
Offenses Involving Falsification of Records
29.3.36 §871. Falsifying business records;
29.3.37 §872. Falsifying business records;
29.3.38 §873. Tampering with public records in
the second degree;
29.3.39 §876. Tampering with public records in
the first degree;
29.3.40 §877. Offering a false instrument for
filing;
29.3.41 §878. Issuing a false certificate;
Bribery Not Involving Public Servants
29.3.42 §881. Bribery;
29.3.43 §882. Bribe receiving;
Frauds on Creditors
29.3.44 §891. Defrauding secured creditors;
29.3.45 §892. Fraud in insolvency;
29.3.46 §893. Interference with levied-upon
property;
Other Frauds and Cheats
29.3.47 §900. Issuing a bad check;
29.3.48 §903. Unlawful use of credit card;
29.3.49 §903A. Reencoder and scanning devices;
29.3.50 §906. Deceptive business practices;
29.3.51 §907. Criminal impersonation;
29.3.52 §907A. Criminal impersonation, accident
related;
29.3.53 §907B. Criminal impersonation of a police
officer;
29.3.54 §908. Unlawfully concealing a will;
29.3.55 §909. Securing execution of documents by
deception;
29.3.56 §910. Debt adjusting;
29.3.57 §911. Fraudulent conveyance of public
lands;
29.3.58 §912. Fraudulent receipt of public lands.;
29.3.59 §913. Insurance fraud;
29.3.60 §913A. Health care fraud;
29.3.61 §914. Use of consumer identification
information;
29.3.62 §915. Use of credit card information;
29.3.63 §915A. Credit and debit card transaction
receipts;
29.3.64 §916. Home improvement fraud;
29.3.65 §917. New home construction fraud;
Offenses Relating to Recorded Devices
29.3.66 §920. Transfer of recorded sounds;
29.3.67 §921. Sale of transferred recorded sounds;
29.3.68 §922. Improper labeling;
Computer Related Offenses
29.3.69 §932. Unauthorized access.
29.3.70 §933. Theft of computer services.
29.3.71 §934. Interruption of computer services.
29.3.72 §935. Misuse of computer system
information.
29.3.73 §936. Destruction of computer equipment.
29.3.74 §937. Unrequested or unauthorized
electronic mail or use of network or software to cause same.
29.3.75 §938. Failure to promptly cease electronic
communication upon request.
Offenses Relating to Marriage
29.3.76 §1001. Bigamy;
29.3.77 §1003. Bigamous marriage contracted
outside the State.
29.4 Any crime which involves misuse or abuse of
children or animals and shall include by way of example and
not of limitation the following crimes listed in Title 11 of the
Delaware Code Annotated:
Child Welfare; Sexual Offenses, Animal Offenses
29.4.1 §1100. Dealing in children;
29.4.2 §1101. Abandonment of child;
29.4.3 §1102. Endangering the welfare of a child;
29.4.4 §1105. Endangering the welfare of an
incompetent person;
29.4.5 §1106. Unlawfully dealing with a child;
29.4.6 §1107. Endangering children;
29.4.7 §1108. Sexual exploitation of a child;
29.4.8 §1109. Unlawfully dealing in child
pornography;
29.4.9 §1111. Possession of child pornography;
29.4.10 §1112. Sexual offenders; prohibitions
from school zones.
29.4.11 §1112A .Sexual solicitation of a child;
29.4.12 §1113. Criminal non-support and
aggravated criminal non-support.
29.4.13 §1114. Body-piercing; tattooing or
branding;
29.4.14 §1114A. Tongue-splitting;
29.4.15 §1116. Sale or distribution of tobacco
products to minors;
29.4.16 §1117. Notice;
29.4.17 §1119. Distribution of cigarettes through

- vending machines;
 29.4.18 §1120. Distribution of tobacco products;
 29.4.19 §1124. Purchase or receipt of tobacco products by minor;
 29.4.20 §1325. Cruelty to animals;
 29.4.21 §1325A. The unlawful trade in dog or cat by-products;
 29.4.22 §1326. Animals; fighting and baiting prohibited;
 29.4.23 §1327. Maintaining a dangerous animal;
29.5 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:
 Bribery and Improper Influence
 29.5.1 §1201. Bribery;
 29.5.2 §1203. Receiving a bribe;
 29.5.3 §1205. Giving unlawful gratuities;
 29.5.4 §1206. Receiving unlawful gratuities;
 29.5.5 §1207. Improper influence;
 29.5.6 §1211. Official misconduct;
 29.5.7 §1212. Profiteering.
 Perjury and related offenses
 29.5.8 §1221. Perjury in the third degree;
 29.5.9 §1222. Perjury in the second degree;
 29.5.10 §1223. Perjury in the first degree;
 29.5.11 §1233. Making a false written statement;
 29.5.12 §1239. Wearing a disguise during the commission of a felony;
 29.5.13 §1240. Terroristic threatening of public officials or public servants;
 29.5.14 §1241. Refusing to aid a police officer;
 29.5.15 §1243. Obstructing fire-fighting operations;
 29.5.16 §1244. Hindering prosecution;
 29.5.17 §1245. Falsely reporting an incident;
 29.5.18 §1246. Compounding a crime;
 29.5.19 §1248. Obstructing the control and suppression of rabies;
 29.5.20 §1249. Abetting the violation of driver's license restrictions;
 29.5.21 §1250. Offenses against law-enforcement animals;
 29.5.22 §1251. Escape in the third degree;
 29.5.23 §1252. Escape in the second degree;
 29.5.24 §1253. Escape after conviction;
 29.5.25 §1254. Assault in a detention facility;
 29.5.26 §1257A. Use of an animal to avoid capture;
 29.5.27 §1259. Sexual relations in detention facility;
 29.5.28 §1260. Misuse of prisoner mail.
Offenses Relating to Judicial and Similar Proceedings
 29.5.29 §1261. Bribing a witness;
 29.5.30 §1262. Bribe receiving by a witness;
 29.5.31 §1263. Tampering with a witness;
 29.5.32 §1263A. Interfering with child witness.
 29.5.33 §1264. Bribing a juror;
 29.5.34 §1265. Bribe receiving by a juror;
 29.5.35 §1266. Tampering with a juror;
 29.5.36 §1267. Misconduct by a juror;
 29.5.37 §1269. Tampering with physical evidence;
 29.5.38 §1271. Criminal contempt;
 29.5.39 §1271A. Criminal contempt of a domestic violence protective order;
 29.5.40 §1273. Unlawful grand jury disclosure.
29.6 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the Delaware Code Annotated which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.
 Disorderly Conduct and Related Offenses
 29.6.1 §1301. Disorderly conduct;
 29.6.2 §1302. Riot;
 29.6.3 §1304. Hate crimes;
 29.6.4 §1311. Harassment;
 29.6.5 §1312. Aggravated harassment;
 29.6.6 §1312A. Stalking;
 29.6.7 §1313. Malicious interference with emergency communications;
 29.6.8 §1315. Public intoxication;
 29.6.9 §1316. Registration of out-of-state liquor agents;
 29.6.10 §1320. Loitering on property of a state-supported school, college or university;
 29.6.11 §1321. Loitering
 29.6.12 §1322. Criminal nuisance;
 29.6.13 §1323. Obstructing public passages;
 29.6.14 §1324. Obstructing ingress to or egress from public buildings;
 29.6.15 §1331. Desecration;
 29.6.16 §1332. Abusing a corpse;
 29.6.17 §1333. Trading in human remains and associated funerary objects.
 29.6.18 §1335. Violation of privacy;
 29.6.19 §1338. Bombs, incendiary devices, Molotov cocktails and explosive devices;
 29.6.20 §1339. Adulteration;
 29.6.21 §1340. Desecration of burial place.

Offenses Involving Public Indecency29.6.22 §1341. Lewdness;29.6.23 §1342. Prostitution;29.6.24 §1343. Patronizing a prostitute prohibited.29.6.25 §1351. Promoting prostitution in the third degree;29.6.26 §1352. Promoting prostitution in the second degree;29.6.27 §1353. Promoting prostitution in the first degree;29.6.28 §1355. Permitting prostitution;Obscenity29.6.29 §1361. Obscenity: acts constituting;29.6.30 §1365. Obscene literature harmful to minors;29.6.31 §1366. Outdoor motion picture theatres;Offenses Involving Gambling29.6.32 §1403. Advancing gambling in the first degree;29.6.33 §1404. Providing premises for gambling;29.6.34 §1405. Possessing a gambling device; class A misdemeanor.29.6.35 §1406. Being concerned in interest in keeping any gambling device;29.6.36 §1407. Engaging in a crap game;29.6.37 §1411. Unlawfully disseminating gambling information.29.7 Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the Delaware Code Annotated:29.7.1 §4751. Prohibited acts A;29.7.2 §4752. Prohibited acts B;29.7.3 §4752A. Unlawful delivery of noncontrolled substance.29.7.4 §4753. Prohibited acts C.29.7.5 §4753A. Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs.29.7.6 §4754. Prohibited acts D;29.6.7 §4754A. Possession and delivery of noncontrolled prescription drug.29.7.8 §4755. Prohibited acts E;29.7.9 §4756. Prohibited acts;29.7.10 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;29.7.11 §4758. Keeping drugs in original containers.29.7.12 §4761. Distribution to persons under 21 years of age;29.7.13 §4761A. Purchase of drugs from minors;29.7.14 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;29.7.15 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship.29.8 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:Offenses Involving Deadly Weapons and Dangerous Instruments29.8.1 §1442. Carrying a concealed deadly weapon;29.8.2 §1443. Carrying a concealed dangerous instrument;29.7.3 §1444. Possessing a destructive weapon;29.8.4 §1445. Unlawfully dealing with a dangerous weapon;29.8.5 §1446. Unlawfully dealing with a switchblade knife;29.8.6 §1447. Possession of a deadly weapon during commission of a felony;29.8.7 §1447A. Possession of a firearm during commission of a felony;29.8.8 §1448. Possession and purchase of deadly weapons by persons prohibited;29.8.9 §1448A. Criminal history record checks for sales or firearms;29.8.10 §1449. Wearing body armor during commission of felony;29.8.11 §1450. Receiving a stolen firearm;29.8.12 §1451. Theft of a firearm;29.8.13 §1452. Unlawfully dealing with knuckles-combination knife;29.8.14 §1453. Unlawfully dealing with martial arts throwing star;29.8.15 §1454. Giving a firearm to person prohibited;29.8.16 §1455. Engaging in a firearms transaction on behalf of another;29.8.17 §1456. Unlawfully permitting a minor access to a firearm;29.8.18 §1457. Possession of a weapon in a Safe School and Recreation Zone;29.8.19 §1458. Removing a firearm from the possession of a law enforcement officer;29.8.20 §1459. Possession of a weapon with a removed, obliterated or altered serial number;29.8.21 §1471. Prohibited acts.Offenses Involving Drug Paraphernalia29.8.22 §4774. Penalties.

Offenses Involving Organized Crime and Racketeering

29.8.23 §1504. Criminal Penalties for Organized Crime & Racketeering

Offenses Involving Intimidation of Victims or Witnesses

29.8.24 §3532. Acts of Intimidation: Class E felony

29.8.25 §3533. Aggravated act of intimidation, Class D felony

Other Crimes

29.8.26 Title 3 §1041. Willfully or maliciously starting fires; Carelessly Starting Fires;

29.8.27 §1043. Setting fire to woodland; Unseasonable Marsh Burning.

29.8.28 Title 4 §901. Offenses carrying penalty of imprisonment for 3 to 6 months;

29.8.29 §902. Offenses carrying penalty of fine of \$500 to \$1,000 or imprisonment of 3 to 6 months on failure to pay fine;

29.8.30 §903. Offenses carrying penalty of fine of not more than \$100 imprisonment for 1 month on failure to pay fine;

29.8.31 §904. Offenses concerning certain persons;

29.8.32 §905. Unlicensed manufacture of alcoholic liquor; Possession of still, apparatus, mash, etc., by unlicensed person;

29.8.33 §906. Transportation or shipment;

29.8.34 §907. Interference with officer or inspector;

29.8.35 §908. Failure of licensee to file report;

29.8.36 §909. Violation of rules respecting liquor taxes.

29.8.37 Title 7 §1717. Unauthorized acts against a service guide or seeing eye dog.

29.8.38 Title 11 §2403. Manufacture, possession or sale of intercepting device;

29.8.39 §2410. Breaking and entering, etc. to place or remove equipment;

29.8.40 §2412. Obstruction, impediment or prevention of interception;

29.8.41 §2422. Divulging contents of communications;

29.8.42 §3532. Act of intimidation;

29.8.43 §3533. Aggravated act of intimidation;

29.8.44 §3534. Attempt to intimidate;

29.8.45 §8523. Penalties [for violation of reporting provision re: SBI];

29.8.46 §8562. Penalties [for failure of child-care provider to obtain information required under §8561 or for those providing false information]

29.8.47 §8572. Penalties [for providing false information when seeking employment in a public school]

29.8.48 §9016. Filing false claim [under Victims'

Compensation Fund].

29.8.49 Title 12 §210. Alteration, theft or destruction of Will.

29.8.50 Title 16 §1136. Abuse or neglect of a patient or resident of a nursing facility.

29.8.51 Title 21 §2118A. Unlawful possession or manufacture of proof of insurance;

29.8.52 §2133. Penalties; jurisdiction of justices of the peace.

29.8.53 §2315. False statements;

29.8.54 §2316. Altering or forging certificate of title, manufacturer's certificate of origin, registration sticker or vehicle I identification plate;

29.8.55 §2620. False statements; incorrect or incomplete information;

29.8.56 §2703. License to operate a motorcycle, motorbike, etc.;

29.8.57 §2710. Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age;

29.8.58 §2722. Restricted licenses based on driver's physical limitations;

29.8.59 §2751. Unlawful application for or use of license or identification card;

29.8.60 §2752. False statements;

29.8.61 §2756. Driving vehicle while license is suspended or revoked; penalty;

29.8.62 §2760. Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards.

29.8.63 Title 23 §2302. Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs;

29.8.64 §2305. Penalties; jurisdiction.

29.8.65 Title 24 §903. Sale to persons under 21 or intoxicated persons.

29.8.66 Title 29 §3107. Motor vehicle safety-responsibility; False statements;

29.8.67 §4175A. Reckless driving;

29.8.68 §4177. Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties.

29.8.69 §4177M. Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs;

29.8.70 §4183. Parking areas for vehicles being used by persons with disabilities;

29.8.71 §4198J. Bicycling on highways under influence of drugs or alcohol;

29.8.72 §4198O. Operation of electric personal assistive mobility devices (EPAMD);

29.8.73 §4201. Duty of driver involved in accident resulting in property damage or injury;

29.8.74 §4202. Duty of driver involved in

accident resulting in injury or death to any person;

29.8.75 §4203. Duty to report accidents; evidence;

29.8.76 §4204. Report of damaged vehicles; cars involved in fatal accidents;

29.8.77 §4604. Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires;

29.8.78 §6420. Odometers penalties;

29.8.79 §6702. Driving vehicle without consent of owner;

29.8.80 §6704. Receiving or transferring stolen vehicle;

29.8.81 §6705. Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity;

29.8.82 §6707. Penalty;

29.8.83 §6709. Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers;

29.8.84 §6710. Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers.

29.8.85 Title 30 §571. Attempt to evade or defeat tax;

29.8.86 §572. Failure to collect or pay over tax;

29.8.87 §573. Failure to file return, supply information or pay tax;

29.8.88 §574. Fraud and false statements;

29.8.89 §576. Misdemeanors.

29.8.90 Title 31 §1007. Fraudulent acts penalties;

29.8.91 §3913. Welfare violations [knowing or reckless abuse of an infirm adult]

29.9 Any crime which is a violation of Title 24, Chapter 17 (Delaware Medical Practices Act) as it may be amended from time to time or of any other statute which requires the reporting of a medical situation or condition to state, federal or local authorities or a crime which constitutes a violation of the Medical Practice Act of the state in which the conviction occurred or in which the physician is licensed.

29.10 The Board reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare. The Board also specifically reserves the jurisdiction to review any crime committed by an applicant for licensure as a physician and to determine whether to waive the disqualification under 24 Del.C. §1720(d).

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Medical**

Practice is available at: <http://www.state.de.us/research/AdminCode/title24/1700 Board of Medical Practice.shtml>

Symbol Key

Roman 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
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 **Del.C.** §1906(1))
24 **DE Admin. Code** 1900

PUBLIC NOTICE

The Delaware Board of Nursing in accordance with 24 **Del.C.** Subsection 1906(1) has proposed to promulgate Rules and Regulations related to the insertion and removal of epidural catheters by certified Registered Nurse Anesthetists and identifying those crimes which are substantially related to the practice of Nursing.

The proposed rule and regulation developed by the Board defines that the insertion and removal of epidural catheters is authorized practice for certified Registered Nurse Anesthetists.

Further, pursuant to 24 **Del.C.** §1906(b) [Senate Bill No. 229, as amended - 74 **Del. Laws.** C. 262], the Board of Nursing is directed to promulgate regulations specifically identifying those crimes which are substantially related to the practice of Nursing.

The Delaware Board of Nursing finds that State of Delaware has a compelling public policy interest in ensuring that its licensed nursing professionals have not only specified levels of educational and professional competence but also have sufficient character and judgment necessary to practice safely in their chosen fields and to do so in a manner

which will not undermine the community's confidence in the expertise and professionalism of the members of the nursing profession.

Nurses and other health care professions come into contact with the public at times when their patients are sick or infirmed and often extremely vulnerable to undue influence or other forms of abuse. It is therefore critical that all reasonable steps are taken to determine, to the extent reasonably feasible, that the licensing of such nursing professionals takes into consideration not only the individual's technical competence but his or her demonstrated propensity to behave in a way that does not expose a vulnerable population to risk or diminish legitimate expectations of honest and honorable behavior by such licensed professionals.

The Delaware Board of Nursing, in accordance with 24 **Del.C.** §1906 has proposed changes to its rules and regulations as directed by Senate Bill No. 229 (74 **Del. Laws** C. 262). The proposed addition sets forth a list of crimes that the Board views as being substantially related to the provision of nursing.

A public hearing will be held on Wednesday, January 12, 2005 at 9:00 a.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4515 or (302) 744-4516. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be January 12, 2005.

8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of Delaware

8.1 Authority

These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 Del.C. §§1902(d), 1906(1), 1906(7).

8.2 Purpose

8.2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the public by regulating the practice of the Advanced Practice Nurse.

8.3 Scope

8.3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20). The Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/ or professional nursing in a specialty area.

8.4 Definitions

“Advanced Practice Nurse” as defined in 24 Del.C. §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

“Audit” The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

“Board” The Delaware Board of Nursing

“Certified Nurse Midwife (C.N.M.)” A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

“Certified Registered Nurse Anesthetist (C.R.N.A.)” A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists’ Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists’ Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

“Clinical Nurse Specialist (C.N.S.)” A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master’s degree program in a clinical nurse specialty or post Master’s certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in 8.9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

“Clinical Nursing Specialty” a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/ pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

3 DE Reg. 1373 (4/1/00)

“Collaborative Agreement” Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

“Guidelines/ Protocols” Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/ protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

“National Certification” That credential earned by a nurse who has met requirements of a Board approved certifying agency.

The agencies so approved include but are not limited to:

American Academy of Nurse Practitioners
American Nurses Credentialing Center
American Association of Nurse Anesthetists
Council on Certification of Nurse Anesthetists
American Association of Nurse Anesthetists
Council on Recertification of Nurse Anesthetists

National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties
National Certification Board of Pediatric Nurse Practitioners and Nurses.

ACNM Certification Council, Inc.

“Nurse Practitioner (N.P.)” A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master’s program or from

an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women's health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

“Post Basic Program”

A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

The program must be one offered and administered by an approved health agency and/or institution of higher learning,

Post basic means a program taken after licensure is achieved.

“Scope of Specialized Practice” That area of practice in which an Advanced Practice Nurse has a Master's degree or a post-basic program certificate in a clinical nursing specialty with national certification.

“Supervision” Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

8.5 Grandfathering Period

8.5.1 Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of licensure.

8.6 Standards for the Advanced Practice Nurse

8.6.1 Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

8.6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in 8.6.2 of these Rules and Regulations:

8.6.2.1 Performs comprehensive assessments using appropriate physical and psychosocial parameters;

8.6.2.2 Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

8.6.2.3 Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited

to psychotherapy, administration of anesthesia, and vaginal deliveries;

8.6.2.4 Functions under established guidelines/protocols and/ or accepted standards of care;

8.6.2.5 Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;

8.6.2.6 Uses appropriate teaching/learning strategies to diagnose learning impediments;

8.6.2.7 Evaluates the quality of individual client care in accordance with quality assurance and other standards;

8.6.2.8 Reviews and revises guidelines/ protocols, as necessary;

8.6.2.9 Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

8.6.2.10 Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;

8.6.2.11 Pursues strategies to enhance access to and use of adequate health care services;

8.6.2.12 Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

8.6.2.13 Performs consultative services for clients referred by other members of the multi-disciplinary team; and

8.6.2.14 Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

8.6.3 In addition to these standards, each nurse certified in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

8.7 Generic Functions of the Advanced Practice Nurse Within the Specialized Scope of Practice include but are not limited to:

8.7.1 Eliciting detailed health history(s)

8.7.2 Defining nursing problem(s)

8.7.3 Performing physical examination(s)

8.7.4 Collecting and performing laboratory tests

8.7.5 Interpreting laboratory data

8.7.6 Initiating requests for essential laboratory procedures

8.7.7 Initiating requests for essential x-rays

8.7.8 Screening patients to identify abnormal problems

8.7.9 Initiating referrals to appropriate resources and services as necessary

8.7.10 Initiating or modifying treatment and medications within established guidelines

8.7.11 Assessing and reporting changes in the health of individuals, families and communities

8.7.12 Providing health education through teaching and counseling

8.7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public

8.7.14 Delegating tasks appropriately

8.7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 **Del.C.** §1906(20).

8.7.16 Inserting and removing epidural catheters after specialized training.

8.8 Criteria for Approval of Certification Agencies

8.8.1 A national certifying body which meets the following criteria shall be recognized by the Board to satisfy 24 **Del.C.** §1902(d)(1).

8.8.2 The national certifying body:

8.8.2.1 Is national in the scope of its credentialing.

8.8.2.2 Has no requirement for an applicant to be a member of any organization.

8.8.2.3 Has educational requirements which are consistent with the requirements of these rules.

8.8.2.4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.8.2.5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.8.2.5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.8.2.5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.8.2.5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.8.2.5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.8.2.5.5 Examinations are evaluated for psychometric performance;

8.8.2.5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.8.2.5.7 Examination security is

maintained through established procedures

8.8.2.6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.8.2.7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.8.2.8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.8.2.9 Has an evaluation process to provide quality assurance in its certification program.

8.9 Application for Licensure to Practice as an Advanced Practice Nurse

8.9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

8.9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

8.9.2.1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.9.2.2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

8.9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

8.9.4 A Registered Nurse meeting the practice requirement as listed in 8.11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

8.9.4.1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

8.9.4.2 Faculty members teaching in nursing education programs are not required to be licensed as

Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 8.11.2.1.

8.9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

8.9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 **Del.C.** Ch. 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 **Del.C.** §1906(20) - (22).

8.10 Temporary Permit for Advanced Practice Nurse Licensure

8.10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

8.10.1.1 The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

8.10.1.2 The individual applying holds a current license in Delaware, and

8.10.1.3 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

8.10.1.4 The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of at least 1000 hours of clinical nursing practice within the past 24 months.

8.10.1.5 Application(s) and fee(s) are on file in the Board office.

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.5 and;

8.10.2.2 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

8.10.2.3 The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice

hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 8.10.2.4; or,

8.10.2.4 The individual meets 8.10.2.1 and 8.10.2.2 hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

8.10.3 If the certifying examination has been passed, the appropriate form must accompany the application.

8.10.4 A temporary permit may be issued:

8.10.4.1 For up to two years in three month periods.

8.10.4.2 At the discretion of the Executive Director.

8.10.5 A temporary permit will be withdrawn:

8.10.5.1 Upon failure to pass the first certifying examination

8.10.5.1.1 The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

8.10.5.1.1.1 current employer reference,

8.10.5.1.1.2 supervision available,

8.10.5.1.1.3 job description,

8.10.5.1.1.4 letter outlining any extenuating circumstances,

8.10.5.1.1.5 any other information the Board of Nursing deems necessary.

8.10.5.2 For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

3 DE Reg. 1373 (4/1/00)

8.10.6 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

8.10.7 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

8.10.8 Any person practicing or holding oneself out as an Advanced Practice Nurse in any category without a Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (24 **Del.C.** Ch. 19).

8.10.9 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

8.11 Maintenance of Licensure Status: Reinstatement

8.11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for recertification as established by the certifying agency.

8.11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

8.11.2.1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

8.11.2.2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

8.11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.11.4 Advanced Practice Nurses who fail to renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

8.11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 8.11.4 followed.

8.11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

8.12 Audit of Licensees

8.12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

8.12.1.1 Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

8.12.1.2 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

8.12.1.3 An unsatisfactory audit shall result in Board action.

8.12.1.4 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

8.12.2 The Board may select licensees for audit throughout the biennium.

8.13 Exceptions to the Requirements to Practice

8.13.1 The requirements set forth in 8.9 shall not apply to a Registered Nurse who is duly enrolled as a bona

fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

8.14 Definitions

8.14.1 Collaborative Agreement - Includes

8.14.1.1 A true collegial agreement between two parties where mutual goal setting, access, authority, and responsibility for actions belong to individual parties and there is a conviction to the belief that this collaborative agreement will continue to enhance patient outcomes and

8.14.1.2 a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a duly licensed Delaware physician, dentist, podiatrist or licensed Delaware health care delivery system. This document can include, but not be limited to, written verification of health care facility approved clinical privileges or a health care facility approved job description of the A.P.N. If the agreement is with a licensed Delaware health care delivery system, the individual will have to show that the system will supply appropriate medical back-up for purposes of consultation and referral.

8.14.2 National Certification - That credential earned by an Advanced Practice Nurse who has met requirements of a Board of Nursing approved certifying agency.

8.14.3 Pharmacology/Pharmacotherapeutics - refers to any course, program, or offering that would include, but not be limited to, the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their dosages, their side-effects and their interactions. It also encompasses clinical judgement skills and decision making. These skills may be based on thorough interviewing, history taking, physical assessment, test selection and interpretation, patho-physiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non-pharmacologic interventions.

8.14.4 Prescription Order - includes the prescription date, the name of the patient, the name, address, area of specialization and business telephone number of the advanced practice nurse prescriber, the name, strength, quantity, directions for use, and number of refills of the drug product or device prescribed, and must bear the name and prescriber ID number of the advanced practice nurse prescriber, and when applicable, prescriber's D.E.A. number and signature. There must be lines provided to show whether the prescription must be dispensed as written or substitution is permitted.

8.15 Requirements for Initial Independent Practice/prescriptive Authority

An APN who has not had independent prescriptive authority within the past two years in Delaware or any other jurisdiction who is applying for independent practice and/or

independent prescriptive authority shall:

8.15.1 Be an Advanced Practice Nurse (APN) holding a current permanent license issued by the Board of Nursing (BON). If the individual does not hold national certification, eligibility will be determined on a case by case basis.

8.15.2 Have completed a post basic advanced practice nursing program that meets the criteria as established in Section 4.7 of Article 7 of the Rules and Regulations of the Delaware Board of Nursing with documentation of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty, advanced patho-physiology and advanced pharmacology/ pharmacotherapeutics. In the absence of transcript verification of the aforementioned courses, applicants shall show evidence of content integration through course descriptions, course syllabi, or correspondence from school officials. If the applicant cannot produce the required documentation, such applicant may petition the Joint Practice Committee for consideration of documented equivalent independent prescriptive authority experience.

8.15.3 Submit a copy of the current collaborative agreement to the Joint Practice Committee (JPC). The collaborative agreement(s) shall include arrangements for consultation, referral and/or hospitalization complementary to the area of the nurse's independent practice.

8.15.4 Show evidence of the equivalent of at least thirty hours of advanced pharmacology and pharmacotherapeutics related continuing education within the two years prior to application for independent practice and/or independent prescriptive authority. This may be continuing education programs or a three credit, semester long graduate level course. The thirty hours may also occur during the generic APN program as integrated content as long as this can be documented to the JPC. All offerings will be reviewed and approved by the JPC.

8.15.5 Demonstrate how submitted continuing education offerings relate to pharmacology and therapeutics within their area of specialty. This can be done by submitting the program titles to show content and dates attended. If the JPC questions the relevance of the offerings, the applicant must have available program descriptions, and/ or learner objectives, and/or program outlines for submission to the JPC for their review and approval.

8.16 Requirements for Independent Practice/ prescriptive Authority by Endorsement

An APN who has had prescriptive authority in another jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.16.1 Show evidence of meeting 8.15.1 and 8.15.3.

8.16.2 Show evidence of having current prescriptive authority in another jurisdiction.

8.16.3 Have no encumbered APN designation(s) in any jurisdiction.

8.16.4 Show evidence of completion of a minimum of ten hours of JPC approved pharmacology/ pharmacotherapeutics related continuing education within the area of specialization and licensure within the past two years.

8.17 Application

8.17.1 Names and credentials of qualified applicants will be forwarded to the Joint Practice Committee for approval and then forwarded to the Board of Medical Practice for review and final approval.

8.18 Prescriptive Authority

8.18.1 APN's may prescribe, administer, and dispense legend medications including Schedule II - V controlled substances, (as defined in the Controlled Substance Act and labeled in compliance with 24 **Del.C.** §2536(C), parenteral medications, medical therapeutics, devices and diagnostics.

8.18.2 APN's will be assigned a provider identifier number as outlined by the Division of Professional Regulation.

8.18.3 Controlled Substances registration will be as follows:

8.18.3.1 APN's must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

8.18.3.2 APN's must register biennially with the Office of Narcotics and Dangerous Drugs in accordance with 16 **Del.C.** §4732(a).

8.18.4 APN's may request and issue professional samples of legend, including schedule II-V controlled substances, and over-the-counter medications that must be labeled in compliance with 24 **Del.C.** §2536(C).

8.18.5 APN's may give verbal prescription orders.

8.19 Prescriptive Writing

8.19.1 All prescription orders will be written as defined by the Delaware Board of Pharmacy as defined in 8.14.4.

8.20 Renewal

8.20.1 Maintain current APN licensure.

8.20.2 Maintain competency through a minimum of ten hours of JPC approved pharmacology/ pharmacotherapeutics related continuing education within the area of specialization and licensure per biennium. The pharmacology/ pharmacotherapeutics content may be a separate course or integrated within other offerings.

8.21 Disciplinary Proceedings

8.21.1 Pursuant to 24 **Del.C.** §1906(19)(c), the Joint Practice Committee is statutorily empowered, with the approval of the Board of Medical Practice, to grant independent practice and/or prescriptive authority to nurses who qualify for such authority. The Joint Practice

Committee is also empowered to restrict, suspend or revoke such authority also with the approval of the Board of Medical Practice.

8.21.2 Independent practice or prescriptive authority may be restricted, suspended or revoked where the nurse has been found to have committed unprofessional conduct in his or her independent practice or prescriptive authority or if his or her mental or physical faculties have changed or deteriorated in such a manner as to create an inability to practice or prescribe with reasonable skill or safety to patients.

8.21.3 Unprofessional conduct, for purposes of restriction, suspension or revocation of independent practice or prescriptive authority shall include but not be limited to:

8.21.3.1 The use or attempted use of any false, fraudulent or forged statement or document or use of any fraudulent, deceitful, dishonest or immoral practice in connection with any acquisition or use of independent practice or prescriptive authority;

8.21.3.2 Conviction of a felony;

8.21.3.3 Any dishonorable or unethical conduct likely to deceive, defraud or harm the public;

8.21.3.4 Use, distribution or prescription of any drugs or medical devices other than for therapeutic or diagnostic purposes;

8.21.3.5 Misconduct, incompetence, or gross negligence in connection with independent or prescriptive practice;

8.21.3.6 Unjustified failure upon request to divulge information relevant to authorization or competence to independently practice or exercise prescriptive authority to the Executive Director of the Board of Nursing or to anyone designated by him or her to request such information.

8.21.3.7 The violation of the Nurse Practice Act or of an Order or Regulation of the Board of Nursing or the Board of Medical Practice related to independent practice or prescriptive authority.

8.21.3.8 Restriction, suspension, or revocation of independent practice or prescriptive authority granted by another licensing authority in any state, territory or federal agency.

8.21.4 Complaints concerning the use or misuse of independent practice or prescriptive authority received by the Division of Professional Regulation or the Board of Nursing shall be investigated in accordance with the provisions of Title 29, Section 8807 governing investigations by the Division of Professional Regulation. As soon as convenience permits, the Board of Nursing shall assign an Investigating Board Member to assist with the investigation of the complaint. The Investigating Board Member shall, whenever practical, be a member of the Joint Practice Committee.

8.21.5 Upon receipt of a formal complaint from

the Office of the Attorney General seeking the revocation, suspension or restriction of independent practice or prescriptive authority, the Committee Chairperson shall promptly arrange for not less than a quorum of the Committee to convene for an evidentiary hearing concerning such complaint upon due notice to the licensee against whom the complaint has been filed. Such notice shall comply with the provisions of the Administrative Procedures Act (29 Del.C. Ch. 101).

8.21.6 The hearing shall be conducted in accordance with the Administrative Procedures Act (29 Del.C. §101), and after the conclusion thereof, the Joint Practice Committee will promptly issue a written Decision and Order which shall be based upon the affirmative vote of a majority of the quorum hearing the case.

8.21.7 Any written Decision and Order of the Joint Practice Committee which imposes a restriction, suspension or revocation of independent practice or prescriptive authority shall not be effective prior to the approval of the Board of Medical Practice.

4 DE Reg. 296 (8/1/00)

5 DE Reg. 1606 (2/1/02)

15.0 The Board finds that for purposes of licensing, renewal, reinstatement and discipline, the conviction of any of the following crimes, or of the attempt to commit or a conspiracy to commit or conceal the following crimes or substantially similar crimes in another state or jurisdiction, is deemed to be substantially related to the practice of Nursing in the State of Delaware without regard to the place of conviction:

15.1 For the purposes of this section the following definitions shall apply:

“Conviction” means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a “Robinson” or “Alford” plea unless the individual has been discharged under §4218 of Title 11 of the *Delaware Code* (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program).

“Jurisdiction” means substantially similar crimes in another state or jurisdiction shall include all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

15.2 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the *Delaware Code Annotated*:

Inchoate Crimes

15.2.1 §501 Criminal solicitation in the third degree

- 15.2.2 §502 Criminal solicitation in the second degree
- 15.2.3 §503 Criminal solicitation in the first degree
- 15.2.4 §511 Conspiracy in the third degree
- 15.2.5 §512 Conspiracy in the second degree
- 15.2.6 §513 Conspiracy in the first degree
- Assaults and Related Offenses
- 15.2.7 §601. Offensive touching;
- 15.2.8 §602. Menacing;
- 15.2.9 §603. Reckless endangering in the second degree;
- 15.2.10 §604. Reckless endangering in the first degree;
- 15.2.11 §605. Abuse of a pregnant female in the second degree;
- 15.2.12 §606. Abuse of a pregnant female in the first degree;
- 15.2.13 §611. Assault in the third degree;
- 15.2.14 §612. Assault in the second degree;
- 15.2.15 §613. Assault in the first degree;
- 15.2.16 §614. Assault on a sports official.
- 15.2.17 §615. Assault by abuse or neglect;
- 15.2.18 §621. Terroristic threatening;
- 15.2.19 §625. Unlawfully administering drugs;
- 15.2.20 §626. Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;
- 15.2.21 §627. Prohibited acts as to substances releasing vapors or fumes;
- 15.2.22 §629. Vehicular assault in the first degree;
- 15.2.23. §630. Vehicular homicide in the second degree;
- 15.2.24 §630A. Vehicular homicide in the first degree;
- 15.2.25 §631. Criminally negligent homicide;
- 15.2.26 §632. Manslaughter;
- 15.2.27 §633. Murder by abuse or neglect in the second degree;
- 15.2.28. §634. Murder by abuse or neglect in the first degree;
- 15.2.29 §635. Murder in the second degree;
- 15.2.30 §636. Murder in the first degree;
- 15.2.31 §645. Promoting suicide.
- Abortion and Related Offenses
- 15.2.32 §651. Abortion;
- 15.2.33 §652. Self-abortion;
- 15.2.34 §653. Issuing abortifacient articles.
- Sexual Offenses
- 15.2.35 §763. Sexual harassment;
- 15.2.36 §764. Indecent exposure in the second degree;
- 15.2.37 §765. Indecent exposure in the first degree;
- 15.2.38 §766. Incest;
- 15.2.39 §767. Unlawful sexual contact in the third degree;
- 15.2.40 §768. Unlawful sexual contact in the second degree;
- 15.2.41 §769. Unlawful sexual contact in the first degree;
- 15.2.42 §770. Rape in the fourth degree;
- 15.2.43 §771. Rape in the third degree;
- 15.2.44 §772. Rape in the second degree;
- 15.2.45 §773. Rape in the first degree;
- 15.2.46 §776. Sexual extortion;
- 15.2.47 §777. Bestiality;
- 15.2.48 §778. Continuous sexual abuse of a child;
- 15.2.49 §780. Female genital mutilation.
- Kidnapping and Related Offenses
- 15.2.50 §781. Unlawful imprisonment in the second degree;
- 15.2.51 §782. Unlawful imprisonment in the first degree;
- 15.2.52 §783. Kidnapping in the second degree;
- 15.2.53 §783A. Kidnapping in the first degree;
- 15.2.54 §785. Interference with custody;
- Coercion
- 15.2.55 §791. Acts constituting coercion;
- 15.3 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the *Delaware Code Annotated*:
- Arson and Related Offenses
- 15.3.1 §801. Arson in the third degree;
- 15.3.2 §802. Arson in the second degree;
- 15.3.3 §803. Arson in the first degree;
- 15.3.4 §804. Reckless burning or exploding;
- 15.3.5 §805. Cross or religious symbol burning;
- 15.3.6 §811. Criminal mischief
- Criminal Trespass and Burglary
- 15.3.7 §820. Trespassing with intent to peer or peep into a window or door of another;
- 15.3.8 §824. Burglary in the third degree;
- 15.3.9 §825. Burglary in the second degree;
- 15.3.10 §826. Burglary in the first degree;
- 15.3.11 §828. Possession of burglar's tools or instruments facilitating theft;
- Robbery
- 15.3.12 §831. Robbery in the second degree;
- 15.3.13 §832. Robbery in the first degree.
- 15.3.14 §835. Carjacking in the second degree;
- 15.3.15 §836. Carjacking in the first degree;
- Theft and Related Offenses
- 15.3.16 §840. Shoplifting
- 15.3.17 §840A. Use of illegitimate retail sales receipt or Universal Product Code Label.
- 15.3.18 §841. Theft;
- 15.3.19 §842. Theft; lost or mislaid property;

mistaken delivery.

- 15.3.20 §843. Theft; false pretense.
- 15.3.21 §844. Theft; false promise.
- 15.3.22 §845. Theft of services.
- 15.3.23 §846. Extortion;
- 15.3.24 §848. Misapplication of property;
- 15.3.25 §849. Theft of rented property;
- 15.3.26 §850. Use, possession, manufacture,

distribution and sale of unlawful telecommunication and access devices.

- 15.3.27 §851. Receiving stolen property;
- 15.3.28 §853. Unauthorized use of a vehicle;
- 15.3.29 §854. Identity theft;
- 15.3.30 §859. Larceny of livestock;
- 15.3.31 §860. Possession of shoplifter's tools or

instruments facilitating theft;

Forgery and Related Offenses

- 15.3.32 §861. Forgery
- 15.3.33 §862. Possession of forgery devices;
- Offenses Involving Falsification of Records
- 15.3.34 §871. Falsifying business records;
- 15.3.35 §873. Tampering with public records in

the second degree;

- 15.3.36 §876. Tampering with public records in

the first degree;

- 15.3.37 §877. Offering a false instrument for

filing;

- 15.3.38 §878. Issuing a false certificate;
- Bribery Not Involving Public Servants

- 15.3.39 §881. Bribery;
- 15.3.40 §882. Bribe receiving;

Frauds on Creditors

- 15.3.41 §891. Defrauding secured creditors;
- 15.3.42 §892. Fraud in insolvency;
- 15.3.43 §893. Interference with levied-upon

property;

Other Frauds and Cheats

- 15.3.44 §900. Issuing a bad check;
- 15.3.45 §903. Unlawful use of credit card;
- 15.3.46 §903. A Re-encoder and scanning devices;
- 15.3.47 §906. Deceptive business practices;
- 15.3.48 §907. Criminal impersonation;
- 15.3.49 §907A. Criminal impersonation, accident

related;

- 15.3.50 §907B. Criminal impersonation of a police

officer;

- 15.3.51 §908. Unlawfully concealing a will;
- 15.3.52 §909. Securing execution of documents by

deception;

- 15.3.53 §913. Insurance fraud;
- 15.3.54 §913A. Health care fraud;
- 15.3.55 §916. Home improvement fraud;
- 15.3.56 §917. New home construction fraud;
- Computer Related Offenses

- 15.3.57 §932. Unauthorized access.

- 15.3.58 §933. Theft of computer services.

- 15.3.59 §934. Interruption of computer services.

- 15.3.60 §935. Misuse of computer system information.

- 15.3.61 §936. Destruction of computer equipment.

- 15.3.62 §937. Unrequested or unauthorized electronic mail or use of network or software to cause same.

15.4 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the *Delaware Code Annotated*:

Child Welfare; Sexual Offenses, Animal Offenses

- 15.4.1 §1100. Dealing in children;

- 15.4.2 §1101. Abandonment of child;

- 15.4.3 §1102. Endangering the welfare of a child;

- 15.4.4 §1105. Endangering the welfare of an incompetent person;

- 15.4.5 §1106. Unlawfully dealing with a child;

- 15.4.6 §1107. Endangering children;

- 15.4.7 §1108. Sexual exploitation of a child;

- 15.4.8 §1109. Unlawfully dealing in child pornography;

- 15.4.9 §1111. Possession of child pornography;

- 15.4.10 §1112. Sexual offenders; prohibitions from school zones.

- 15.4.11 §1112A. Sexual solicitation of a child;

- 15.4.12 §1113. Criminal non-support and aggravated criminal non-support.

- 15.4.13 §1114. Body-piercing; tattooing or branding;

- 15.4.14 §1114A. Tongue splitting;

- 15.4.15 §1116. Sale or distribution of tobacco to minors;

- 15.4.16 §1117. Notice;

- 15.4.17 §1118. Distribution of samples to minors;

- 15.4.18 §1124. Purchase or receipt of tobacco products to minors.

- 15.4.19 §1325. Cruelty to animals;

- 15.4.20 §1325A. The unlawful trade in dog or cat by-products;

- 15.4.21 §1326. Animals; fighting and baiting prohibited;

- 15.4.22 §1327. Maintaining a dangerous animal;

15.5 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the *Delaware Code Annotated*:

Bribery and Improper Influence

- 15.5.1 §1201. Bribery;

- 15.5.2 §1203. Receiving a bribe;

15.5.3 §1205. Giving unlawful gratuities;
15.5.4 §1206. Receiving unlawful gratuities;
15.5.5 §1207. Improper influence;
15.5.6 §1211. Official misconduct
15.5.7 §1212. Profiteering
Perjury and related offenses
15.5.8 §1221. Perjury in the third degree;
15.5.9 §1222. Perjury in the second degree;
15.5.10 §1223. Perjury in the first degree;
15.5.11 §1233. Making a false written statement;
class
15.5.12 §1239. Wearing a disguise during
commission of a felony
15.5.13 §1240. Terroristic threatening of public
officials or public servants
15.5.14 §1243. Obstructing fire-fighting
operations;
15.5.15 §1244. Hindering prosecution;
15.5.16 §1245. Falsely reporting an incident;
15.5.17 §1246. Compounding a crime;
15.5.18 §1249. Abetting the violation of driver's
license restrictions;
15.5.19 §1250. Offenses against law-enforcement
animals;
15.5.20 §1253. Escape after conviction;
15.5.21 §1254. Assault in a detention facility;
15.5.22 §1256. Promoting prison contraband;
15.5.23 §1257. Resisting arrest;
15.5.24 §1257A. Use of an animal to avoid
capture;
15.5.25 §1259. Sexual relations in detention
facility;
15.5.26 §1260a. Misuse of prisoner mail;
Offenses Relating to Judicial and Similar
Proceedings
15.5.27 §1261. Bribing a witness;
15.5.28 §1262. Bribe receiving by a witness;
15.5.29 §1263. Tampering with a witness;
15.5.30 §1263A. Interfering with child witness;
15.5.31 §1264. Bribing a juror;
15.5.32 §1265. Bribe receiving by a juror;
15.5.33 §1266. Tampering with a juror;
15.5.34 §1267. Misconduct by a juror;
15.5.35 §1269. Tampering with physical evidence;
15.5.36 §1271. Criminal contempt;
15.5.37 §1271A. Criminal contempt of a domestic
violence protective order;
15.5.37 §1273. Unlawful grand jury disclosure;
15.6 Any crime which involves offenses against a
public health order and decency which may tend to bring
discredit upon the profession, specifically including the
below listed crimes from Title 11 of the *Delaware Code*
Annotated which evidence a lack of appropriate concern for
the safety and well being of another person or persons in

general or sufficiently flawed judgment to call into question
the individuals ability to make health care decisions or
advise upon health care related matters for other individuals.
Disorderly Conduct and Related Offenses
15.6.1 §1302. Riot;
15.6.2 §1304. Hate crimes;
15.6.3 §1311. Harassment;
15.6.4 §1312. Aggravated harassment;
15.6.5 §1312A. Stalking;
15.6.6 §1313. Malicious interference with
emergency communications;
15.6.7 §1315. Public intoxication;
15.6.8 §1321. Loitering;
15.6.9 §1322. Criminal nuisance;
15.6.10 §1323. Obstructing public passages;
15.6.11 §1324. Obstructing ingress to or egress
from public buildings;
15.6.12 §1331. Desecration;
15.6.13 §1332. Abusing a corpse;
15.6.14 §1333. Trading in human remains and
associated funerary objects.
15.6.15 §1335. Violation of privacy;
15.6.16 §1338. Bombs, incendiary devices,
Molotov cocktails and explosive devices;
15.6.17 §1339. Adulteration;
15.6.18 §1340. Desecration of burial place.
Offenses Involving Public Indecency
15.6.19 §1341. Lewdness;
15.6.20 §1342. Prostitution;
15.6.21 §1343. Patronizing a prostitute prohibited.
15.6.22 §1351. Promoting prostitution in the third
degree;
15.6.23 §1352. Promoting prostitution in the
second degree;
15.6.24 §1353. Promoting prostitution in the first
degree;
15.6.25 §1355. Permitting prostitution;
Obscenity
15.6.26 §1361. Obscenity; acts constituting;
15.6.27 §1365. Obscene literature harmful to
minors;
15.6.28 §1366. Outdoor motion picture theatres;
Offenses Involving Gambling
15.6.29 §1403. Advancing gambling in the first
degree;
15.6.30 §1404. Providing premises for gambling;
15.6.31 §1405. Possessing a gambling device;
class A misdemeanor.
15.6.32 §1406. Being concerned in interest in
keeping any gambling device;
15.6.33 §1411. Unlawfully disseminating
gambling information;
15.7 Any crime which involves the illegal
possession or the misuse or abuse of narcotics, or other

addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the Delaware Code Annotated:

15.7.1 §4751. Prohibited acts A;

15.7.2 §4752. Prohibited acts B;

15.7.3 §4752A. Unlawful delivery of noncontrolled substance.

15.7.4 §4753. Prohibited acts C.

15.7.5 §4753A. Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs.

15.7.6 §4754. Prohibited acts D;

15.7.7 §4754A. Possession and delivery of noncontrolled prescription drug.

15.7.8 §4755. Prohibited acts E;

15.7.9 §4756. Prohibited acts;

15.7.10 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;

15.7.11 §4758. Keeping drugs in original containers.

15.7.12 §4761. Distribution to persons under 21 years of age;

15.7.13 §4761A. Purchase of drugs from minors;

15.7.14 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;

15.7.15 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship;

15.7.16 §4774. Penalties

15.8 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Offenses Involving Deadly Weapons and Dangerous Instruments

15.8.1 §1442. Carrying a concealed deadly weapon;

15.8.2 §1443. Carrying a concealed dangerous instrument;

15.8.3 §1444. Possessing a destructive weapon;

15.8.4 §1445a. Unlawfully dealing with a dangerous weapon;

15.8.5 §1446. Unlawfully dealing with a switchblade knife;

15.8.6 §1447. Possession of a deadly weapon during commission of a felony;

15.8.7 §1447A. Possession of a firearm during commission of a felony;

15.8.8 §1448. Possession and purchase of deadly

weapons by persons prohibited;

15.8.9 §1448A. Criminal history record checks for sales of firearms

15.8.10 §1449. Wearing body armor during commission of felony;

15.8.11 §1450. Receiving a stolen firearm;

15.8.12 §1451. Theft of a firearm;

15.8.13 §1452. Unlawfully dealing with knuckles-combination knife;

15.8.14 §1453. Unlawfully dealing with martial arts throwing star;

15.8.15 §1454. Giving a firearm to person prohibited;

15.8.16 §1455. Engaging in a firearms transaction on behalf of another;

15.8.17 §1456. Unlawfully permitting a minor access to a firearm;

15.8.18 §1457. Possession of a weapon in a Safe School and Recreation Zone;

15.8.19 §1458. Removing a firearm from the possession of a law enforcement officer;

15.8.20 §1459. Possession of a weapon with a removed, obliterated or altered serial number.

15.8.21 §1471. Prohibited Acts

Offenses Involving Organized Crime and Racketeering

15.8.22 §1504. Criminal Penalties for Organized Crime & Racketeering

Offenses Involving Intimidation of Victims or Witnesses

15.8.23 §3532. Acts of Intimidation: Class E felony

15.8.24 §3533. Aggravated act of intimidation, Class D felony

Other Crimes

15.8.25 Title 16 §1136 Violations – neglect or abuse of patient or resident of nursing facilities

15.8.26 Title 23 §2305 Penalties; jurisdiction

15.8.27 Title 30 §571 Attempt to evade or defeat tax.

15.8.28 Title 30 §572 Failure to collect or pay over tax;

15.8.29 Title 30 §573 Failure to file return, supply information or pay tax;

15.8.30 Title 30 §574 Fraud and false statements; §576 Misdemeanors

15.8.31 Title 31 §1007 Penalties

15.8.32 Title 21 §2118A Unlawful possession or manufacture of proof of insurance, penalties

15.8.33 Title 21 §2133 Penalties' jurisdiction of justices of the peace

15.8.34 Title 21 §2315 False statements

15.8.35 Title 21 §2316 Altering or forging certificate of title, manufacturer's certificate of origin,

registration card, vehicle warranty or certification sticker or vehicle identification plate

15.8.36 Title 21 §2620 False statements; incorrect or incomplete information

15.8.37 Title 21 §2703 License to operate a motorcycle, motorbike, etc.

15.8.38 Title 21 §2710 Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age

15.8.39 Title 21 §2722 Restricted licenses based on driver's physical limitations

15.8.40 Title 21 §2751 Unlawful application for or use of license or identification card

15.8.41 Title 21 §2752 False statements

15.8.42 Title 21 §2753 Operation of vehicle by unlicensed minor

15.8.43 Title 21 §2754 Employment of unlicensed person

15.8.44 Title 21 §2755 Authorizing or permitting the operation of a motor vehicle by another

15.8.45 Title 21 §2756 Driving vehicle while license is suspended or revoked;

15.8.46 Title 21 §2758 Driving during period of denial; penalties

15.8.47 Title 21 §2760 Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards

15.8.48 Title 21 §2810 Driving after judgment prohibited; penalty; jurisdiction

15.8.49 Title 21 §2814 Additional penalty when convicted of an offense which would render an individual an habitual offender

15.8.50 Title 21 §3107 False statements

15.8.51 Title 21 §4103 Obedience to authorized person directing traffic

15.8.52 Title 21 §4112 Interference with official traffic-control devices or railroad signs or signals or other street signs

15.8.53 Title 21 §4127 Unlawful evasion of Delaware Turnpike and the Korean War Veterans Memorial Highway; harassment of toll collectors; penalty; appeal; jurisdiction; payment of minimum fine before trial

15.8.54 Title 21 §4166 Overtaking and passing school bus; stop signal devices

15.8.55 Title 21 §4172 Speed exhibitions; drag races and other speed contests

15.8.56 Title 21 §4172A Malicious mischief by motor vehicle

15.8.57 Title 21 §4175 Reckless driving

15.8.58 Title 21 §4175A Aggressive driving

15.8.59 Title 21 §4177 Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties

15.8.60 Title 21 §4177J Drinking while driving

prohibited

15.8.61 Title 21 §4177L Driving by persons under the age of 21 after consumption of alcohol; penalties

15.8.62 Title 21 §4177M Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs

15.8.63 Title 21 §4183 Parking areas for vehicles being used by persons with disabilities

15.8.64 Title 21 §4198J Bicycling on highways under influence of drugs or alcohol

15.8.65 Title 21 §4198O Operation of electric personal assistive mobility devices (EPAMD)

15.8.66 Title 21 §4201 Duty of driver involved in accident resulting in property damage or injury

15.8.67 Title 21 §4202 Duty of driver involved in accident resulting in injury or death to any person

15.8.68 Title 21 §4203 Duty to report accidents; evidence

15.8.69 Title 21 §4601 Introduction, sale, distribution or advertisement for sale to public of motor vehicle master keys; penalties

15.8.70 Title 21 §4604 Possession of motor vehicle masters keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires

15.8.71 Title 21 §6420 Penalties; jurisdiction

15.8.72 Title 21 §6701 Injuring vehicle or obstructing its operation

15.8.73 Title 21 §6703 Tampering with vehicle

15.8.74 Title 21 §6704 Receiving or transferring stolen vehicle

15.8.75 Title 21 §6705 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identify

15.8.76 Title 21 §6708 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card

15.8.77 Title 21 §6709 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers

15.8.78 Title 21 §6710 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers

Supplementary List of Offenses

Title 2

Transportation

15.8.79 §309 Dangerous Flying

15.8.80 §310 Hunting from Aircraft

Title 3,

Agriculture

15.8.81 §1041 Willfully or maliciously starting fires

15.8.82 §1044 Obstructing person in performance of duty

15.8.83 §8713 Offenses – involving meat and poultry inspection including bribery or attempted bribery or assaulting or impeding any person in the performance of his duties

15.8.84 §8715 Penalties generally – misdemeanor; felony if offensive involves fraud or distribution or attempted distribution of adulterated article

Title 4

Alcoholic Liquors

15.8.85 §901 Offenses carrying penalty of imprisonment for 3 to 6 months – including peddling of alcoholic liquors, dispensing liquor from a disorderly house, selling alcoholic liquor without a license, claiming to have a license, keeping or selling for beverage purposes any solid or liquor containing alcohol not originally manufactured for use as a beverage

15.8.86 §903 Offenses carrying penalty of fine of not more than \$100.00 or imprisonment for 1 month on failure to pay fine – including selling beer to which other alcohol has been added or selling adulterated alcoholic liquor; selling alcoholic liquor in time, manner or quantity not authorized by license; selling alcoholic beverage in dining room or bedroom not fitted equipped in manner prescribed by Commissioner/Division; selling alcoholic beverages without complying with specific provisions of statute; selling an alcoholic liquor at a time not authorized; selling alcoholic liquor to prohibited person; allowing alcoholic beverage to be consumed in liquor store; failing to post license conspicuously; keeping or transporting alcoholic liquor in contravention of the statute; selling a product containing alcoholic liquor as medicine after being notified by the Commissioner that a product is being used for beverage purposes; not having a license and inducing the public to believe person has license; buying or receiving alcoholic liquor from person not authorized to sell such liquor and keeping such liquor; obtaining during time when sale is forbidden any alcoholic liquor from a licensee for sale; causing a disturbance or bringing or drinking alcoholic liquor in a place where such is prohibited; buying alcoholic liquor from another person; being a licensee, failing to post conspicuously a sign warning against drinking during pregnancy

15.8.87 §904 Offenses Concerning Certain Persons [forbidding direct or indirect sales to and purchases by a person under age of 21] (classified misdemeanor)

15.8.88 §907 Interference with Officer or Inspector (classified misdemeanor)

Title 6

Commerce and Trade

15.8.89 §2581 Civil Penalty: Disposition of Funds [re: enhanced penalties assessed for prohibited trade practices against infirm or elderly] (unclassified misdemeanor)

15.8.90 §4619 Penalties [for improper sale of

secondhand watches] (unclassified misdemeanor)

15.8.91 §4909A Enforcement and Remedies [providing for enhanced penalties for Auto Repair Fraud victimizing the infirm or elderly] (unclassified misdemeanor)

15.8.92 §5132 Hindering or Obstructing [DOA] Officer (unclassified misdemeanor)

15.8.93 §5133 Impersonation of [DOA] Officer (unclassified misdemeanor)

15.8.94 §5134 Offenses and Penalties [involving possession or use of false weights] (unclassified misdemeanor)

15.8.95 §7322 Criminal Penalties [for violation of the Securities Act] (class E, F, or G felony depending on the amount of investor loss)

Title 7

Conservation

15.8.96 §707 Hunting or Shooting from Motor Vehicle, Boats or Farm Machinery (class C or B environmental misdemeanor)

15.8.97 §710 Use of Silencer on Gun (class C environmental misdemeanor)

15.8.98 §711 Hunting with Automatic – Loading Gun (class C environmental misdemeanor)

15.8.99 §719 Discharge of Firearms on or near Public Roads and Public Rights-of-Way (class C misdemeanor)

15.8.100 §1710 Poisoning of Dogs (unclassified misdemeanor)

15.8.101 §1717 Unauthorized Acts against a Service Guide or Seeing Eye Dog (class D felony)

15.8.102 §1739 Violations by Owners of Dangerous or Potentially Dangerous Dogs (unclassified misdemeanor)

15.8.103 §5409 Prohibited Acts [involving Disposition of Human Remains] (unclassified misdemeanor)

15.8.104 §6015 Interference with Department Personnel (unclassified misdemeanor)

15.8.105 §6025 [Improper Disposal of] Solid Waste (unclassified misdemeanor)

15.8.106 §6304 Prohibitions [relating to generation, storage, disposal, transportation, and treatment of hazardous waste] (unclassified misdemeanor)

15.8.107 §6315 Interference with Department [DNREC] Personnel (unclassified misdemeanor)

Title 11

Crimes

15.8.108 §2402 Interception of Communications Generally; Divulging Contents of Communications (class misdemeanor, class F felony, class D felony, depending on specifics of violation)

15.8.109 §2403 Manufacture, Possession or Sale of Intercepting Device (class F felony)

15.8.110 §2410 Breaking and Entering, Etc. to

Place or Remove Equipment (class F felony)

15.8.111 §2412 Obstruction, Impediment or

Prevention of Interception (class F felony)

15.8.112 §2421 Obtaining, Altering or

Preventing Authorized Access (class B misdemeanor, class A misdemeanor for 2nd offense)

15.8.114 §2422 Divulging Contents of

Communications (class F felony)

15.8.115 §2431 Installation and Use Generally

[of pen trace and trap and trace devices] (class A misdemeanor)

15.8.116 §3532 Act of Intimidation [of victim

or of witness to crime] (class E felony)

15.8.117 §3533 Aggravated Act of

Intimidation (class D felony)

15.8.118 §3534 Attempt to Intimidate (class E

felony, class D felony, depending on the nature of the act attempted)

15.8.119 §4374 Disclosure of Expunged

Records (class B misdemeanor)

15.8.120 §6562 Furnishing Contraband [to

DOC prisoners] (unclassified misdemeanor)

15.8.121 §8523 Penalties [for violation of

reporting provision re: SBI] (class A misdemeanor, class E felony, depending on the specifics of the offense)

15.8.122 §8562 Penalties [for failure of child-

care provider to obtain information required under §8561 or for those providing false information] (class A misdemeanor, class G felony depending on the specifics of the offense)

15.8.123 §8572 Penalties [for providing false

information when seeking employment in a public school] (class G felony)

15.8.124 §9016 Filing False Claim [under

Victims' Compensation Fund] (class A misdemeanor)

Title 12

Decedents' Estates

15.8.125 §210 Alteration, Theft or Destruction

of Will (class E felony)

Title 14

Education

15.8.126 §9303 Hazing Prohibited (class B

misdemeanor)

Title 16

Health & Safety Nature of the Offense

15.8.127 §914 Penalty for Violation [of

reporting requirements involving abuse under §903] (unclassified misdemeanor)

15.8.128 §2513 Penalties [relating to improper

health-care decisions] (misdemeanor, class felony for falsification, destruction of a document to create a false impression that measures to prolong life have been authorized)

15.8.129 §3317 Treatment of Meats with

Unlawful Drugs and Preparations [prior to sale] unclassified misdemeanor)

15.8.130 §7103 General Provisions [regarding

sale, purchase, etc. of explosives] (unclassified misdemeanor)

15.8.131 §7112 Penalties [for violations of

chapter other than §7103] (unclassified misdemeanor, felony depending on nature of the offense)

15.8.132 §7416 Penalties [for violating statute

governing Radiation Control] (unclassified misdemeanor)

Title 23

Navigation and Waters

15.8.133 §2202 Child Safety on Recreational

Boats (unclassified misdemeanor)

15.8.134 §2303 Operation of a Vessel or Boat

while under the Influence of Intoxicating Liquor and/or Drugs (unclassified misdemeanor, class G felony, depending on number of offenses)

Title 24

Professions and Occupations Deadly Weapons

Dealers

15.8.135 §903 Sale to Persons under 21 or

Intoxicated Persons (unclassified misdemeanor)

Title 30

State Taxes Motor Carriers Fuel Purchase Law

15.8.136 §5215 False Statements (unclassified

misdemeanor)

Title 31

Welfare

15.8.137 §2117 [Interference] Relating to the

Blind and "Seeing Eye Dogs" (unclassified misdemeanor)

15.8.138 §3913 Violations [knowing or

reckless abuse of an infirm adult] (class A misdemeanor, class G felony for exploitation of infirm adult's resources valued at \$500 to \$5000, class E felony if resources are valued from \$5000 to \$10,000, class D felony if resources are valued over \$10,000 or if abuse or neglect results in bodily harm, class A felony if abuse or neglect results in death)

15.9 Any crime which is a violation of Title 24, Chapter 19 (Nurse Practices Act) as it may be amended from time to time.

15.10 The Board reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare. The Board also specifically reserves the jurisdiction to review any crime committed by an applicant for licensure with regard to the temporal proximity of the crime or the conviction to the application and to determine whether the period of time involved has been so long as to negate any reasonable conclusion or determination that the crime for which the individual was

convicted has a direct bearing on the individual's fitness or ability to perform one or more of the duties and responsibilities necessarily related to nursing or to otherwise determine that sufficient restitution has been made for the offense committed.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Nursing is available at: <http://www.professionallicensing.state.de.us/boards/nursing/index.shtml>

DIVISION OF PROFESSIONAL REGULATION BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

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

PUBLIC NOTICE

The Delaware Examining Board of Physical Therapists and Athletic Trainers in accordance with 24 Del.C. §2604(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of physical therapy and athletic training.

A public hearing will be held on January 18, 2005 at 6:30 p.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. 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 Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations

13.0 Crimes substantially related to the practice of physical therapy and athletic training:

13.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following

crimes, is deemed to be substantially related to the practice of physical therapy and athletic training in the State of Delaware without regard to the place of conviction:

13.1.1 Offensive touching. 11 Del.C. 601.

13.1.2 Aggravated menacing. 11 Del.C. §602

(b)

13.1.3 Abuse of a pregnant female in the second degree. 11 Del.C. § 605.

13.1.4 Abuse of a pregnant female in the first degree. 11 Del.C. §606.

13.1.5 Assault in the second degree. 11 Del.C. §612

13.1.6 Assault in the first degree. 11 Del.C. §613.

13.1.7 Assault by abuse or neglect. 11 Del.C. §615.

13.1.8 Unlawfully administering drugs. 11 Del.C. §625.

13.1.9 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.

13.1.10 Criminally negligent homicide. 11 Del.C. §631.

13.1.11 Manslaughter. 11 Del.C. §632.

13.1.12 Murder by abuse or neglect in the second degree. 11 Del.C. §633

13.1.13 Murder by abuse or neglect in the first degree. 11 Del.C. §634.

13.1.14 Murder in the second degree; class A felony. 11 Del.C. §635.

13.1.15 Murder in the first degree. 11 Del.C. §636.

13.1.16 Promoting suicide. 11 Del.C. §645.

13.1.17 Abortion. 11 Del.C. §651.

13.1.18 Issuing abortifacient articles. 11 Del.C. §653.

13.1.19 Incest. 11 Del.C. §766.

13.1.20 Unlawful sexual contact in the third degree. 11 Del.C. §767.

13.1.21 Unlawful sexual contact in the second degree. 11 Del.C. §768.

13.1.22 Unlawful sexual contact in the first degree. 11 Del.C. §769.

13.1.23 Rape in the fourth degree. 11 Del.C. §770.

13.1.24 Rape in the third degree. 11 Del.C. §771.

13.1.25 Rape in the second degree. 11 Del.C. §772.

13.1.26 Rape in the first degree. 11 Del.C. §773.

13.1.27 Sexual extortion. 11 Del.C. § 776.

13.1.28 Bestiality. 11 Del.C. § 777.

13.1.29 Continuous sexual abuse of a child. 11 Del.C. §778.

13.1.30 Dangerous crime against a child. 11 Del.C. §779.

13.1.31 Female genital mutilation. 11 Del.C. §780.

- 13.1.32 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 13.1.33 Kidnapping in the second degree. 11 Del.C. §783.
- 13.1.34 Kidnapping in the first degree. 11 Del.C. §783A.
- 13.1.35 Arson in the first degree. 11 Del.C. §803.
- 13.1.36 Burglary in the third degree. 11 Del.C. §824.
- 13.1.37 Burglary in the second degree. 11 Del.C. §825.
- 13.1.38 Burglary in the first degree. 11 Del.C. §826.
- 13.1.39 Robbery in the second degree. 11 Del.C. §831.
- 13.1.40 Robbery in the first degree. 11 Del.C. §832.
- 13.1.41 Carjacking in the second degree. 11 Del.C. §835.
- 13.1.42 Carjacking in the first degree. 11 Del.C. §836.
- 13.1.43 Theft; felony. 11 Del.C. §841.
- 13.1.44 Extortion. 11 Del.C. §846.
- 13.1.45 Identity theft. 11 Del.C. §854.
- 13.1.46 Forgery. 11 Del.C. §861.
- 13.1.47 Falsifying business records. 11 Del.C. §871.
- 13.1.48 Tampering with public records in the second degree. 11 Del.C. §873.
- 13.1.49 Tampering with public records in the first degree. 11 Del.C. §876.
- 13.1.50 Offering a false instrument for filing. 11 Del.C. §877.
- 13.1.51 Issuing a false certificate. 11 Del.C. §878.
- 13.1.52 Reencoder and scanning devices. 11 Del.C. §903A.
- 13.1.53 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 13.1.54 Insurance fraud. 11 Del.C. §913.
- 13.1.55 Health care fraud. 11 Del.C. §913A.
- 13.1.56 Dealing in children. 11 Del.C. §1100.
- 13.1.57 Sexual exploitation of a child. 11 Del.C. §1108.
- 13.1.58 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 13.1.59 Possession of child pornography. 11 Del.C. §1111.
- 13.1.60 Sexual solicitation of a child. 11 Del.C. §1112A.
- 13.1.61 Bribery. 11 Del.C. §1201.
- 13.1.62 Receiving a bribe; felony. 11 Del.C. §1203.
- 13.1.63 Perjury in the second degree. 11 Del.C. §1222.
- 13.1.64 Perjury in the first degree. 11 Del.C. §1223.
- 13.1.65 Escape after conviction. 11 Del.C. §1253.
- 13.1.66 Assault in a detention facility. 11 Del.C. §1254.
- 13.1.67 Promoting prison contraband; felony. 11 Del.C. §1256.
- 13.1.68 Bribing a witness. 11 Del.C. §1261.
- 13.1.69 Bribe receiving by a witness. 11 Del.C. §1262.
- 13.1.70 Tampering with a witness. 11 Del.C. §1263.
- 13.1.71 Interfering with child witness; class F. 11 Del.C. §1263A.
- 13.1.72 Bribing a juror. 11 Del.C. §1264.
- 13.1.73 Bribe receiving by a juror. 11 Del.C. §1265.
- 13.1.74 Tampering with physical evidence. 11 Del.C. §1269.
- 13.1.75 Riot. 11 Del.C. §1302.
- 13.1.76 Hate crimes; felony. 11 Del.C. §1304.
- 13.1.77 Aggravated harassment. 11 Del.C. §1312.
- 13.1.78 Stalking; felony. 11 Del.C. §1312A.
- 13.1.79 Abusing a corpse. 11 Del.C. §1332.
- 13.1.80 Violation of privacy; felony. 11 Del.C. §1335.
- 13.1.81 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C. §1338.
- 13.1.82 Adulteration. 11 Del.C. §1339.
- 13.1.83 Promoting prostitution in the second degree. 11 Del.C. §1352.
- 13.1.84 Promoting prostitution in the first degree. 11 Del.C. §1353.
- 13.1.85 Obscenity. 11 Del.C. §1361.
- 13.1.86 Carrying a concealed deadly weapon; Class E (if previous conviction within 5 years). 11 Del.C. §1442.
- 13.1.87 Possessing a destructive weapon. 11 Del.C. §1444.
- 13.1.88 Unlawfully dealing with a dangerous weapon; felony 11 Del.C. §1445.
- 13.1.89 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447.
- 13.1.90 Possession of a firearm during commission of a felony. 11 Del.C. §1447A.
- 13.1.91 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448.
- 13.1.92 Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455.
- 13.1.93 Organized Crime and Racketeering. 11 Del.C. §1504.
- 13.1.94 Victim or Witness Intimidation. 11 Del.C. §§3532 & 3533.
- 13.1.95 Abuse, neglect, mistreatment or financial

exploitation of residents or patients; felony or under subsection (c). 16 Del.C. §1136(a), (b) and (c).

13.1.96 Prohibited acts A under the Uniform Controlled Substances Act. 16 Del.C. §4751(a), (b) and (c).

13.1.97 Prohibited acts B under the Uniform Controlled Substances Act. 16 Del.C. §4752(a) and (b).

13.1.98 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 Del.C. §4753A (a)(1)-(9).

13.1.99 Prohibited acts E under the Uniform Controlled Substances Act. 16 Del.C. §4755.(a)(1) and (2)

13.1.100 Prohibited acts under the Uniform Controlled Substances Act. 16 Del.C. §4756(a)(1)-(5) and (b).

13.1.101 Distribution to persons under 21 years of age. 16 Del.C. §4761.

13.1.102 Purchase of drugs from minors. 16 Del.C. §4761A

13.1.103 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; felony. 23 Del.C. §2302(a) and § 2305 (3) and (4).

13.1.104 Failure to collect or pay over tax. 30 Del.C. §572.

13.1.105 Driving a vehicle while under the influence or with a prohibited alcohol content; felony. 21 Del.C. §4177 (3) and (4).

13.1.106 Duty of driver involved in accident resulting in injury or death to any person; felony. 21 Del.C. §4202.

13.1.107 Prohibition of Intimidation under the Fair Housing Act; felony. 6 Del.C. §2581.

13.1.108 Interception of Communications Generally; Divulging Contents of Communications; felony. 11 Del.C. §2402

13.1.109 Breaking and Entering, Etc. to Place or Remove Equipment 11 Del.C. §2410.

13.1.110 Aggravated Act of Intimidation. 11 Del.C. §3533

13.1.111 Attempt to Intimidate. 11 Del.C. §3534

13.1.112 Providing false information when seeking employment in a public school. 11 Del.C. §8572

13.1.113 Abuse, neglect, exploitation or mistreatment of infirm adult; felony. 31 Del.C. §3913(a), (b) and (c).

13.2 Crimes substantially related to the practice of physical therapy and athletic training shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Physical Therapists and Athletic Trainers is available at: <http://www.professionallicensing.state.de.us/boards/physicaltherapy/index.shtml>

DIVISION OF PROFESSIONAL REGULATION BOARD OF PROFESSIONAL LAND SURVEYORS

Statutory Authority: 24 Delaware Code,
Section 2706(g) (24 Del.C. §2706(g))
24 DE Admin. Code 2700

PUBLIC NOTICE

The State Board of Professional Land Surveyors in accordance with 24 Del.C. §2706 (g) has proposed changes to its rules and regulations as mandated by S.B. 229, 74 Del. Laws c. 262. The proposal identifies crimes that are substantially related to the practice of land surveyors.

A public hearing will be held at 9:30 a.m. on January 20, 2005 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the State Board of Professional Land Surveyors, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations

20.0 Crimes substantially related to practice of land surveyors

20.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the practice of land surveyor in the State of Delaware without regard to the place of conviction:

20.1.1 Menacing. 11 Del.C. §602

20.1.2 Reckless endangering in the second degree. 11 Del.C. §603

20.1.3 Reckless endangering in the first degree. 11 Del.C. §604

20.1.4 Abuse of a pregnant female in the second

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| degree. 11 Del.C. §605 | | 20.1.36 Burglary in the third degree. 11 Del.C. | |
| 20.1.5 Abuse of a pregnant female in the first | §824 | 20.1.37 Burglary in the second degree. 11 Del.C. | |
| degree. 11 Del.C. §606 | | 20.1.38 Burglary in the first degree. 11 Del.C. | |
| 20.1.6 Assault in the second degree. 11 Del.C. | §825 | 20.1.39 Multiple Offenses. 11 Del.C. §827 | |
| §612 | | 20.1.40 Possession of burglar's tools or | |
| 20.1.7 Assault in the first degree. 11 Del.C. §613 | §826 | instruments facilitating theft. 11 Del.C. §828 | |
| 20.1.8 Assault by abuse or neglect. 11 Del.C. | | 20.1.41 Robbery in the second degree. 11 Del.C. | |
| §615 | | 20.1.42 Robbery in the first degree. 11 Del.C. | |
| 20.1.9 Terroristic threatening. 11 Del.C. | | 20.1.43 Carjacking in the second degree. 11 Del.C. | |
| §621(a)(b) | | 20.1.44 Carjacking in the first degree. 11 Del.C. | |
| 20.1.10 Unlawful administering drugs. 11 Del.C. | §831 | 20.1.45 Shoplifting. 11 Del.C. § 840 | |
| §625 | | 20.1.46 Theft. 11 Del.C. §841 | |
| 20.1.11 Unlawful administering controlled | §832 | 20.1.47 Theft of Services. 11 Del.C. §845 | |
| substance or counterfeit substance or narcotic drugs. 11 | | 20.1.48 Extortion. 11 Del.C. §846 | |
| Del.C. §626 | §835 | 20.1.49 Misapplication of property. 11 Del.C. | |
| 20.1.12 Prohibited acts as to substances releasing | | 20.1.50 Theft of rented property. 11 Del.C. §849 | |
| vapors or fumes. 11 Del.C. §627 | §836 | 20.1.51 Receiving stolen property. 11 Del.C. §851 | |
| 20.1.13 Vehicular assault in the second degree. 11 | | 20.1.52 Identity theft. 11 Del.C. §854 | |
| Del.C. §628 | | 20.1.53 Forgery. 11 Del.C. §861 | |
| 20.1.14 Vehicular assault in the first degree. 11 | | 20.1.54 Falsifying business records. 11 Del.C. | |
| Del.C. §629 | | 20.1.55 Tampering with public records in the | |
| 20.1.15 Vehicular homicide in the second degree. | | second degree. 11 Del.C. §873 | |
| 11 Del.C. §630 | §848 | 20.1.56 Tampering with public records in the first | |
| 20.1.16 Vehicular homicide in the first degree. 11 | | degree. 11 Del.C. §876 | |
| Del.C. §630A | | 20.1.57 Offering a false instrument for filing. 11 | |
| 20.1.17 Criminally negligent homicide. 11 Del.C. | | Del.C. §877 | |
| §631 | | 20.1.58 Issuing a false certificate. 11 Del.C. §878 | |
| 20.1.18 Manslaughter. 11 Del.C. §632 | | 20.1.59 Bribery. 11 Del.C. §881 | |
| 20.1.19 Murder by abuse or neglect in the second | §871 | 20.1.60 Bribe receiving. 11 Del.C. §882 | |
| degree. 11 Del.C. §633 | | 20.1.61 Issuing a bad check. 11 Del.C. §900 | |
| 20.1.20 Murder by abuse or neglect in the first | | 20.1.62 Criminal impersonation of a police officer. | |
| degree. 11 Del.C. §634 | | 11 Del.C. §907B | |
| 20.1.21 Murder in the second degree. 11 Del.C. | | 20.1.63 Unlawfully concealing a will. 11 Del.C. | |
| §635 | | §908 | |
| 20.1.22 Murder in the first degree. 11 Del.C. §636 | | 20.1.64 Fraudulent conveyance of public lands. 11 | |
| 20.1.23 Unlawful sexual contact in the second | | Del.C. §911 | |
| degree. 11 Del.C. §768 | | 20.1.65 Fraudulent receipt of public lands. 11 | |
| 20.1.24 Unlawful sexual contact in the first degree. | | Del.C. §912 | |
| 11 Del.C. §769 | | 20.1.66 Insurance fraud. 11 Del.C. §913 | |
| 20.1.25 Rape in the fourth degree. 11 Del.C. §770 | | 20.1.67 Health care fraud. 11 Del.C. §913A | |
| 20.1.26 Rape in the third degree. 11 Del.C. §771 | | 20.1.68 New home construction fraud. 11 Del.C. | |
| 20.1.27 Rape in the second degree. 11 Del.C. §772 | | §917 | |
| 20.1.28 Rape in the first degree. 11 Del.C. §773 | | 20.1.69 Unauthorized access. 11 Del.C. §932 | |
| 20.1.29 Sexual extortion. 11 Del.C. §776 | | 20.1.70 Theft of computer services. 11 Del.C. | |
| 20.1.30 Continuous sexual abuse of a child. 11 | | | |
| Del.C. §778 | | | |
| 20.1.31 Female genital mutilation. 11 Del.C. §780 | | | |
| 20.1.32 Unlawful imprisonment in the first degree. | | | |
| 11 Del.C. §782 | | | |
| 20.1.33 Kidnapping in the second degree. 11 | | | |
| Del.C. §783 | | | |
| 20.1.34 Kidnapping in the first degree. 11 Del.C. | | | |
| §783A | | | |
| 20.1.35 Arson in the first degree. 11 Del.C. §803 | §933 | | |

- 20.1.71 Interruption of computer services. 11 **Del.C.** §934
- 20.1.72 Misuse of computer system information. 11 **Del.C.** §935
- 20.1.73 Destruction of computer equipment. 11 **Del.C.** §936
- 20.1.74 Dealing in children. 11 **Del.C.** §1100
- 20.1.75 Abandonment of a child. 11 **Del.C.** §1101
- 20.1.76 Endangering the welfare of a child. 11 **Del.C.** §1102
- 20.1.77 Sexual exploitation of a child. 11 **Del.C.** §1108
- 20.1.78 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- 20.1.79 Possession of child pornography. 11 **Del.C.** §1111
- 20.1.80 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 20.1.81 Bribery. 11 **Del.C.** §1201
- 20.1.82 Receiving a bribe. 11 **Del.C.** §1203
- 20.1.83 Giving unlawful gratuities. 11 **Del.C.** §1205
- 20.1.84 Receiving unlawful gratuities. 11 **Del.C.** §1206
- 20.1.85 Perjury in the third degree. 11 **Del.C.** §1221
- 20.1.86 Perjury in the second degree. 11 **Del.C.** §1222
- 20.1.87 Perjury in the first degree. 11 **Del.C.** §1223
- 20.1.88 Making a false written statement. 11 **Del.C.** §1233
- 20.1.89 Threats to public officials. 11 **Del.C.** §1240
- 20.1.90 Assault in a detention facility. 11 **Del.C.** §1254
- 20.1.91 Bribing a witness. 11 **Del.C.** §1261
- 20.1.92 Bribe receiving by a witness. 11 **Del.C.** §1262
- 20.1.93 ampering with a witness. 11 **Del.C.** §1263
- 20.1.94 Interfering with child witness. 11 **Del.C.** §1263A
- 20.1.95 Bribing a juror. 11 **Del.C.** §1264
- 20.1.96 Bribe receiving by a juror. 11 **Del.C.** §1265
- 20.1.97 Tampering with physical evidence. 11 **Del.C.** §1269
- 20.1.98 Disorderly conduct. 11 **Del.C.** §1301
- 20.1.99 Felony hate crimes. 11 **Del.C.** §1304
- 20.1.100 Harassment. 11 **Del.C.** §1311
- 20.1.101 Aggravated harassment. 11 **Del.C.** §1312
- 20.1.102 Felony stalking. 11 **Del.C.** §1312A
- 20.1.103 Trading in human remains and associated funerary objects. 11 **Del.C.** §1333
- 20.1.104 Adulteration. 11 **Del.C.** §1339
- 20.1.105 Carrying a concealed deadly weapon. 11 **Del.C.** §1442
- 20.1.106 Possessing a destructive weapon. 11 **Del.C.** §1444
- 20.1.107 Felony possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447
- 20.1.108 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A
- 20.1.109 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448
- 20.1.110 Theft of a firearm. 11 **Del.C.** §1451
- 20.1.111 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455
- 20.1.112 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458
- 20.1.113 Act of intimidation. 11 **Del.C.** §3532
- 20.1.114 Aggravated act of intimidation. 11 **Del.C.** §3533
- 20.1.115 Prohibited drug offenses A. 16 **Del.C.** §4751
- 20.1.116 Prohibited drug offenses B. 16 **Del.C.** §4752
- 20.1.117 Unlawful delivery of noncontrolled substances. 16 **Del.C.** §4752A
- 20.1.118 Prohibition against transfer, sale and purchase. 7 **Del.C.** §5306
- 20.1.119 Alteration, theft or destruction of will. 12 **Del.C.** §210
- 20.1.120 Receiving or transferring stolen vehicle. 21 **Del.C.** §6704
- 20.2 Crimes substantially related to the practice of professional land surveyors shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Professional Land Surveyors is available at: <http://www.professionallicensing.state.de.us/boards/landsurveyors/index.shtml>

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF FUNERAL SERVICES**

Statutory Authority: 24 Delaware Code,
Section 3105(f) (24 **Del.C.** §3105(f))
24 **DE Admin. Code** 3100

PUBLIC NOTICE

The Delaware Board of Funeral Services in accordance with 24 **Del.C.** §3105(f) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of funeral services.

A public hearing will be held at 10:30 a.m. on January 26, 2005, 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Funeral Services, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations**11.0 Crimes substantially related to the provision of Funeral Services**

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the provision of Funeral Services in the State of Delaware without regard to the place of conviction:

11.1.1 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605.

11.1.2 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606

11.2.3 Assault in the second degree. 11 **Del.C.** §612.

11.1.4 Assault in the first degree. 11 **Del.C.** §613.

11.1.5 Felony abuse of a sports official. 11 **Del.C.** §614

11.1.6 Assault by abuse or neglect. 11 **Del.C.** §615.

11.1.7 Unlawfully administering of drugs. 11 **Del.C.** §625.

11.1.8 Unlawfully administering controlled

substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.

11.1.9 Prohibited acts as to substances releasing vapors or fumes. 11 **Del.C.** §627.

11.1.10 Manslaughter. 11 **Del.C.** §632.

11.1.11 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.

11.1.12 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.

11.1.13 Murder in the second degree. 11 **Del.C.** §635.

11.1.14 Murder in the first degree. 11 **Del.C.** §636.

11.1.15 Promoting suicide. 11 **Del.C.** §645

11.1.16 Abortion. 11 **Del.C.** §651

11.1.17 Self-abortion. 11 **Del.C.** §652

11.1.18 Issuing abortion articles. 11 **Del.C.** §653

11.1.19 Unlawful sexual contact in the third degree. 11 **Del.C.** §767

11.1.20 Unlawful sexual contact in the second degree. 11 **Del.C.** §768

11.1.21 Unlawful sexual contact in the first degree. 11 **Del.C.** §769

11.1.22 Rape in the fourth degree. 11 **Del.C.** §770

11.1.23 Rape in the third degree. 11 **Del.C.** §771

11.1.24 Rape in the second degree. 11 **Del.C.** §772

11.1.25 Rape in the first degree. 11 **Del.C.** §773

11.1.26 Sexual extortion. 11 **Del.C.** §776

11.1.27 Bestiality. 11 **Del.C.** §777

11.1.28 Continuous sexual abuse of a child. 11 **Del.C.** §778

11.1.29 Dangerous crimes against a child. 11 **Del.C.** §779

11.1.30 Female genital mutilation. 11 **Del.C.** §780

11.1.31 Kidnapping in the second degree. 11 **Del.C.** §783

11.1.32 Kidnapping in the first degree. 11 **Del.C.** §783A

11.1.33 Acts constituting coercion. 11 **Del.C.** §791

11.1.34 Arson in the third degree. 11 **Del.C.** §801

11.1.35 Arson in the second degree. 11 **Del.C.** §802

11.1.36 Arson in the first degree. 11 **Del.C.** §803

11.1.37 Reckless burning or exploding. 11 **Del.C.** §804

11.1.38 Burglary in the third degree. 11 **Del.C.** §824

11.1.39 Burglary in the second degree. 11 **Del.C.** §825

11.1.40 Burglary in the first degree. 11 **Del.C.** §826

11.1.41 Possession of burglar's tools or instruments facilitating theft. 11 **Del.C.** §828

11.1.42 Robbery in the second degree. 11 **Del.C.** §831

- §832 11.1.43 Robbery in the first degree. 11 Del.C.
 §835 11.1.44 Carjacking in the second degree.11 Del.C.
 §836 11.1.45 Carjacking in the first degree. 11 Del.C.
 §842 11.1.46 Felony theft. 11 Del.C. §841
 11.1.47 Theft; lost or mislaid property. 11 Del.C.
 11.1.48 Theft; false pretense. 11 Del.C. §843
 11.1.49 Extortion 11 Del.C. §844
 11.1.50 Theft, extortion; claim of right as an
affirmative defense. 11 Del.C. §846
 §848 11.1.51 Misapplication of property. 11 Del.C.
 11.1.52 Use, possession manufacture, distribution
and sale of unlawful telecommunication and access devises
11 Del.C. §850
 11.1.53 Receiving stolen property 11 Del.C. §851
 §853 11.1.54 Unauthorized use of a vehicle 11 Del.C.
 11.1.55 Identity theft 11 Del.C. §854
 11.1.56 Forgery 11 Del.C. §861
 §862 11.1.57 Possession of forgery devices 11 Del.C.
 §871 11.1.58 Falsifying business records 11 Del.C.
 11.1.59 Tampering with public records in the
second degree 11 Del.C. §873
 11.1.60 Tampering with public records in the first
degree 11 Del.C. §876
 11.1.61 Offering a false instrument for filing. 11
Del.C. §877
 11.1.62 Issuing a false certificate 11 Del.C. §878
 11.1.63 Bribery 11 Del.C. §881
 11.1.64 Bribe receiving 11 Del.C. §882
 §903 11.1.65 Unlawful use of credit card. 11 Del.C.
 11.1.66 Reencoder and scanning devices. 11
Del.C. §903A
 11.1.67 Criminal impersonation . 11 Del.C. §907
 11.1.68 Criminal impersonation, accident related.
11 Del.C. §907A
 11.1.69 Criminal impersonation of a police officer.
11 Del.C. §907B
 §908 11.1.70 Unlawfully concealing a will. 11 Del.C.
 11.1.71 Securing execution of documents by
deception. 11 Del.C. §909
 11.1.72 Insurance fraud 11 Del.C. §913
 11.1.73 Use of consumer identification
information. 11Del.C. §914
 §915 11.1.74 Use of credit card information. 11 Del.C.
 11.1.75 Unauthorized access 11 Del.C. §932
 11.1.76 Misuse of computer system information.
11 Del.C. §935
 11.1.77 Endangering the welfare of a child 11
Del.C. §1102
 11.1.78 Endangering the welfare of an
incompetent person. 11 Del.C. §1105
 11.1.79 Unlawfully dealing with a child. 11 Del.C.
§1106
 11.1.80 Sexual exploitation of a child. 11 Del.C.
§1108
 11.1.81 Unlawfully dealing in child pornography.
11 Del.C. §1109
 11.1.82 Possession of child pornography. 11
Del.C. §1111
 11.1.83 Sexual solicitation of a child. 11 Del.C.
§1112A
 11.1.84 Perjury in the second degree. 11 Del.C.
§1222
 11.1.85 Perjury in the first degree. 11 Del.C.
§1223
 11.1.86 Making a false written statement. 11
Del.C. §1233
 11.1.87 Tampering with physical evidence. 11
Del.C. §1269
 11.1.88 Hate crimes 11 Del.C. §1304
 11.1.89 Aggravated harassment 11 Del.C. §1312
 11.1.90 Abusing a corpse 11 Del.C. §1332
 11.1.91 Trading in human remains and associated
funerary objects 11 Del.C. §1333
 11.1.92 Adulteration 11 Del.C. §1339
 11.1.93 Desecration of a burial place. 11 Del.C.
§1340
 11.1.94 Act of intimidation. 11 Del.C. §3532
 11.1.95 Aggravated act of intimidation. 11 Del.C.
§3533
 11.1.96 Attempt to intimidate. 11 Del.C. §3534.
 11.1.97 Alteration, theft, or destruction of will. 12
Del.C. §210
 11.1.98 Abuse, Neglect Mistreatments or Financial
Exploitation of residents or patients. 16 Del.C. §1136
 11.1.99 Controlled substance prohibited acts A. 16
Del.C. §4751
 11.1.100 Controlled substance prohibited acts
B. 16 Del.C. §4752.
 11.1.10 Trafficking in marijuana, cocaine,
illegal drugs, metamphetamines, L.S.D., or designer drugs.
16 Del.C. §4753A
 11.1.102 Possession and delivery of
noncontrolled prescription drug. 16 Del.C. §4754A (d) E
felony
 11.1.103 Hypodermic syringe or needle
delivering or possessing; disposal; exceptions. 16 Del.C.
§4757

11.1.104 Distribution to persons under 21 years of age. 16 Del.C. §4761

11.1.105 Purchase of drugs from minors. 16 Del.C. §4761A

11.1.106 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. 16 Del.C. §4767

11.1.107 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768

11.1.108 Duty of driver involved in accident resulting in injury or death to any person. 21 Del.C. §4202

11.2 Crimes substantially related to the provision of Funeral Services shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Funeral Services is available at: <http://www.professionallicensing.state.de.us/boards/funeralservices/index.shtml>**

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Statutory Authority: 24 Delaware Code,
Section 3506(a)(1) (24 Del.C. §3506(a)(1))
24 DE Admin. Code 3500

PUBLIC NOTICE

The Delaware Board of Examiners of Psychologists in accordance with 24 Del.C. §3506(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of psychology services.

A public hearing will be held on January 3, 2005 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Examiners of Psychologists, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed

regulations at its regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations

17.0 Crimes substantially related to the practice of psychology:

17.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of psychology in the State of Delaware without regard to the place of conviction:

17.1.1 Aggravated menacing. 11 Del.C. §602(b)

17.1.2 Reckless endangering in the second degree. 11 Del.C. §603

17.1.3 Reckless endangering in the first degree. 11 Del.C. §604

17.1.4 Abuse of a pregnant female in the second degree. 11 Del.C. §605.

17.1.5 Abuse of a pregnant female in the first degree. 11 Del.C. §606.

17.1.6 Assault in the third degree. 11 Del.C. §611.

17.1.7 Assault in the second degree. 11 Del.C. §612

17.1.8 Assault in the first degree. 11 Del.C. §613.

17.1.9 Abuse of a sports official; felony. 11 Del.C. §614.

17.1.10 Assault by abuse or neglect. 11 Del.C. §615.

17.1.11 Gang participation. 11 Del.C. §616.

17.1.12 Terroristic threatening. 11 Del.C. §621(a) and (b).

17.1.13 Unlawfully administering drugs. 11 Del.C. §625.

17.1.14 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.

17.1.15 Prohibited acts as to substances releasing vapors or fumes. 11 Del.C. §627.

17.1.16 Vehicular assault in the first degree. 11 Del.C. §629.

17.1.17 Vehicular homicide in the second degree. 11 Del.C. §630.

17.1.18 Vehicular homicide in the first degree. 11 Del.C. §630A.

17.1.19 Criminally negligent homicide. 11 Del.C. §631.

17.1.20 Manslaughter. 11 Del.C. §632.

17.1.21 Murder by abuse or neglect in the second degree. 11 Del.C. §633

17.1.22 Murder by abuse or neglect in the first degree. 11 Del.C. §634.

- 17.1.23 Murder in the second degree. 11 Del.C. §825.
§635.
- 17.1.24 Murder in the first degree. 11 Del.C. §636.
- 17.1.25 Promoting suicide. 11 Del.C. §645.
- 17.1.26 Abortion. 11 Del.C. §651.
- 17.1.27 Self abortion. 11 Del.C. §652.
- 17.1.28 Issuing abortifacient articles. 11 Del.C. §653.
- 17.1.29 Sexual harassment. 11 Del.C. §763.
- 17.1.30 Indecent exposure in the second degree. 11 Del.C. §764.
- 17.1.31 Indecent exposure in the first degree. 11 Del.C. §765.
- 17.1.32 Incest. 11 Del.C. §766.
- 17.1.33 Unlawful sexual contact in the third degree. 11 Del.C. §767.
- 17.1.34 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 17.1.35 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 17.1.36 Rape in the fourth degree. 11 Del.C. §770.
- 17.1.37 Rape in the third degree. 11 Del.C. §771.
- 17.1.38 Rape in the second degree. 11 Del.C. §772.
- 17.1.39 Rape in the first degree. 11 Del.C. §773.
- 17.1.40 Sexual extortion. 11 Del.C. §776.
- 17.1.41 Bestiality. 11 Del.C. §777.
- 17.1.42 Continuous sexual abuse of a child. 11 Del.C. §778.
- 17.1.43 Dangerous crime against a child. 11 Del.C. §779.
- 17.1.44 Female genital mutilation. 11 Del.C. §780.
- 17.1.45 Unlawful imprisonment in the second degree. 11 Del.C. §781.
- 17.1.46 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 17.1.47 Kidnapping in the second degree. 11 Del.C. §783.
- 17.1.48 Kidnapping in the first degree. 11 Del.C. §783A.
- 17.1.49 Interference with custody. 11 Del.C. §785.
- 17.1.50 Acts constituting coercion. 11 Del.C. §791.
- 17.1.51 Arson in the third degree. 11 Del.C. §801.
- 17.1.52 Arson in the second degree. 11 Del.C. §802.
- 17.1.53 Arson in the first degree. 11 Del.C. §803.
- 17.1.54 Cross or religious symbol burning. 11 Del.C. §805.
- 17.1.55 Criminal mischief. 11 Del.C. §811.
- 17.1.56 Trespassing with intent to peer or peep into a window of another. 11 Del.C. §820.
- 17.1.57 Burglary in the third degree. 11 Del.C. §824.
- 17.1.58 Burglary in the second degree. 11 Del.C. §825.
- 17.1.59 Burglary in the first degree. 11 Del.C. §826.
- 17.1.60 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828.
- 17.1.61 Robbery in the second degree. 11 Del.C. §831.
- 17.1.62 Robbery in the first degree. 11 Del.C. §832.
- 17.1.63 Carjacking in the second degree. 11 Del.C. §835.
- 17.1.64 Carjacking in the first degree. 11 Del.C. §836.
- 17.1.65 Shoplifting; felony. 11 Del.C. §840.
- 17.1.66 Use of illegitimate retail sales receipt or Universal Product Code Label; felony. 11 Del.C. §840A.
- 17.1.67 Theft. 11 Del.C. §841.
- 17.1.68 Theft; lost or mislaid property; mistaken delivery. 11 Del.C. §842.
- 17.1.69 Theft; false pretense. 11 Del.C. §843.
- 17.1.70 Theft; false promise. 11 Del.C. §844.
- 17.1.71 Theft of services. 11 Del.C. §845.
- 17.1.72 Extortion. 11 Del.C. §846.
- 17.1.73 Misapplication of property. 11 Del.C. §848.
- 17.1.74 Theft of rented property. 11 Del.C. §849.
- 17.1.75 Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices. 11 Del.C. §850.
- 17.1.76 Receiving stolen property. 11 Del.C. §851.
- 17.1.77 Identity theft. 11 Del.C. §854.
- 17.1.78 Larceny of livestock. 11 Del.C. §859.
- 17.1.79 Possession of shoplifters tools or instruments facilitating theft. 11 Del.C. §860.
- 17.1.80 Forgery. 11 Del.C. §861.
- 17.1.81 Possession of forgery devices. 11 Del.C. §862.
- 17.1.82 Falsifying business records. 11 Del.C. §871.
- 17.1.83 Tampering with public records in the second degree 11 Del.C. §873.
- 17.1.84 Tampering with public records in the first degree. 11 Del.C. §876.
- 17.1.85 Offering a false instrument for filing. 11 Del.C. §877.
- 17.1.86 Issuing a false certificate. 11 Del.C. §878.
- 17.1.87 Bribery. 11 Del.C. §881.
- 17.1.88 Bribe receiving. 11 Del.C. §882.
- 17.1.89 Defrauding secured creditors. 11 Del.C. §891.
- 17.1.90 Fraud in insolvency. 11 Del.C. §892.
- 17.1.91 Interference with levied-upon property. 11 Del.C. §893.
- 17.1.92 Issuing a bad check. 11 Del.C. §900.

- 17.1.93 Unlawful use of credit card. 11 **Del.C.** §903.
- 17.1.94 Reencoder and scanning devices. 11 **Del.C.** §903A.
- 17.1.95 Deceptive business practices. 11 **Del.C.** §906.
- 17.1.96 Criminal impersonation. 11 **Del.C.** §907.
- 17.1.97 Criminal impersonation, accident related. 11 **Del.C.** §907A.
- 17.1.98 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 17.1.99 Unlawfully concealing a will. 11 **Del.C.** §908.
- 17.1.100 Securing execution of documents by deception. 11 **Del.C.** §909.
- 17.1.101 Debt adjusting. 11 **Del.C.** §910.
- 17.1.102 Fraudulent conveyance of public lands. 11 **Del.C.** §911.
- 17.1.103 Fraudulent receipt of public lands. 11 **Del.C.** §912.
- 17.1.104 Insurance fraud. 11 **Del.C.** §913.
- 17.1.105 Health care fraud. 11 **Del.C.** §913A.
- 17.1.106 Home improvement fraud. 11 **Del.C.** §916.
- 17.1.107 New home construction fraud. 11 **Del.C.** §917.
- 17.1.108 Transfer of recorded sounds. 11 **Del.C.** §920.
- 17.1.109 Sale of transferred recorded sounds. 11 **Del.C.** §921.
- 17.1.110 Improper labeling. 11 **Del.C.** §922.
- 17.1.111 Unauthorized access. 11 **Del.C.** §932.
- 17.1.112 Theft of computer services. 11 **Del.C.** §933.
- 17.1.113 Interruption of computer services. 11 **Del.C.** §934.
- 17.1.114 Misuse of computer system information. 11 **Del.C.** §935.
- 17.1.115 Destruction of computer equipment. 11 **Del.C.** §936.
- 17.1.116 Unrequested or unauthorized electronic mail or use of network or software to cause same. 11 **Del.C.** §937.
- 17.1.117 Failure to promptly cease electronic communication upon request. 11 **Del.C.** §938.
- 17.1.118 Bigamy. 11 **Del.C.** §1001.
- 17.1.119 Bigamous marriage contracted outside of the State. 11 **Del.C.** §1002.
- 17.1.120 Dealing in children. 11 **Del.C.** §1100.
- 17.1.121 Abandonment of child. 11 **Del.C.** §1101.
- 17.1.122 Endangering the welfare of a child. 11 **Del.C.** §1102.
- 17.1.123 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105.
- 17.1.124 Unlawfully dealing with a child. 11 **Del.C.** §1106.
- 17.1.125 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 17.1.126 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 17.1.127 Possession of child pornography. 11 **Del.C.** §1111.
- 17.1.128 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- 17.1.129 Sexual solicitation of a child. 11 **Del.C.** §1112A.
- 17.1.130 Criminal non-support and aggravated criminal non-support. 11 **Del.C.** §1113.
- 17.1.131 Body-piercing, tattooing or branding. 11 **Del.C.** §1114.
- 17.1.132 Tongue-splitting. 11 **Del.C.** §1114A.
- 17.1.133 Sale or distribution of tobacco products to minors. 11 **Del.C.** §1116.
- 17.1.134 Distribution of samples to minors. 11 **Del.C.** §1118.
- 17.1.135 Distribution of cigarettes through vending machines. 11 **Del.C.** §1119.
- 17.1.136 Distribution of tobacco products. 11 **Del.C.** §1120.
- 17.1.137 Bribery. 11 **Del.C.** §1201.
- 17.1.138 Receiving a bribe; felony. 11 **Del.C.** §1203.
- 17.1.139 Giving unlawful gratuities. 11 **Del.C.** §1205.
- 17.1.140 Receiving unlawful gratuities. 11 **Del.C.** §1206.
- 17.1.141 Improper influence. 11 **Del.C.** §1207.
- 17.1.142 Official misconduct. 11 **Del.C.** §1211.
- 17.1.143 Profiteering. 11 **Del.C.** §1212.
- 17.1.144 Perjury in the third degree. 11 **Del.C.** §1221.
- 17.1.145 Perjury in the second degree. 11 **Del.C.** §1222.
- 17.1.146 Perjury in the first degree. 11 **Del.C.** §1223.
- 17.1.147 Making a false written statement. 11 **Del.C.** §1233.
- 17.1.148 Wearing a disguise during the commission of a felony. 11 **Del.C.** §1239.
- 17.1.149 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240.
- 17.1.150 Obstructing fire-fighting operations. 11 **Del.C.** §1243.
- 17.1.151 Hindering prosecution; felony. 11 **Del.C.** §1244.
- 17.1.152 Falsely reporting an incident. 11 **Del.C.** §1245.

- 17.1.153 Obstructing the control and suppression of rabies; felony. 11 **Del.C.** §1248.
- 17.1.154 Abetting the violation of driver's license restrictions. 11 **Del.C.** §1249.
- 17.1.155 Offenses against law-enforcement animals. 11 **Del.C.** §1250.
- 17.1.156 Escape in the second degree. 11 **Del.C.** §1252.
- 17.1.157 Escape after conviction. 11 **Del.C.** §1253.
- 17.1.158 Assault in a detention facility. 11 **Del.C.** §1254.
- 17.1.159 Promoting prison contraband; felony. 11 **Del.C.** §1256.
- 17.1.160 Use of an animal to avoid capture. 11 **Del.C.** §1257A.
- 17.1.161 Sexual relations in a detention facility. 11 **Del.C.** §1259.
- 17.1.162 Misuse of prisoner mail; felony. 11 **Del.C.** §1260.
- 17.1.163 Bribing a witness. 11 **Del.C.** §1261.
- 17.1.164 Bribe receiving by a witness. 11 **Del.C.** §1262.
- 17.1.165 Tampering with a witness. 11 **Del.C.** §1263.
- 17.1.166 Interfering with child witness. 11 **Del.C.** §1263A.
- 17.1.167 Bribing a juror. 11 **Del.C.** §1264.
- 17.1.168 Bribe receiving by a juror. 11 **Del.C.** §1265.
- 17.1.169 Tampering with a juror. 11 **Del.C.** §1266.
- 17.1.170 Misconduct by a juror. 11 **Del.C.** §1267.
- 17.1.171 Tampering with physical evidence. 11 **Del.C.** §1269.
- 17.1.172 Criminal contempt of a domestic violence protective order. 11 **Del.C.** §1271A.
- 17.1.173 Unlawful grand jury disclosure. 11 **Del.C.** §1273.
- 17.1.174 Riot. 11 **Del.C.** §1302.
- 17.1.175 Hate crimes. 11 **Del.C.** §1304.
- 17.1.176 Aggravated harassment. 11 **Del.C.** §1312.
- 17.1.177 Stalking. 11 **Del.C.** §1312A.
- 17.1.178 Malicious interference with emergency communications. 11 **Del.C.** §1313.
- 17.1.179 Criminal nuisance. 11 **Del.C.** §1322.
- 17.1.180 Cruelty to animals. 11 **Del.C.** §1325.
- 17.1.181 Unlawful trade in dog or cat by-products. 11 **Del.C.** §1325A.
- 17.1.182 Animals; fighting and baiting prohibited; felony. 11 **Del.C.** §1326.
- 17.1.183 Maintaining a dangerous animal; felony. 11 **Del.C.** §1327.
- 17.1.184 Abusing a corpse. 11 **Del.C.** §1332.
- 17.1.185 Trading in human remains and associated funerary objects. 11 **Del.C.** §1333.
- 17.1.186 Violation of privacy. 11 **Del.C.** §1335.
- 17.1.187 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 17.1.188 Adulteration. 11 **Del.C.** §1339.
- 17.1.189 Prostitution. 11 **Del.C.** §1342.
- 17.1.190 Patronizing a prostitute prohibited. 11 **Del.C.** §1343.
- 17.1.191 Promoting prostitution in the third degree. 11 **Del.C.** §1351.
- 17.1.192 Promoting prostitution in the second degree. 11 **Del.C.** §1352.
- 17.1.193 Promoting prostitution in the first degree. 11 **Del.C.** §1353.
- 17.1.194 Permitting prostitution. 11 **Del.C.** §1355.
- 17.1.195 Obscenity. 11 **Del.C.** §1361.
- 17.1.196 Advancing gambling in the second degree. 11 **Del.C.** §1401.
- 17.1.197 Foreign lotteries. 11 **Del.C.** §1402.
- 17.1.198 Advancing gambling in the first degree. 11 **Del.C.** §1403.
- 17.1.199 Carrying a concealed deadly weapon. 11 **Del.C.** §1442.
- 17.1.200 Carrying a concealed dangerous instrument. 11 **Del.C.** §1443.
- 17.1.201 Possessing a destructive weapon. 11 **Del.C.** §1444.
- 17.1.202 Unlawfully dealing with a dangerous weapon. 11 **Del.C.** §1445.
- 17.1.203 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
- 17.1.204 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
- 17.1.205 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
- 17.1.206 Criminal history record checks for sales of firearms. 11 **Del.C.** §448A.
- 17.1.207 Wearing body armor during commission of felony. 11 **Del.C.** §1449.
- 17.1.208 Receiving a stolen firearm. 11 **Del.C.** §1450.
- 17.1.209 Theft of a firearm. 11 **Del.C.** §1451.
- 17.1.210 Unlawfully dealing with knuckles-combination knife. 11 **Del.C.** §1452.
- 17.1.211 Unlawfully dealing with martial arts throwing star. 11 **Del.C.** §1453.
- 17.1.212 Giving a firearm to person prohibited. 11 **Del.C.** §1454.
- 17.1.213 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.

- 17.1.214 Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457.
- 17.1.215 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458.
- 17.1.216 Possession of a weapon with a removed, obliterated or altered serial number. 11 **Del.C.** §1459.
- 17.1.217 Prohibited acts. Cheating devices(a)-(e). 11 **Del.C.** §1471.
- 17.1.218 Organized Crime and Racketeering. 11 **Del.C.** §1504.
- 17.1.219 Victim or Witness Intimidation 11 **Del.C.** §§3532 & 3533.
- 17.1.220 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136(a), (b) and (c).
- 17.1.221 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).
- 17.1.222 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a) and (b).
- 17.1.223 Unlawful delivery of noncontrolled substance. 16 **Del.C.** §4752A.
- 17.1.224 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
- 17.1.225 Prohibited acts D under the Uniform Controlled Substances Act. 16 **Del.C.** §4754.
- 17.1.226 Possession and delivery of noncontrolled prescription drug; felony. 16 **Del.C.** §4754A(d).
- 17.1.227 Prohibited acts E under the Uniform Controlled Substances Act. 16 **Del.C.** §4755(a)(1) and (2).
- 17.1.228 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.** §4756(a)(1)-(5) and (b).
- 17.1.229 Hypodermic syringe or needle; delivering or possessing; disposal; felony. 16 **Del.C.** §4757.
- 17.1.230 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.
- 17.1.231 Purchase of drugs from minors. 16 **Del.C.** §4761A
- 17.1.232 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 **Del.C.** §4767
- 17.1.233 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768
- 17.1.234 Drug paraphernalia. 16 **Del.C.** §4771 (a) and (b).
- 17.1.235 Possession, manufacture and sale, delivery to a minor and advertising of drug paraphernalia; felony. 16 **Del.C.** §§4771 and 4774.
- 17.1.236 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; third and fourth offenses. 23 **Del.C.** §2302(a) and §2305(3) and (4).
- 17.1.237 Attempt to evade or defeat tax. 30 **Del.C.** §571.
- 17.1.238 Failure to collect or pay over tax. 30 **Del.C.** §572.
- 17.1.239 Fraud and false statements. 30 **Del.C.** §574.
- 17.1.240 Obtaining benefit under false representation. 31 **Del.C.** §1003.
- 17.1.241 Reports, statements and documents. 31 **Del.C.** §1004.
- 17.1.242 Kickback schemes and solicitations. 31 **Del.C.** §1005.
- 17.1.243 Conversion of payment. 31 **Del.C.** §1006.
- 17.1.244 Unlawful possession or manufacture of proof of insurance. 21 **Del.C.** §2118A.
- 17.1.245 Temporary registration violations related to providing false information. 21 **Del.C.** §2133(a) (1)-(3).
- 17.1.246 False statements. 21 **Del.C.** §2315.
- 17.1.247 Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate. 21 **Del.C.** §2316.
- 17.1.248 Transfer to automotive recycler. 21 **Del.C.** §2505.
- 17.1.249 Endorsement and delivery of certificate of title upon transfer. 21 **Del.C.** §2510.
- 17.1.250 False statements; incorrect or incomplete information. 21 **Del.C.** §2620.
- 17.1.251 License to operate a motorcycle, motorbike, etc. 21 **Del.C.** §2703.
- 17.1.252 Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age. 21 **Del.C.** §2710.
- 17.1.253 Unlawful application for or use of license or identification card. 21 **Del.C.** §2751.
- 17.1.254 False statements. 21 **Del.C.** §2752.
- 17.1.255 Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards. 21 **Del.C.** §2760(a) and (b).
- 17.1.256 Driving after judgment prohibited. 21 **Del.C.** §2810.
- 17.1.257 False statements. 21 **Del.C.** §3107.
- 17.1.258 Driving a vehicle while under the influence or with a prohibited alcohol content; third and fourth offenses. 21 **Del.C.** §4177 (3) and (4).
- 17.1.259 Operating a commercial motor vehicle with a prohibited blood alcohol concentration or

while impaired by drugs. 21 **Del.C.** §4177M.

17.1.260 Duty of driver involved in accident resulting in property damage or injury. 21 **Del.C.** §4201.

17.1.261 Duty of driver involved in accident resulting in injury or death to any person. 21 **Del.C.** §4202.

17.1.262 Report of damaged vehicles; cars involved in fatal accidents. 21 **Del.C.** §4204.

17.1.263 Introduction, sale, distribution or advertisement to public of motor vehicle master keys. 21 **Del.C.** §4601.

17.1.264 Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires. 21 **Del.C.** §4604(a).

17.1.265 Odometer violations. 21 **Del.C.** §6420.

17.1.266 Receiving or transferring stolen vehicle. 21 **Del.C.** §6704.

17.1.267 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity. 21 **Del.C.** §6705(a)-(e).

17.1.268 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card. 21 **Del.C.** §6708(a) and (b).

17.1.269 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers. 21 **Del.C.** §6709(a).

17.1.270 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers. 21 **Del.C.** §6710(a).

17.1.271 Violations related to the requirements if licensing or maintenance of vehicle records for automotive recyclers. 21 **Del.C.** §7512.

17.1.272 Offenses [involving meat and poultry inspection including bribery or attempted bribery or assaulting or impeding any person in the performance of his duties] (felony) 3 **Del.C.** §8713.

17.1.273 Fraud or distribution or attempted distribution of adulterated article. 3 **Del.C.** §8715.

17.1.274 Fraudulent Written Statements. 3 **Del.C.** §10049.

17.1.275 Fraudulent Certificate of Registration or Eligibility Documents 3 **Del.C.** §10050.

17.1.276 Prohibited trade practices against infirm or elderly. 6 **Del.C.** §2581.

17.1.277 Prohibition of intimidation [under the Fair Housing Act]; felony. 6 **Del.C.** §4619.

17.1.278 Auto Repair Fraud victimizing the infirm or elderly. 6 **Del.C.** §4909A.

17.1.279 Violations of the Securities Act. 6 **Del.C.** §7322.

17.1.280 Environmental Control Permits; felony. 7 **Del.C.** §6003.

17.1.281 Unauthorized Acts against a Service

Guide or Seeing Eye Dog. 7 **Del.C.** §1717.

17.1.282 Interception of Communications Generally; Divulging Contents of Communications. 11 **Del.C.** §2402

17.1.283 Manufacture, Possession or Sale of Intercepting Device. 11 **Del.C.** §2403.

17.1.284 Breaking and Entering, Etc. to Place or Remove Equipment 11 **Del.C.** §2410.

17.1.285 Obstruction, Impediment or Prevention of Interception. 11 **Del.C.** §2412

17.1.286 Obtaining, Altering or Preventing Authorized Access. 11 **Del.C.** §2421

17.1.287 Divulging Contents of Communications. 11 **Del.C.** §2422

17.1.288 Installation and Use Generally [of pen trace and trap and trace devices]. 11 **Del.C.** §243.

17.1.289 Attempt to Intimidate. 11 **Del.C.** §3534

17.1.290 Disclosure of Expunged Records. 11 **Del.C.** §4374.

17.1.291 Violation of reporting provisions re: SBI.; felony. 11 **Del.C.** §8523.

17.1.292 Failure of child-care provider to obtain information required under §8561 or for those providing false information. 11 **Del.C.** §8562

17.1.293 Providing false information when seeking employment in a public school. 11 **Del.C.** §8572

17.1.294 Filing False Claim [under Victims' Compensation Fund]. 11 **Del.C.** §9016

17.1.295 Failure of Physician to file report of abuse of neglect pursuant to 16 Del.C. §903.

17.1.296 Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized; felony. 16 **Del.C.** §2513 (b).

17.1.297 Violations related to the sale, purchase, receipt, possession, transportation, use, safety and control of explosive materials other than 16 **Del.C.** §7103. 16 **Del.C.** §7112

17.1.298 Operation of a Vessel or Boat while under the Influence of Intoxicating Liquor and/or Drugs. 23 **Del.C.** §2302 (3) and (4)

17.1.299 Sale to Persons under 21 or Intoxicated Persons. 24 **Del.C.** §903

17.1.300 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** §3913(a), (b) and (c).

17.2 Crimes substantially related to the practice of psychology shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Examiners of Psychologists is available at: <http://www.professionallicensing.state.de.us/boards/psychology/index.shtml>

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF GEOLOGISTS**

Statutory Authority: 24 Delaware Code,
Section 3606 (24 Del.C. §3606)
24 DE Admin. Code 3600

PUBLIC NOTICE

The Delaware Board of Geologists in accordance with 24 Del.C. §3606 has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of geological services.

A public hearing will be held on January 14, 2005 at 10:15 a.m. in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Geologists, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations

9.0 Crimes substantially related to the practice of geology:

9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of geology in the State of Delaware without regard to the place of conviction:

- 9.1.1 Abuse of a pregnant female in the first degree. 11 Del.C. §606.
- 9.1.2 Assault in the first degree. 11 Del.C. §613.
- 9.1.3 Assault by abuse or neglect. 11 Del.C. §615.
- 9.1.4 Murder by abuse or neglect in the first

- degree. 11 Del.C. §634.
- 9.1.5 Murder in the second degree. 11 Del.C. §635.
- 9.1.6 Murder in the first degree. 11 Del.C. §636.
- 9.1.7 Rape in the third degree. 11 Del.C. §771.
- 9.1.8 Rape in the second degree. 11 Del.C. §772.
- 9.1.9 Rape in the first degree. 11 Del.C. §773.
- 9.1.10 Continuous sexual abuse of a child. 11 Del.C. §778.
- 9.1.11 Dangerous crime against a child. 11 Del.C. §779.
- 9.1.12 Kidnapping in the first degree. 11 Del.C. §783A.
- 9.1.13 Burglary in the first degree. 11 Del.C. §826.
- 9.1.14 Robbery in the first degree. 11 Del.C. §832.
- 9.1.15 Carjacking in the first degree. 11 Del.C. §836.
- 9.1.16 Identity theft. 11 Del.C. §854.
- 9.1.17 Forgery; felony. 11 Del.C. §861.
- 9.1.18 Possession of forgery devices. 11 Del.C. §862.
- 9.1.19 Tampering with public records in the first degree. 11 Del.C. §876.
- 9.1.20 Offering a false instrument for filing. 11 Del.C. §877.
- 9.1.21 Issuing a false certificate. 11 Del.C. §878.
- 9.1.22 Unlawful use of credit card; felony. 11 Del.C. §903.
- 9.1.23 Reencoder and scanning devices. 11 Del.C. §903A.
- 9.1.24 Criminal impersonation. 11 Del.C. §907
- 9.1.25 Criminal impersonation, accident related. 11 Del.C. §907A.
- 9.1.26 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 9.1.27 Sexual exploitation of a child. 11 Del.C. §1108.
- 9.1.28 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 9.1.29 Bribery. 11 Del.C. §1201.
- 9.1.30 Receiving a bribe. 11 Del.C. §1203.
- 9.1.31 Improper influence. 11 Del.C. §1207.
- 9.1.32 Official misconduct. 11 Del.C. §1211.
- 9.1.33 Profiteering. 11 Del.C. §1212.
- 9.1.34 Perjury in the second degree. 11 Del.C. §1222.
- 9.1.35 Perjury in the first degree. 11 Del.C. §1223.
- 9.1.36 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.
- 9.1.37 Bribing a witness. 11 Del.C. §1261.

- 9.1.38 Bribe receiving by a witness. 11 Del.C. §1262.
- 9.1.39 Tampering with a witness. 11 Del.C. §1263.
- 9.1.40 Bribing a juror. 11 Del.C. §1264.
- 9.1.41 Bribe receiving by a juror. 11 Del.C. §1265.
- 9.1.42 Tampering with physical evidence. 11 Del.C. §1269.
- 9.1.43 Escape after conviction; Class B felony. 11 Del.C. §1253.
- 9.1.44 Assault in a detention facility; Class B felony. 11 Del.C. §1254.
- 9.1.45 Hate Crimes; Class A or B felony. 11 Del.C. §1304.
- 9.1.46 Adulteration; Class A felony. 11 Del.C. §1339.
- 9.1.47 Possession of a deadly weapon during the commission of a felony. 11 Del.C. §1447.
- 9.1.48 Possession of a firearm during the commission of a felony. 11 Del.C. §1447A.
- 9.1.49 Wearing body armor during the commission of a felony. 11 Del.C. §1449.
- 9.1.50 Organized crime and racketeering. 11 Del.C. § 1504.
- 9.1.51 Victim or witness intimidation. 11 Del.C. §§3532 & 3533.
- 9.1.52 Prohibited acts A [delivery/manufacture/possession with intent to deliver narcotics (death); Class B. 16 Del. C. §4751.
- 9.1.53 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 Del.C. §47513A.

9.2 Crimes substantially related to the practice of geology shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Geologists is available at: <http://www.professionallicensing.state.de.us/boards/geology/index.shtml>

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF SPEECH/LANGUAGE PATHOLOGISTS,
AUDIOLOGISTS, AND HEARING AID DISPENSERS**

Statutory Authority: 24 Delaware Code,
Section 3706(c) (24 Del.C. §3706(c))
24 DE Admin. Code 3700

PUBLIC NOTICE

The Delaware Board Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, in accordance with 24 Del.C. §3706(c) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing.

A public hearing will be held at 2:00 p.m. on January 12, 2005 in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations

11.0 Crimes substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing.

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing in the State of Delaware without regard to the place of conviction:

- 11.1.1 Assault in the second degree. 11 Del.C. §612.
- 11.1.2 Assault in the first degree. 11 Del.C. §613.
- 11.1.3 Assault by abuse or neglect. 11 Del.C. §615.
- 11.1.4 Murder by abuse or neglect in the second degree. 11 Del.C. §633.
- 11.1.5 Murder by abuse or neglect in the first degree. 11 Del.C. §634.

- 11.1.6 Murder in the second degree. 11 Del.C. §635.
- 11.1.7 Murder in the first degree. 11 Del.C. §636.
- 11.1.8 Rape in the fourth degree. 11 Del.C. §770
- 11.1.9 Rape in the third degree. 11 Del.C. §771
- 11.1.10 Rape in the second degree. 11 Del.C. §772
- 11.1.11 Rape in the first degree. 11 Del.C. §773
- 11.1.12 Sexual extortion. 11 Del.C. §776
- 11.1.13 Continuous sexual abuse of a child. 11 Del.C. §778
- 11.1.14 Kidnapping in the second degree. 11 Del.C. §783
- 11.1.15 Kidnapping in the first degree. 11 Del.C. §783A
- 11.1.16 Identity theft. 11 Del.C. §854
- 11.1.17 Insurance fraud. 11 Del.C. §913
- 11.1.18 Health care fraud. 11 Del.C. §913A
- 11.1.19 Dealing in children. 11 Del.C. §1100
- 11.1.20 Endangering the welfare of a child. 11 Del.C. §1102
- 11.1.21 Sexual exploitation of a child. 11 Del.C. §1108
- 11.1.22 Unlawful dealing in child pornography. 11 Del.C. §1109
- 11.1.23 Sexual solicitation of a child. 11 Del.C. §1112A
- 11.1.24 Hate crimes (felony). 11 Del.C. §1304(a)
- 11.1.25 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 Del.C. §1136.
- 11.1.26 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 Del.C. §4753A
- 11.1.27 Abuse, neglect, mistreatment or financial exploitation of an infirm adult. 31 Del.C. §3913

11.2 Crimes substantially related to the practice speech/language pathology, audiology, and hearing aid dispensing shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers is available at: <http://www.professionallicensing.state.de.us/boards/speechaudio/index.shtml>

**DIVISION OF PROFESSIONAL REGULATION
STATE COMMITTEE ON DIETETICS/NUTRITION**

Statutory Authority: 24 Delaware Code,
Section 3805(1) (24 Del.C. §3805(1))
24 DE Admin. Code 3800

PUBLIC NOTICE

The State Committee on Dietetics/Nutrition in accordance with 24 Del.C. §3805(1) has proposed changes to its rules and regulations as mandated by SB 229 (74 Del. Laws c. 262). The proposal identifies crimes that are substantially related to the provision of services as a Certified Dietitian and/or Nutritionist.

A public hearing will be held at 2:30 p.m. on January 19, 2005 in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Committee on Dietetics/Nutrition, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Committee at the above address. The final date to receive written comments will be at the public hearing.

The Committee will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations

6.0 Crimes Substantially Related To Provision Of Dietetic/Nutrition Services.

6.1 For the purposes of this section the following definition shall apply:

6.1.1 "Conviction" means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a "Robinson" or "Alford" plea unless the individual has been discharged under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program). Including all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

6.2 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the provision of Dietetics/Nutrition services as a Certified Dietitian and/or Nutritionist in the State of Delaware without regard to the place of conviction:

6.2.1 Homicide

- 6.2.2 Assault
- 6.2.3 Criminal Sexual Abuse
- 6.2.4 Tax Evasion
- 6.2.5 Kidnapping
- 6.2.6 Theft and all related offenses
- 6.2.7 Embezzlement
- 6.2.8 Child pornography
- 6.2.9 Forgery
- 6.2.10 Identity theft
- 6.2.11 Insurance fraud
- 6.2.12 Bribery
- 6.2.13 Perjury
- 6.2.14 Abuse- any abuse of a person or animal
- 6.2.15 Counterfeiting
- 6.2.16 Tampering with consumer products
- 6.2.17 Hate crimes
- 6.2.18 False or fraudulent statements
- 6.2.19 Kick Back schemes
- 6.2.20 Abduction or unlawful restraint

6.3 Crimes substantially related to the provision of services as a Certified Dietitian and/or Nutritionist shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the State Committee on Dietetics/Nutrition is available at: <http://www.professionallicensing.state.de.us/boards/dietitians/index.shtml>

DIVISION OF PROFESSIONAL REGULATION BOARD OF COSMETOLOGY AND BARBERING

Statutory Authority: 24 Delaware Code,
Section 5106 (24 Del.C. §5106)
24 DE Admin. Code 5100

PUBLIC NOTICE

The Delaware Board of Cosmetology and Barbering in accordance with 24 Del.C. §5106 has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of cosmetology, barbering, electrology and nail technology services.

A public hearing will be held at 9:30 a.m. on January 31, 2005 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. Anyone wishing to receive a copy of the proposed rules and

regulations may obtain a copy from the Delaware Board of Cosmetology and Barbering, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations

18.0 Crimes substantially related to the practice of cosmetology, barbering, electrology and nail technology

18.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of cosmetology, barbering, electrology and nail technology in the State of Delaware without regard to the place of conviction:

- 18.1.1 Criminal solicitation in the first degree. 11 Del.C. §503.
- 18.1.2 Conspiracy in the first degree. 11 Del.C. §513.
- 18.1.3 Aggravated Menacing. 11 Del.C. §602(b).
- 18.1.4 Reckless endangering in the first degree. 11 Del.C. §604.
- 18.1.5 Abuse of a pregnant female in the second degree. 11 Del.C. §605.
- 18.1.6 Abuse of a pregnant female in the first degree. 11 Del.C. §606
- 18.1.7 Assault in the second degree. 11 Del.C. §612.
- 18.1.8 Assault in the first degree. 11 Del.C. §613.
- 18.1.9 Abuse of a sports official; felony. 11 Del.C. §614.
- 18.1.10 Assault by abuse or neglect. 11 Del.C. §615.
- 18.1.11 Terroristic threatening; felony. 11 Del.C. §621.
- 18.1.12 Unlawfully administering drugs. 11 Del.C. §625.
- 18.1.13 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.
- 18.1.14 Murder by abuse or neglect in the second degree. 11 Del.C. §633.
- 18.1.15 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- 18.1.16 Murder in the second degree. 11 Del.C. §635.
- 18.1.17 Murder in the first degree. 11 Del.C. §636.

- 18.1.18 Abortion. 11 Del.C. §651.
- 18.1.19 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 18.1.20 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 18.1.21 Rape in the fourth degree. 11 Del.C. §770.
- 18.1.22 Rape in the third degree. 11 Del.C. §771.
- 18.1.23 Rape in the second degree. 11 Del.C. §772.
- 18.1.24 Rape in the first degree. 11 Del.C. §773.
- 18.1.25 Sexual extortion. 11 Del.C. §776.
- 18.1.26 Continuous sexual abuse of a child. 11 Del.C. §778.
- 18.1.27 Dangerous crime against a child. 11 Del.C. §779.
- 18.1.28 Female genital mutilation. 11 Del.C. §780.
- 18.1.29 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 18.1.30 Kidnapping in the second degree. 11 Del.C. §783.
- 18.1.31 Kidnapping in the first degree. 11 Del.C. §783A.
- 18.1.32 Arson in the third degree. 11 Del.C. §801.
- 18.1.33 Arson in the second degree. 11 Del.C. §802.
- 18.1.34 Arson in the first degree. 11 Del.C. §803.
- 18.1.35 Burglary in the second degree. 11 Del.C. §825.
- 18.1.36 Burglary in the first degree. 11 Del.C. §826.
- 18.1.37 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828.
- 18.1.38 Robbery in the second degree. 11 Del.C. §831.
- 18.1.39 Robbery in the first degree. 11 Del.C. §832.
- 18.1.40 Carjacking in the second degree. 11 Del.C. §835.
- 18.1.41 Carjacking in the first degree. 11 Del.C. §836.
- 18.1.42 Extortion. 11 Del.C. §846.
- 18.1.43 Identity theft. 11 Del.C. §854.
- 18.1.44 Forgery. 11 Del.C. §861.
- 18.1.45 Possession of forgery devices. 11 Del.C. §862.
- 18.1.46 Tampering with public records in the first degree. 11 Del.C. §876.
- 18.1.47 Unlawful use of credit card; felony. 11 Del.C. §903.
- 18.1.48 Reencoder and scanning devices. 11 Del.C. §903A.
- 18.1.49 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 18.1.50 Dealing in children. 11 Del.C. §1100.
- 18.1.51 Endangering the welfare of a child. 11 Del.C. §1102.
- 18.1.52 Sexual exploitation of a child. 11 Del.C. §1108.
- 18.1.53 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 18.1.54 Possession of child pornography. 11 Del.C. §1111.
- 18.1.55 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112.
- 18.1.56 Perjury in the second degree. 11 Del.C. §1222.
- 18.1.57 Perjury in the first degree. 11 Del.C. §1223.
- 18.1.58 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.
- 18.1.59 Abetting the violation of driver's license restrictions. 11 Del.C. §1249.
- 18.1.60 Escape in the second degree. 11 Del.C. §1252.
- 18.1.61 Escape after conviction. 11 Del.C. §1253.
- 18.1.62 Assault in a detention facility. 11 Del.C. §1254.
- 18.1.63 Promoting prison contraband; deadly weapon. 11 Del.C. §1256.
- 18.1.64 Use of an animal to avoid capture. 11 Del.C. §1257A(b)(1) and (2).
- 18.1.65 Sexual relations in detention facility. 11 Del.C. §1259.
- 18.1.66 Misuse of prisoner mail; second conviction. 11 Del.C. §1260.
- 18.1.67 Tampering with a witness. 11 Del.C. §1263.
- 18.1.68 Interfering with child witness. 11 Del.C. §1263A.
- 18.1.69 Tampering with physical evidence. 11 Del.C. §1269.
- 18.1.70 Criminal contempt of a domestic violence protective order. 11 Del.C. §1271A.
- 18.1.71 Hate crimes. 11 Del.C. §1304.
- 18.1.72 Aggravated harassment. 11 Del.C. §1312.
- 18.1.73 Stalking. 11 Del.C. §1312A.
- 18.1.74 Cruelty to animals. 11 Del.C. §1325.
- 18.1.75 Violation of privacy. 11 Del.C. §1335.
- 18.1.76 Definitions relating to riot, disorderly conduct and related offenses. 11 Del.C. §1337.
- 18.1.77 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C. §1338.
- 18.1.78 Adulteration. 11 Del.C. §1339.
- 18.1.79 Promoting prostitution in the third degree. 11 Del.C. §1351.
- 18.1.80 Promoting prostitution in the second degree. 11 Del.C. §1352.
- 18.1.81 Promoting prostitution in the first degree.

11 Del.C. § 1353.

18.1.82 Obscenity. 11 Del.C. §1361.

18.1.83 Unlawfully dealing with a dangerous weapon. 11 Del.C. §1445.

18.1.84 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447.

18.1.85 Possession of a firearm during commission of a felony. 11 Del.C. §1447A

18.1.86 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448.

18.1.87 Giving a firearm to person prohibited. 11 Del.C. §1454.

18.1.88 Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455.

18.1.89 Possession of a weapon in a Safe School and Recreation Zone; felony. 11 Del.C. §1457.

18.1.90 Removing a firearm from the possession of a law enforcement officer. 11 Del.C. §1458.

18.1.91 Organized Crime and Racketeering. 11 Del.C. §1504.

18.1.92 Victim or Witness intimidation. 11 Del.C. §§3532 & 3533.

18.1.93 Violations. (Abuse, neglect, mistreatment or financial exploitation of residents or patients.) 16 Del.C. §1136.

18.1.94 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. 16 Del.C. §4767.

18.1.95 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768.

18.2 Crimes substantially related to the practice of cosmetology, barbering, electrology and nail technology shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Cosmetology and Barbering is available at: <http://www.professionallicensing.state.de.us/boards/cosmetology/index.shtml>

DIVISION OF PROFESSIONAL REGULATION BOARD OF NURSING HOME ADMINISTRATORS

Statutory Authority: 24 Delaware Code,
Section 5204(1) (24 Del.C. §5204(1))
24 DE Admin. Code 5200

PUBLIC NOTICE

The Delaware Board of Nursing Home Administrators in accordance with 24 Del.C. §5204(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of nursing home administration.

A public hearing will be held on January 11, 2005 at 2:15 p.m. in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Nursing Home Administrators, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations

24.0 Crimes substantially related to the practice of nursing home administration:

24.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of nursing home administration in the State of Delaware without regard to the place of conviction:

24.1.1 Offensive touching. 11 Del.C. §601.

24.1.2 Aggravated menacing. 11 Del.C. §602(b)

24.1.3 Reckless endangering in the second degree. 11 Del.C. §603.

24.1.4 Reckless endangering in the first degree. 11 Del.C. §604

24.1.5 Abuse of a pregnant female in the second degree. 11 Del.C. §605.

24.1.6 Abuse of a pregnant female in the first degree. 11 Del.C. §606.

24.1.7 Assault in the third degree. 11 Del.C. §611.

24.1.8 Assault in the second degree. 11 Del.C. §612

24.1.9 Assault in the first degree. 11 Del.C. §613.

- 24.1.10 Abuse of a sports official. 11 Del.C. §614.
- 615. 24.1.11 Assault by abuse or neglect. 11 Del. C. §
- 24.1.12 Gang participation. 11 Del.C. §616
- 24.1.13 Terroristic threatening. 11 Del.C. §621.
- §625. 24.1.14 Unlawfully administering drugs. 11 Del.C.
- 24.1.15 Unlawfully administering controlled
substance or counterfeit substance or narcotic drugs. 11
Del.C. §626.
- 24.1.16 Vehicular assault in the first degree. 11
Del.C. §629.
- 24.1.17 Vehicular homicide in the second degree.
11 Del.C. §630.
- 24.1.18 Vehicular homicide in the first degree. 11
Del.C. §630A.
- §631. 24.1.19 Criminally negligent homicide. 11 Del.C.
- 24.1.20 Manslaughter. 11 Del.C. §632.
- 24.1.21 Murder by abuse or neglect in the second
degree. 11 Del.C. §633
- 24.1.22 Murder by abuse or neglect in the first
degree. 11 Del.C. §634.
- 24.1.23 Murder in the second degree; class A
felony. 11 Del.C. §635.
- 24.1.24 Murder in the first degree. 11 Del.C. §636.
- 24.1.25 Promoting suicide. 11 Del.C. §645.
- 24.1.26 Abortion. 11 Del.C. §651.
- 24.1.27 Self-abortion. 11 Del.C. §652.
- 24.1.28 Issuing abortifacient articles. 11 Del.C. §653.
- 24.1.29 Indecent exposure in the second degree.
11 Del.C. §764.
- 24.1.30 Indecent exposure in the first degree. 11
Del.C. §765.
- 24.1.31 Incest. 11 Del.C. §766.
- 24.1.32 Unlawful sexual contact in the third
degree. 11 Del.C. §767.
- 24.1.33 Unlawful sexual contact in the second
degree. 11 Del.C. §768.
- 11 Del.C. §769.
- 24.1.34 Unlawful sexual contact in the first degree.
11 Del.C. §769.
- 24.1.35 Rape in the fourth degree. 11 Del.C. §770.
- 24.1.36 Rape in the third degree. 11 Del.C. §771.
- 24.1.37 Rape in the second degree. 11 Del.C.
§772.
- 24.1.38 Rape in the first degree. 11 Del.C. §773.
- 24.1.39 Sexual extortion. 11 Del.C. §776.
- 24.1.40 Bestiality. 11 Del.C. §777.
- 24.1.41 Continuous sexual abuse of a child. 11
Del.C. §778.
- 24.1.42 Dangerous crime against a child. 11
Del.C. §779.
- 24.1.43 Female genital mutilation. 11 Del.C. §780.
- 24.1.44 Unlawful imprisonment in the second
degree. 11 Del.C. §781.
- 24.1.45 Unlawful imprisonment in the first degree.
11 Del.C. §782.
- 24.1.46 Kidnapping in the second degree. 11
Del.C. §783.
- 24.1.47 Kidnapping in the first degree. 11 Del.C.
§783A.
- 24.1.48 Interference with custody. 11 Del.C. §785.
- 24.1.49 Acts constituting coercion. 11 Del.C.
§791.
- 24.1.50 Arson in the third degree. 11 Del.C. §801.
- 24.1.51 Arson in the second degree. 11 Del.C.
§802.
- 24.1.52 Arson in the first degree. 11 Del.C. §803.
- 24.1.53 Reckless burning or exploding; felony. 11
Del.C. §804.
- 24.1.54 Cross or religious symbol burning. 11
Del.C. §805.
- 24.1.55 Criminal mischief. 11 Del.C. §811.
- 24.1.56 Trespassing with intent to peep or peer. 11
Del.C. §820.
- 24.1.57 Burglary in the third degree. 11 Del.C.
§824.
- 24.1.58 Burglary in the second degree. 11 Del.C.
§825.
- 24.1.59 Burglary in the first degree. 11 Del.C.
§826.
- 24.1.60 Possession of burglar's tools or
instruments facilitating theft. 11 Del.C. §828.
- 24.1.61 Robbery in the second degree. 11 Del.C.
§831.
- 24.1.62 Robbery in the first degree. 11 Del.C.
§832.
- 24.1.63 Carjacking in the second degree. 11 Del.C.
§835.
- 24.1.64 Carjacking in the first degree. 11 Del.C.
§836.
- 24.1.65 Shoplifting. 11 Del.C. §840.
- 24.1.66 Use of illegitimate retail sales receipt or
Universal Product Code Label. 11 Del.C. §840A.
- 24.1.67 Theft. 11 Del.C. §841.
- 24.1.68 Theft; lost or mislaid property. 11 Del.C.
§842.
- 24.1.69 Theft; false pretense. 11 Del.C. §843.
- 24.1.70 Theft; false promise. 11 Del.C. §844.
- 24.1.71 Theft of services. 11 Del.C. §845.
- 24.1.72 Extortion. 11 Del.C. §846.
- 24.1.73 Misapplication of property. 11 Del.C.
§848.
- 24.1.74 Theft of rented property. 11 Del.C. §849.
- 24.1.75 Use, possession, manufacture, distribution
and sale of unlawful telecommunication and access devices;
felony. 11 Del.C. §850.
- 24.1.76 Receiving stolen property; felony. 11

- Del.C. §851**
 24.1.77 Identity theft. 11 **Del.C. §854.**
 24.1.78 Possession of shoplifters tools or instruments facilitating theft. 11 **Del.C. §860.**
 24.1.79 Forgery. 11 **Del.C. §861.**
 24.1.80 Possession of forgery devices. 11 **Del.C. §862.**
 24.1.81 Falsifying business records. 11 **Del.C. §871.**
 24.1.82 Tampering with public records in the second degree 11 **Del.C. §873.**
 24.1.83 Tampering with public records in the first degree. 11 **Del.C. §876.**
 24.1.84 Offering a false instrument for filing. 11 **Del.C. §877.**
 24.1.85 Issuing a false certificate. 11 **Del.C. §878.**
 24.1.86 Bribery. 11 **Del.C. §881.**
 24.1.87 Bribe receiving. 11 **Del.C. §882.**
 24.1.88 Defrauding secured creditors. 11 **Del.C. §891.**
 24.1.89 Fraud in insolvency. 11 **Del.C. §892.**
 24.1.90 Interference with levied-upon property. 11 **Del.C. §893.**
 24.1.91 Issuing a bad check. 11 **Del.C. §900.**
 24.1.92 Unlawful use of credit card. 11 **Del.C. §903.**
 24.1.93 Reencoder and scanning devices. 11 **Del.C. §903A.**
 24.1.94 Deceptive business practices. 11 **Del.C. §906.**
 24.1.95 Criminal impersonation. 11 **Del.C. §907.**
 24.1.96 Criminal impersonation, accident related. 11 **Del.C. §907A.**
 24.1.97 Criminal impersonation of a police officer. 11 **Del.C. §907B.**
 24.1.98 Unlawfully concealing a will. 11 **Del.C. §908.**
 24.1.99 Securing execution of documents by deception. 11 **Del.C. §909.**
 24.1.100 Fraudulent conveyance of public lands. 11 **Del.C. §911.**
 24.1.101 Fraudulent receipt of public lands. 11 **Del.C. §912.**
 24.1.102 Insurance fraud. 11 **Del.C. §913.**
 24.1.103 Health care fraud. 11 **Del.C. §913A.**
 24.1.104 Home improvement fraud. 11 **Del.C. §916.**
 24.1.105 New home construction fraud. 11 **Del.C. §917.**
 24.1.106 Transfer of recorded sounds. 11 **Del.C. §920.**
 24.1.107 Sale of transferred recorded sounds. 11 **Del.C. §921.**
 24.1.108 Improper labeling 11 **Del.C. §922.**
 24.1.109 Theft of computer services. 11 **Del.C. §933.**
 24.1.110 Interruption of computer services. 11 **Del.C. §934.**
 24.1.111 Misuse of computer system information. 11 **Del.C. §935.**
 24.1.112 Destruction of computer equipment. 11 **Del.C. §936.**
 24.1.11 Failure to promptly cease electronic communication upon request. 11 **Del.C. §920.**
 24.1.114 Bigamy. 11 **Del.C. §1001.**
 24.1.115 Bigamous marriage contracted outside of the State. 11 **Del.C. §1002.**
 24.1.116 Dealing in children. 11 **Del.C. §1100.**
 24.1.117 Endangering the welfare of a child. 11 **Del.C. §1102.**
 24.1.118 Endangering the welfare of an incompetent person. 11 **Del.C. §1105.**
 24.1.119 Sexual exploitation of a child. 11 **Del.C. §1108.**
 24.1.120 Unlawfully dealing in child pornography. 11 **Del.C. §1109.**
 24.1.121 Possession of child pornography. 11 **Del.C. §1111.**
 24.1.122 Sexual offenders; prohibitions from school zones. 11 **Del.C. §1112.**
 24.1.123 Sexual solicitation of a child. 11 **Del.C. §1112A.**
 24.1.124 Body-piercing, tattooing or branding. 11 **Del.C. §1114.**
 24.1.125 Tongue-splitting. 11 **Del.C. §1114A.**
 24.1.126 Bribery. 11 **Del.C. §1201**
 24.1.127 Receiving a bribe; class E felony. 11 **Del.C. §1203.**
 24.1.128 Improper influence. 11 **Del.C. §1207.**
 24.1.129 Official misconduct. 11 **Del.C. §1211.**
 24.1.130 Profiteering. 11 **Del.C. §1212.**
 24.1.131 Perjury in the second degree. 11 **Del.C. §1222.**
 24.1.132 Perjury in the first degree. 11 **Del.C. §1223.**
 24.1.133 Making a false written statement. 11 **Del.C. §1233.**
 24.1.134 Terroristic threatening of public officials or public servants. 21 **Del.C. §1240.**
 24.1.135 Hindering prosecution; felony. 11 **Del.C. §1244.**
 24.1.136 Falsely reporting an incident; felony. 11 **Del.C. §1245.**
 24.1.137 Obstructing the control and suppression of rabies; felony. 11 **Del.C. §1248.**
 24.1.138 Abetting the violation of driver's license restrictions; felony. 11 **Del.C. §1249.**
 24.1.139 Offenses against law-enforcement

- animals; felony. 11 **Del.C.** §1250.
- 24.1.140 Escape in the second degree. 11 **Del.C.** §1252.
- 24.1.141 Escape after conviction. 11 **Del.C.** §1253.
- 24.1.142 Assault in a detention facility. 11 **Del.C.** §1254.
- 24.1.143 Promoting prison contraband; felony. 11 **Del.C.** §1256.
- 24.1.144 Use of an animal to avoid capture; felony 11 **Del.C.** §1257A.
- 24.1.145 Sexual relations in detention facility. 11 **Del.C.** §1259.
- 24.1.146 Bribing a witness. 11 **Del.C.** §1261.
- 24.1.147 Bribe receiving by a witness. 11 **Del.C.** §1262.
- 24.1.148 Tampering with a witness. 11 **Del.C.** §1263.
- 24.1.149 Interfering with child witness. 11 **Del.C.** §1263A.
- 24.1.150 Bribing a juror. 11 **Del.C.** §1264.
- 24.1.151 Bribe receiving by a juror. 11 **Del.C.** §1265.
- 24.1.152 Tampering with a juror. 11 **Del.C.** §1266.
- 24.1.153 Misconduct by a juror. 11 **Del.C.** §1267.
- 24.1.154 Tampering with physical evidence. 11 **Del.C.** §1269.
- 24.1.155 Riot. 11 **Del.C.** §1302.
- 24.1.156 Hate crimes. 11 **Del.C.** §1304.
- 24.1.157 Aggravated harassment. 11 **Del.C.** §1312.
- 24.1.158 Stalking. 11 **Del.C.** §1312A.
- 24.1.159 Malicious interference with emergency communications. 11 **Del.C.** §1313.
- 24.1.160 Criminal nuisance. 11 **Del.C.** §1322.
- 24.1.161 Cruelty to animals. 11 **Del.C.** §1325.
- 24.1.162 The unlawful trade in dog or cat by-products. 11 **Del.C.** §1325A.
- 24.1.163 Animals; fighting and baiting prohibited; felony. 11 **Del.C.** §1326.
- 24.1.164 Maintaining a dangerous animal; felony. 11 **Del.C.** §1327.
- 24.1.165 Abusing a corpse. 11 **Del.C.** §1332.
- 24.1.166 Trading in human remains and associated funerary objects. 11 **Del.C.** §1333.
- 24.1.167 Violation of privacy. 11 **Del.C.** §1335.
- 24.1.168 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 24.1.169 Adulteration. 11 **Del.C.** §1339.
- 24.1.170 Promoting prostitution in the third degree. 11 **Del.C.** §1351.
- 24.1.171 Promoting prostitution in the second degree. 11 **Del.C.** §1352.
- 24.1.172 Promoting prostitution in the first degree. 11 **Del.C.** §1353.
- 24.1.173 Permitting prostitution. 11 **Del.C.** §1355.
- 24.1.174 Obscenity. 11 **Del.C.** §1361.
- 24.1.175 Carrying a concealed deadly weapon. 11 **Del.C.** §1442.
- 24.1.176 Possessing a destructive weapon. 11 **Del.C.** §1444.
- 24.1.177 Unlawfully dealing with a dangerous weapon. 11 **Del.C.** §1445.
- 24.1.178 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
- 24.1.179 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
- 24.1.180 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
- 24.1.181 Criminal history record checks for sales of firearms; felony. 11 **Del.C.** §1448A.
- 24.1.182 Receiving a stolen firearm. 11 **Del.C.** §1450.
- 24.1.183 Theft of a firearm. 11 **Del.C.** §1451.
- 24.1.184 Giving a firearm to person prohibited. 11 **Del.C.** §1454.
- 24.1.185 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.
- 24.1.186 Unlawfully permitting a minor access to a firearm. 11 **Del.C.** §1456.
- 24.1.187 Possession of a weapon in a Safe School and Recreation Zone; felony. 11 **Del.C.** §1457.
- 24.1.188 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458.
- 24.1.189 Prohibited acts, cheating devices(a)-(e). 11 **Del.C.** §1471.
- 24.1.190 Organized Crime and Racketeering. 11 **Del.C.** §1504.
- 24.1.191 Victim or Witness Intimidation. 11 **Del.C.** §3532 & 3533.
- 24.1.192 Abuse, neglect, mistreatment or financial exploitation of residents or patients 16 **Del.C.** §1136(a), (b) and (c).
- 24.1.193 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).
- 24.1.194 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a) and (b).
- 24.1.195 Unlawful delivery of noncontrolled substance. 16 **Del.C.** §4752A.
- 24.1.196 Prohibited acts C under the Uniform Controlled Substances Act. 16 **Del.C.** §4753.
- 24.1.197 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.**

- §4753A (a)(1)-(9).
- 24.1.198 Prohibited acts D under the Uniform Controlled Substances Act. 16 Del.C. §4754.
- 24.1.199 Possession and delivery of noncontrolled prescription drug. 16 Del.C. §4754A.
- 24.1.200 Prohibited acts E under the Uniform Controlled Substances Act. 16 Del.C. § 4755.(a)(1) and (2)
- 24.1.201 Prohibited acts under the Uniform Controlled Substances Act. 16 Del.C. §4756(a)(1)-(5) and (b).
- 24.1.202 Hypodermic syringe or needle; delivering or possessing; disposal; 16 Del.C. §4757.
- 24.1.203 Keeping drugs in original containers. 16 Del.C. §4758.
- 24.1.204 Distribution to persons under 21 years of age. 16 Del.C. §4761.
- 24.1.205 Purchase of drugs from minors. 16 Del.C. §4761A
- 24.1.206 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 Del.C. §4767
- 24.1.207 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768
- 24.1.208 Drug paraphernalia. 16 Del.C. §4771 (a) and (b).
- 24.1.209 Possession, manufacture and sale, delivery to a minor and advertising of drug paraphernalia. 16 Del.C. §4774(a), (b), (c) (d)
- 24.1.210 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; felony. 23 Del.C. §2302(a) and § 2305 (3) and (4).
- 24.1.211 Attempt to evade or defeat tax. 30 Del.C. §571.
- 24.1.212 Failure to collect or pay over tax. 30 Del.C. §572.
- 24.1.213 Fraud and false statements [taxes]. 30 Del.C. §574.
- 24.1.214 Understatement or evasion [taxes]. 30 Del.C. §576.
- 24.1.215 Obtaining benefit under false representation. 31 Del.C. §1003.
- 24.1.216 Reports, statements and documents. 31 Del.C. §1004(1), (2), (3), (4), (5)
- 24.1.217 Kickback schemes and solicitations. 31 Del.C. §1005.
- 24.1.218 Conversion of payment. 31 Del.C. §1006.
- 24.1.219 Unlawful possession or manufacture of proof of insurance. 21 Del.C. §2118A.
- 24.1.220 Temporary registration violations related to providing false information. 21 Del.C. §2133(a) (1)-(3).
- 24.1.221 False statements. 21 Del.C. §2315.
- 24.1.222 Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate. 21 Del.C. §2316.
- 24.1.223 False statements; incorrect or incomplete information. 21 Del.C. §2620.
- 24.1.224 License to operate a motorcycle, motorbike, etc. 21 Del.C. §2703.
- 24.1.225 Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age. 21 Del.C. §2710.
- 24.1.226 Unlawful application for or use of license or identification card. 21 Del.C. §751.
- 24.1.227 False statements. 21 Del.C. §2752.
- 24.1.228 Employment of unlicensed person. 21 Del.C. §2754.
- 24.1.229 Authorizing or permitting the operation of a motor ny another. 21 Del.C. §2755.
- 24.1.230 Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards. 21 Del.C. §2760(a) and (b).
- 24.1.231 Driving after judgment prohibited. 21 Del.C. §2810.
- 24.1.232 False statements. 21 Del.C. §3107.
- 24.1.233 Driving a vehicle while under the influence or with a prohibited alcohol content; felony. 21 Del.C. §4177 (3) and (4).
- 24.1.234 Duty of driver involved in accident resulting in injury or death to any person. 21 Del.C. §4202.
- 24.1.235 Duty to report accidents; evidence. 21 Del.C. §4203.
- 24.1.236 Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires. 21 Del.C. §4604(a).
- 24.1.237 Receiving or transferring stolen vehicle. 21 Del.C. §6704.
- 24.1.238 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity; felony. 21 Del.C. §6705(b) and (d).
- 24.1.239 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card. 21 Del.C. §6708(a) and (b).
- 24.1.240 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers. 21 Del.C. §6709(a).
- 24.1.241 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers. 21 Del.C. §6710(a).
- 24.1.242 Obstructing person in performance of duty. 3 Del.C. §1044.
- 24.1.243 Unlawful Acts. 3 Del.C. §1224.
- 14.1.244 Offenses [involving meat and poultry

inspection including bribery or attempted bribery or assaulting or impeding any person in the performance of his duties] (felony) 3 Del.C. §8713.

24.1.245 Fraud or distribution or attempted distribution of adulterated article. 3 Del.C. §8715

24.1.246 Fraudulent Written Statements. 3 Del.C. §10049

24.1.247 Fraudulent Certificate of Registration or Eligibility Documents 3 Del.C. §10050.

24.1.248 Interference with officer or inspector. 4 Del.C. §907.

24.1.249 Prohibited trade practices against infirm or elderly. 6 Del.C. §2581

24.1.250 Prohibition of intimidation [under the Fair Housing Act]; felony. 6 Del.C. §4619

24.1.251 Auto Repair Fraud victimizing the infirm or elderly. 6 Del.C. §4909A

24.1.252 Hindering or obstructing [DOA] officer. 6 Del.C. §5132.

24.1.253 Impersonation of [DOA] officer. 6 Del.C. §5133.

24.1.254 Violations of the Securities Act. 6 Del.C. §7322.

24.1.255 Poisoning of dogs. 7 Del.C. §1710.

24.1.256 Unauthorized acts against a service guide or seeing eye dog. 7 Del.C. §1717.

24.1.257 Interference with department personnel. 7 Del.C. §6015.

24.1.258 Improper disposal of solid waste. 7 Del.C. §6025.

24.1.259 Failure to report discharge of pollutant or contaminant. 7 Del.C. §6028.

24.1.260 Prohibitions [relating to generation, storage, disposal, transportation, and treatment of hazardous waste]. 7 Del.C. §6304.

24.1.261 Interference with department [DNREC] personnel. 7 Del.C. §6315.

24.1.262 Interception of Communications Generally; Divulging Contents of Communications 11 Del.C. §2402

24.1.263 Manufacture, Possession or Sale of Intercepting Device. 11 Del.C. §2403

24.1.264 Breaking and Entering, Etc. to Place or Remove Equipment. 11 Del.C. §2410

24.1.265 Obstruction, Impediment or Prevention of Interception. 11 Del.C. §2412

24.1.266 Obtaining, Altering or Preventing Authorized Access. 11 Del.C. §2421

24.1.267 Divulging Contents of Communications. 11 Del.C. §2422

24.1.268 Installation and Use Generally [of pen trace and trap and trace devices]. 11 Del.C. §243.

24.1.269 Attempt to Intimidate. 11 Del.C. §3534

24.1.270 Disclosure of Expunged Records. 11 Del.C. §4374

24.1.271 Violation of reporting provisions re: SBI.; felony 11 Del.C. §8523.

24.1.272 Failure of child-care provider to obtain information required under §8561 or for those providing false information. 11 Del.C. §8562.

24.1.273 Providing false information when seeking employment in a public school. 11 Del.C. §8572.

24.1.274 Filing False Claim [under Victims' Compensation Fund]. 11 Del.C. §9016.

24.1.275 Alteration, theft or destruction of will. 12 Del.C. §210.

24.1.276 Failure of Physician to file report of abuse of neglect pursuant to 16 Del.C. §903.

24.1.277 Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized. 16 Del.C. §513.

24.1.278 Treatment of meats with unlawful drugs and preparations [prior to sale]. 16 Del.C. §3317.

24.1.279 Violations related to the sale, purchase, receipt, possession, transportation, use, safety and control of explosive materials other than 16 Del.C. §7103. 16 Del.C. §7112.

24.1.280 Violation of contractor trust provision of § 802 for Highway Construction Payments. 17 Del.C. §805.

24.1.281 Violation of deadly weapons dealers' license requirements. 24 Del.C. §901.

24.1.282 Sale [deadly weapons] to persons under 21 or intoxicated persons. 24 Del.C. §903.

24.1.283 [Failure to make] reports of persons who are subject to loss of consciousness. 24 Del.C. §1763.

24.1.284 False statements [State taxes motor fuel carriers]. 30 Del.C. §5215.

24.1.285 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 Del.C. §3913(a), (b) and (c).

24.2 Crimes substantially related to the practice of nursing home administration shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Nursing Home Administrators is available at: <http://www.professionallicensing.state.de.us/boards/nursinghomeadmin/index.shtml>**

DIVISION OF PROFESSIONAL REGULATION**BOARD OF MASSAGE AND BODYWORK**

Statutory Authority: 24 Delaware Code,
Section 5306(1) (24 **Del.C.** §5306(1))
24 **DE Admin. Code** 5300

PUBLIC NOTICE

The Delaware Board of Board of Massage and Bodywork in accordance with 24 **Del.C.** §5306(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of massage and bodywork services.

A public hearing will be held on January 20, 2005 at 3:00 p.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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Massage and Bodywork, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations**9.0 Crimes Substantially Related To The Practice Of Massage And Bodywork:**

9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of massage and bodywork in the State of Delaware without regard to the place of conviction:

- 9.1.1 Aggravated menacing. 11 **Del.C.** §602(b)
- 9.1.2 Reckless endangering in the first degree. 11 **Del.C.** §604
- 9.1.3 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.
- 9.1.4 Assault in the second degree. 11 **Del.C.** §612
- 9.1.5 Assault in the first degree. 11 **Del.C.** §613.
- 9.1.6 Abuse of a sports official; felony. 11 **Del.C.** §614.
- 9.1.7 Terroristic threatening; felony. 11 **Del.C.** §621.
- 9.1.8 Unlawfully administering drugs. 11 **Del.C.** §625.

9.1.9 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.

9.1.10 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.

9.1.11 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.

9.1.12 Murder in the second degree. 11 **Del.C.** §635.

9.1.13 Murder in the first degree. 11 **Del.C.** §636.

9.1.14 Incest. 11 **Del.C.** §766.

9.1.15 Unlawful sexual contact in the third degree. 11 **Del.C.** §767.

9.1.16 Unlawful sexual contact in the second degree. 11 **Del.C.** §768.

9.1.17 Unlawful sexual contact in the first degree. 11 **Del.C.** §769.

9.1.18 Rape in the fourth degree. 11 **Del.C.** §770.

9.1.19 Rape in the third degree. 11 **Del.C.** §771.

9.1.20 Rape in the second degree. 11 **Del.C.** §772.

9.1.21 Rape in the first degree. 11 **Del.C.** §773.

9.1.22 Sexual extortion. 11 **Del.C.** §776.

9.1.23 Bestiality. 11 **Del.C.** §777.

9.1.24 Continuous sexual abuse of a child. 11 **Del.C.** §778.

9.1.25 Dangerous crime against a child. 11 **Del.C.** §779.

9.1.26 Female genital mutilation. 11 **Del.C.** §780.

9.1.27 Kidnapping in the second degree. 11 **Del.C.** §783.

9.1.28 Kidnapping in the first degree. 11 **Del.C.** §783A.

9.1.29 Acts constituting coercion. 11 **Del.C.** §791.

9.1.30 Arson in the first degree. 11 **Del.C.** §803.

9.1.31 Burglary in the third degree. 11 **Del.C.** §824.

9.1.32 Burglary in the second degree. 11 **Del.C.** §825.

9.1.33 Burglary in the first degree. 11 **Del.C.** §826.

9.1.34 Robbery in the second degree. 11 **Del.C.** §831.

9.1.35 Robbery in the first degree. 11 **Del.C.** §832.

9.1.36 Carjacking in the second degree. 11 **Del.C.** §835.

9.1.37 Carjacking in the first degree. 11 **Del.C.** §836.

9.1.38 Theft; felony. 11 **Del.C.** §841.

9.1.39 Theft; lost or mislaid property; mistaken delivery. 11 **Del.C.** §842.

- 9.1.40 Extortion. 11 Del.C. §846.
- 9.1.41 Receiving stolen property. 11 Del.C. §851
- 9.1.42 Identity theft. 11 Del.C. §854.
- 9.1.43 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 9.1.44 Securing execution of documents by deception. 11 Del.C. §909.
- 9.1.45 Insurance fraud. 11 Del.C. §913.
- 9.1.46 Health care fraud. 11 Del.C. §913A.
- 9.1.47 Dealing in children. 11 Del.C. §1100.
- 9.1.48 Sexual exploitation of a child. 11 Del.C. §1108.
- 9.1.49 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 9.1.50 Possession of child pornography. 11 Del.C. §1111.
- 9.1.51 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112.
- 9.1.52 Sexual solicitation of a child. 11 Del.C. §1112A.
- 9.1.53 Improper influence. 11 Del.C. §1207.
- 9.1.54 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.
- 9.1.55 Assault in a detention facility. 11 Del.C. §1254.
- 9.1.56 Promoting prison contraband; felony. 11 Del.C. §1256.
- 9.1.57 Tampering with a witness. 11 Del.C. §1263.
- 9.1.58 Hate crimes; felony. 11 Del.C. §1304.
- 9.1.59 Aggravated harassment. 11 Del.C. §1312.
- 9.1.60 Stalking. 11 Del.C. §1312A.
- 9.1.61 Cruelty to animals; felony. 11 Del.C. §1325.
- 9.1.62 Maintaining a dangerous animal; felony. 11 Del.C. §1327.
- 9.1.63 Abusing a corpse. 11 Del.C. §1332.
- 9.1.64 Violation of privacy. 11 Del.C. §1335.
- 9.1.65 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C. §1338.
- 9.1.66 Adulteration. 11 Del.C. §1339.
- 9.1.67 Lewdness. 11 Del.C. §1341.
- 9.1.68 Prostitution. 11 Del.C. §1342.
- 9.1.69 Patronizing a prostitute prohibited. 11 Del.C. §1343.
- 9.1.70 Promoting prostitution in the third degree. 11 Del.C. §1351.
- 9.1.71 Promoting prostitution in the second degree. 11 Del.C. §1352.
- 9.1.72 Promoting prostitution in the first degree. 11 Del.C. §1353.
- 9.1.73 Permitting prostitution. 11 Del.C. §1355.
- 9.1.74 Obscenity. 11 Del.C. §1361.
- 9.1.75 Possessing a destructive weapon. 11 Del.C. §1444.
- 9.1.76 Unlawfully dealing with a dangerous weapon; felony. 11 Del.C. §1445.
- 9.1.77 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447.
- 9.1.78 Possession of a firearm during commission of a felony. 11 Del.C. §1447A.
- 9.1.79 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448.
- 9.1.80 Giving a firearm to person prohibited. 11 Del.C. §1454.
- 9.1.81 Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455.
- 9.1.82 Removing a firearm from the possession of a law enforcement officer. 11 Del.C. §1458.
- 9.1.83 Organized Crime and Racketeering. 11 Del.C. §1504.
- 9.1.84 Victim or Witness Intimidation. 11 Del.C. §§3532 & 3533.
- 9.1.85 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 Del.C. §1136(a), (b) and (c).
- 9.1.86 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 Del.C. §4753A (a)(1)-(9).
- 9.1.87 Prohibited acts E under the Uniform Controlled Substances Act. 16 Del.C. §4755.
- 9.1.88 Prohibited acts under the Uniform Controlled Substances Act. 16 Del.C. §4756(a)(1)-(5) and (b).
- 9.1.89 Breaking and Entering, Etc. to Place or Remove Equipment 11 Del.C. §2410
- 9.1.90 Attempt to Intimidate. 11 Del.C. §3534
- 9.1.91 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 Del.C. §3913(a), (b) and (c).
- 9.2 Crimes substantially related to the practice of massage and bodywork shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Massage and Bodywork is available at: <http://www.professionallicensing.state.de.us/boards/massagebodyworks/index.shtml>

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

PUBLIC NOTICE

The Harness Racing Commission proposes to enact new Regulations 8.9 detailing the procedures and possible penalties for prerace testing by blood gas analyzer or similar equipment. The Commission further proposes to enact a new Regulation 8.10 to detail the quarantine procedure for horses that test positive for excessive carbon dioxide levels as a result of either a prerace or postrace test. The Commission will accept written comments from December 1, 2004 to December 30, 2004. Written comments should be sent to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901. The Commission will hold a public hearing on the proposed Regulations on December 20, 2004 at 11:00 a.m. at Dover Downs, 1131 N. DuPont Highway, Dover, DE.

8.9 Prerace Testing by Blood Gas Analyzer or Similar Equipment

8.9.1 Notwithstanding any other provisions of these Rules to the contrary, the Commission may conduct prerace and postrace testing with the use of any accepted, reliable testing instrument, including but not limited to a blood gas analyzer for measuring excess carbon dioxide in blood samples.

8.9.2 The Presiding Judge shall announce the selected races or horses for testing and the appropriate time and location.

8.9.3 All horses shall be brought to the paddock or other secure, designated area for the prerace testing before its first warm up, based on the Commission published paddock times.

8.9.4 Each horse entered to compete in the racing program shall be present in his or her designated paddock stall with a groom for the purpose of having a blood sample drawn by the Commission Veterinarian.

8.9.5 The order and number of horses which shall have blood drawn for prerace testing shall be at the discretion of the Commission and the presiding judge.

8.9.6 The Commission Veterinarian will be responsible to verify with the testing machine technician that the blood gas analyzer test is completed for the specific horse in question. The Commission Veterinarian or his designee will inform the trainer or groom if their horse will be retested or can be given permission to leave the paddock.

8.9.7 Refusal-Failure or refusal by a licensee to present a selected horse under his care, custody, or control

for blood gas analyzer testing, or who refuses in any other way, shall result in an automatic scratch of the horse from the racing program, and any other appropriate disciplinary action in the discretion of the judges. The Commission Veterinarian shall document the name of the trainer or person who refuses to have blood drawn from the horse, and shall file a report with the Commission.

8.9.8 Exercise Prior to Testing-In the event that the horse has exercised prior to testing and the horse tests below the Commission standard for a high blood gas test, the horse can be retested upon the discretion of the Commission Veterinarian or presiding judge, or tested post race.

8.9.10 Post Race Testing-The blood gas analyzer machine or similar testing equipment may be used for the post-race blood gas testing on selected horses. The collection of samples will be pursuant to Rule 8.4.3 and testing of split samples will be pursuant to Rule 8.4.3.5.10.

8.9.11 The Commission Veterinarian will provide documentation reflecting the tattoo or name of the horse from which the blood was drawn, the date and time the blood was drawn, and any other identifying information.

8.9.12 Trainer Observation of Testing-The trainer or other designated representative is permitted to observe the testing procedure, but to question the technician or otherwise disrupt the testing.

8.9.13 The Presiding Judge, Commission Veterinarian, and blood gas technician will ensure that the blood gas analyzer or other testing equipment is calibrated in compliance with the recommended calibration and maintenance procedures for the machine, and that the testing machine is in proper working order.

8.9.14 In addition to the provisions of Rule 8.3 and unless otherwise permitted by these Rules, no foreign substance shall be carried in the body of a horse when the horse is on the grounds of the licensed racetrack; it shall be a violation of this rule for a horse to test positive in a pre-race test result using a blood gas analyzer or other testing equipment.

8.9.15 The penalties for post-race positive tests contained in Rule 8.3.2, may apply to pre-race test samples that are positive for a prohibited substance.

8.9.15.1 A positive test result from a pre-race sample tested on the blood gas analyzer machine is subject to the recommended penalty in Rules 8.3.2 and 8.3.3.3. For pre-race testing the Commission may use a testing machine that uses the Commission standard in Rule 8.3.3.3--substances present in a horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules.

8.9.15.2 The Commission may alternatively use a testing machine that measures carbon dioxide levels in pre-

race samples using a Base Excess testing protocol.

8.9.15.2.1 Under this alternative protocol, the prohibitive Base Excess concentrations are as follows: Base Excess level of 10.0 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horses and Base Excess (BE) level of 12.0 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse. The level of uncertainty will be included before it is considered a violation of these Rules. The level of uncertainty is 0.4 mmol/l (mEq/l) and a positive test report must include this level of uncertainty. A horse must show a Base Excess (BE) level of 10.4 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horse and Base Excess (BE) level of 12.4 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse, in order for a violation to be reported under this Rule.

A commission representative will notify the trainer or licensed designee and the horse in question shall be immediately retested. In the event that a second blood gas analyzer test is necessary, the Commission Veterinarian or his designee will take a rectal temperature of said horse. The horse's temperature will be recorded on the veterinarian's control sheet.

8.9.16 With respect to a finding of a prohibited level of carbon dioxide in a blood sample obtained from a prerace blood gas analyzer test result, there shall be no right to testing of the "secondary sample" by the licensee, provided that a "secondary sample" shall be transported to the designated Commission laboratory on an anonymous basis for confirmatory testing. In the event that the initial blood gas analyzer test result is confirmed by the test result of the official Commission laboratory, such test results shall be *prima facie* evidence that the prohibited drug was present in the horse at the time it was scheduled to participate in a race and is *prima facie* evidence.

8.10 Quarantine Procedure For Carbon Dioxide Positive Tests (Prerace Or Postrace)

8.10.1 Detention/Quarantine of Horses: The owner or trainer must request use of the quarantine procedure by sending written notice to the presiding judge within forty-eight (48) hours of notification of the positive carbon dioxide test report. The owner or trainer will then be permitted, totally at his/her own expense, to make the necessary scheduling arrangements with the Judges and the Commission Veterinarian. The horse in question will be quarantined on the grounds for periodic blood gas testing by the DHRC (up to three days) at the trainer's expense. All caretaker activities for the horse in question will be the responsibility of the horse's trainer.

8.10.2 Procedure: The owner or trainer will be responsible for providing the DHRC with a minimum check for \$1,500.00 to cover the costs for the quarantine. A professionally trained Track Security Officer must be with the horse at all times, and the Security Officer must be

knowledgeable about the importance of monitoring all activity pertaining to the quarantined horse.

8.10.3 The quarantine of a horse is subject to the following mandatory requirements:

8.10.3.1 The owner or trainer will be required to deposit sufficient funds with the DHRC Presiding Judge to cover the costs of the quarantine of the horse. The minimum quarantine cost will be \$1,500, and this figure may be higher if additional special circumstances are required for a particular horse. None of these procedures will be initiated until the Commission has in its possession a certified check or other method of payment acceptable to the Commission. The owner or trainer is responsible for all costs for the quarantine, including but not limited to, the costs of: stall bedding, daily cleaning of the stall, feed and hay, stall rent, hourly guard salary, portable toilet rental, veterinary charge, courier or shipping charges to the laboratory, laboratory analysis costs. Unused funds will be returned to the trainer.

8.10.3.2 The expected period of the quarantine will be seventy-two hours.

8.10.3.3 The owner or trainer is required to execute a reasonable liability waiver form if requested to do so by the track for the quarantine of the horse on track grounds.

8.10.3.4 The owner or trainer is obligated to reimburse the track if the racing association is required to purchase additional insurance to cover risks from the quarantine of the trainer's horse. The owner or trainer is also responsible for any additional costs required by the track to pad or otherwise specially equip the quarantine stall.

8.10.3.5 All activity of the quarantined horse is observed, documented, and recorded by security officers for the track and the DHRC.

8.10.3.6 The Commission will be responsible for arranging for and providing for bedding, feed, water, and daily cleaning of the stall, all of which are at the owner's expense. Feed for the horse will be purchased by DHRC officials as specified by the owner or trainer. Samples of the feed will be retained by the DHRC designated official.

8.10.3.7 Each bale of hay/straw will be intact and uncut for inspection of contraband. Four small samples of hay are to be taken from the bale of hay used to feed the animal (one from each end of the bale of hay and two from the middle of the bale of hay). These samples with the ingredient tags from the bag of feed used by the horse will be retained by the DHRC designated official.

8.10.3.8 Every trainer, groom, or caretaker is subject to continuous observation and may be searched when with the horse for contraband.

8.10.3.9 Horses may be trained, but if leg paints or salves are used, they must be new and in unopened containers, and the track Security Officer must monitor the preparation of the horse.

8.10.3.10 A Security Officer must observe the horse during training and ensure that it does not leave the

track except to return to the quarantine stall.

8.10.3.11 A sick horse must only be determined ill by the State Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

8.10.3.12 Stalls for the quarantine of horses are designated by the Presiding Judge of the DHRC, in cooperation with the racetrack.

8.10.3.13 Trainers can restrict water based on previous pre-race preparation schedules.

8.10.3.14 Trainers are expected to train their horse in the same manner as the horse was trained on previous racing events. The horse will be equipped with all the items that it would normally carry, taken to the paddock, and handled in a manner similar to previous racing events.

8.10.3.15 Blood samples will be taken from the quarantined horse by the Commission Veterinarian, as he or she deems appropriate and necessary during the quarantine period. A blood sample should be taken when the horse first enters the quarantine stall and again at the pre-arranged time between sixty (60) and seventy-two (72) hours. At the discretion of the Commission, another sample may be taken between the initial sample and the sample taken at the cessation of the quarantine period. Blood samples will only be taken from the horse that is at rest for a period of time approved by the Commission Veterinarian. The owner or trainer or his/her representative must be present and witness the collection of the blood samples. Blood samples will be shipped promptly to the Commission's designated testing laboratory, pursuant to the Commission's standard chain-of-custody procedures.

8.10.3.16 At the conclusion of the quarantine period, the party requesting the quarantine will be provided timely notice of the test results from the DHRC. The trainer may present such evidence at a hearing before the Judges if he or she attempts to prove that the horse has a naturally high carbon dioxide level.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at: <http://www.state.de.us/deptagri/harness/index.htm>**

DEPARTMENT OF EDUCATION

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

14 DE Admin. Code 250

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

250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data

A. Type of Regulatory Action Required

Repeal of Existing Regulation and Replacement with Two New Regulations

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to repeal 14 **DE Admin. Code 250** Procedures Related to the Collection, Maintenance and Disclosure of Student Data and replace it with 14 **DE Admin. Code 251** Family Education Rights and Privacy Act (FERPA) and 14 **DE Admin. Code 252** Required Educational Records and Transfer and Maintenance of Educational Records. Regulation 251 is intended to govern access to, confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations. Regulation 14 **DE Admin. Code 252** defines important terms, describes the education records that schools are required to maintain, describes the conditions for the transfer of records from school to school and provides for the proper maintenance and destruction of student records in connection with the requirements of the Delaware Public Archives.

C. Impact Criteria

1. Will the regulations help improve student achievement as measured against state achievement standards? The regulations address issues surrounding access to and transfer of student records not achievement standards.

2. Will the regulations help ensure that all students receive an equitable education? The regulations address issues surrounding access to and transfer of student records not equity issues.

3. Will the regulations help to ensure that all students' health and safety are adequately protected? The regulations address issues surrounding access to and transfer of student records some of which may contain some health related issues.

4. Will the regulations help to ensure that all students' legal rights are respected? The regulations address issues

surrounding access to and transfer of student records which include issues related to students' legal rights.

5. Will the regulations preserve the necessary authority and flexibility of decision making at the local board and school level? The regulations will preserve the necessary authority and flexibility of decision making at the local board and school level.

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

7. Will the decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulations? There is no additional cost to the State or to the local school boards of compliance with the regulations.

250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data

~~1.0 Authority: Under the provisions of Section 122, Title 14, of the *Delaware Code*, the Department of Education has been given authority to establish rules and regulations for the schools in Delaware. This document reflects Federal regulations and procedures as required by Code of Federal Regulations, Part 99 Family Education Rights and Privacy, Revised 2/19/88 and Public Law 105-17 Individuals with Disabilities Education Act effective June 4, 1997, and their respective regulations.~~

~~2.0 Applicability~~

~~2.1 These regulations apply to an education agency or institution to which funds have been available under any program for which the U. S. Secretary of Education has administrative responsibility, as specified by law or by~~

~~delegation of authority pursuant to law.~~

~~2.2 These regulations do not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in 1.0, if no funds under those programs are made available to the agency or institution.~~

~~2.3 For the purposes of these regulations, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in 1.0, are provided to the agency or institution by grant, contract, sub-grant, or subcontract, or are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended.).~~

~~2.4 Except as otherwise specifically provided, these procedures apply to education records of students who are, have been, or will be in attendance at the educational institution that collects, maintains, or discloses the records.~~

~~3.0 Purpose: The purpose of these procedures is to set forth the conditions governing the protection of privacy of parents and students as it relates to the collection, maintenance, and disclosure of education records by covered agencies and institutions.~~

~~4.0 Definitions: as used in these procedures:~~

~~"Attendance" at an agency or institution includes, but is not limited to: attendance in person having homebound or correspondence instruction, and the period during which a person is working under a work-study program.~~

~~"Consent" means that the parent or eligible student has been fully informed of the information set out in this document in his or her native language or other mode of communication, unless it clearly is not feasible to do so; the parent or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom; and the parent or eligible student understands that the granting of consent is voluntary.~~

~~"Directory information" means information in an educational record the disclosure of which would not generally be considered harmful or an invasion of privacy. It includes, but is not limited to, a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, and other similar information.~~

“Disclosure” means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

“Educational institution” or “educational agency or institution” means any public or private agency or institution that is the recipient of the funds under any Federal program referenced in 2.0. The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

“Education records” means those records that are directly related to a student, and are maintained by an educational agency or institution or by a party acting for the agency or institution, the term does not include:

- Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

- Are in the sole possession of the maker thereof, and are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a “substitute” means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

- Records of a law enforcement unit of an educational agency or institution that are:

- Maintained apart from the records described above.

- Maintained solely for law enforcement purposes, and:

- Not disclosed to individuals other than law enforcement officials of the same jurisdiction: provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

- Records relating to an individual who is employed by an educational agency or institution which are made and maintained in the normal course of business; relate exclusively to the individual available for use for any other purpose.

- This paragraph does not apply to records relating to an individual in attendance at the agency or institution that is employed as a result of his or her status as a student.

- Records relating to an eligible student that are:

- Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity.

- Created, maintained, or used only in

connection with the provision of treatment to the student, and

- Disclosed only to individuals providing the treatment, provided that the records can be personally reviewed by a physician or other appropriate professional of the student’s choice. For the purpose of this definition, “treatment” does not include remedial educational activities, diagnostic and evaluative data, or other activities used in the development of the student’s instructional program.

- Records of an educational agency or institution that contain only information related to a person after that person is no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

“Eligible Student” means a student who has attained eighteen years of age, or is attending an institution of post-secondary education.

“Financial Aid” means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual’s attendance at an educational agency or institution.

“Student with Disability” means a person in the chronological age group ranging from infancy, 3 or 4 (depending upon the disability) through 20 years, inclusive, who because of mental, physical, emotional or learning disability problems as defined by the Department of Education, requires special educational services in order to develop his or her capabilities.

“Institution of post-secondary education” means an institution which provides education to students beyond the secondary school level; “secondary school level” means the educational level (not beyond grade 12) at which secondary education is provided, as determined under state law.

“Parent” includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights of access and consent unless the agency or institution has been provided with evidence that there is a court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

“Party” means an individual, agency, institution, or organization.

“Personally identifiable” means that the data or information includes the name of the child, the child’s parent, or other family member, the address of the child, a personal identifier, such as the child’s social security number or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. 34 CFR 300.500 (c) (1) through (4).

“Records” means any information or data recorded in

any medium including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

“Secretary” means the Secretary of the U. S. Department of Education.

“Student” includes any individual with respect to whom an education agency or institution maintains educational records.

5.0 Student Rights

5.1 For the purpose of this part, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student, except in the case of a student who is legally determined to be incompetent to make such decisions for himself/herself, and for whom legal guardianship is required beyond the age of majority. In these instances, the legally established guardian shall maintain the rights to privacy as outlined in this document.

5.2 The status of an eligible student as a dependent of his or her parents does not otherwise affect the rights accorded to and the consent required of the eligible student by 5.1.

5.3 Nothing in these regulations shall be construed to limit the ability of a pupil who has reached the age of 14 to request the release of records as provided in 14 ~~Del.C.~~ §4111.

5.4 These procedures shall not be construed to preclude educational agencies or institutions from acceding students rights in addition to those accorded to parents of students.

6.0 Formulation of Institutional Policies and Procedures

6.1 Each educational agency or institution shall formulate and adopt a policy of:

6.1.1 informing parents of students or eligible students of their rights under 7.0;

6.1.2 permitting parents of students or eligible students to inspect and review the education records of the student in accordance with 10.0 including at least:

6.1.2.1 a statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

6.1.2.2 An understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

6.1.2.3 A schedule of fees for copies; and

6.1.2.4 A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records.

6.1.3 Not disclosing personally identifiable information from the education records of a student without

the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by 17.0 and 23.0, including, at least:

6.1.3.1 A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under 17.1 and, if so, a specification of the criteria for determining which parties are “school officials” and what the educational agency or institution considers to be a “legitimate educational interest” and

6.1.3.2 A specification of the personally identifiable information to be designated as “directory information” under 23.0.

6.1.4 Maintaining the records of disclosures of personally identifiable information from the education records of a student required to be maintained by 18.0 and permitting a parent or an eligible student to inspect that record.

6.1.5 Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing and permitting a parent of a student or an eligible student to place a statement in the education records of the student as provided in 14.3.

6.2 The policy adopted by the educational agency or institution shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

7.0 Annual Notification of Rights

7.1 Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

7.1.1 Their rights under these procedures adopted under 6.0; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

7.1.2 The right to file complaints under 24.0 concerning alleged failure by the educational agency or institution to comply with the requirements of these policies.

7.2 Agencies and institutions shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

8.0 Limitations on Waivers

8.1 Subject to the limitations in 8.0 and 11.0, a parent of a student or an eligible student may waive any of his or her rights under these procedures. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

8.2 An educational agency or institution may not require that a parent of a student or an eligible student waive

his or her rights under these procedures. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

8.3 An individual who is an applicant for admission to a post-secondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation.

8.4 All waivers must be executed by the individual, regardless of age, rather than by the parent of the individual.

8.5 A waiver under this section may be made with respect to specified classes of education records, and persons or institutions.

8.5.1 A waiver under this section may be revoked with respect to any actions occurring after the revocation.

8.5.2 A revocation under this paragraph must be in writing.

8.5.3 If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

9.0 Fees

9.1 An educational agency or institution may charge a fee for copies of educational records which are made for the parent of students or an eligible student, provided that the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records. 34 CFR 300.566(a)

9.2 An educational agency or institution may not charge a fee to search for or retrieve the education records of a student. 34 CFR 300.566(b) and 34 CFR 99.11.

10.0 Right to Inspect and Review Educational records

10.1 Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made. 34 CFR 300.562(a)

10.2 The right to inspect and review education records under 10.1 include:

10.2.1 The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

10.2.2 The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and 34 CFR 300.562(b)(2)

10.2.3 The right to have a representative of the parent inspect and review the records. 34 CFR 300.562(b)(3)

10.3 An education agency or institution may presume

that either parent of student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

11.0 Limitations on the Right to Inspect and Review Records

11.1 If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information that pertains to that student.

12.0 Destruction of Educational Records

12.1 An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

12.1.1 The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them as in 10.0.

12.1.2 Explanations placed in the education record under 14.0 shall be maintained as provided in 14.4.

12.1.3 The record of access required under 18.0 shall be maintained for as long as the education record to which it pertains is maintained.

12.1.4 Records of children with disabilities shall not be destroyed without parental consent, or the consent of an eligible student. Prior to any destruction of such data parents must be informed and give consent for that destruction. They shall be informed that records may be needed for other purposes, such as social security benefits, etc. If the parents or eligible student requests that the information be destroyed, that information shall be destroyed. However, a record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed shall be maintained. (See School District General Records Retention Schedule)

12.2 The following shall apply to the length of time and special consideration for the maintaining of all student records:

12.2.1 Directory information shall be maintained in accordance with the retention for the student files. (See School District General Records Retention Scheduled)

12.2.2 Academic grades and attendance records shall be maintained in accordance with the retention for the student files. (See School District General Records Retention Scheduled)

12.2.3 Other personally identifiable data which is no longer needed to provide educational services for the child shall be purged and destroyed in accordance with the Delaware Public Archives (29 Del.C. §504(b)).

~~12.2.4 Student records shall be reviewed and screened at each level of school transition: i.e., elementary to middle school or junior high school to senior high school or between other agencies providing educational programming;~~

~~12.2.5 Records of students who are no longer in school shall be transferred to the Delaware Public Archives for storage.~~

~~13.0 Request to amend Educational Records~~

~~13.1 A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.~~

~~13.2 The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.~~

~~13.3 If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing. 34 CFR 300.567~~

~~14.0 Right to a Hearing~~

~~14.1 A local educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with 15.0.~~

~~14.2 If, as a result of the hearing, the local educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.~~

~~14.3 If, as a result of the hearing, the local education agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.~~

~~14.4 Any explanation placed in the education records of the student under 14.3 shall:~~

~~14.4.1 Be maintained by the local educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and~~

~~14.4.2 If the education records of the student or the contested portion thereof is disclosed by the local~~

~~educational agency or institution to any party, the explanation shall also be disclosed to that party. 34 CFR 300.569~~

~~15.0 Conduct of a Hearing~~

~~15.1 The hearing required to be held by 14.1 shall be conducted according to procedures that shall include at least the following elements:~~

~~15.1.1 The hearing shall be held within a reasonable period of time after the local educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;~~

~~15.1.2 The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;~~

~~15.1.3 The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under 14.0, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;~~

~~15.1.4 The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and~~

~~15.1.5 The decision of the educational agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decisions.~~

~~16.0 Prior Consent for Disclosure Required~~

~~16.1 An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in 17.0.~~

~~16.1.1 Consent is not required under this section where the disclosure is to the parent of a student who is not an eligible student, or the student himself or herself.~~

~~16.2 Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.~~

~~16.3 The written consent must be signed and dated by the parent of the student or the eligible student giving the consent and shall include: a specification of the records to be disclosed; the purpose of the disclosure; and the party or class of parties to whom the disclosure may be made.~~

~~16.4 When a disclosure is made pursuant to 16.1, the educational agency or institution shall, upon request, provide~~

a copy of the record that is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

17.0 Prior Consent

17.1 An educational agency or institution may disclose personally identifiable information from the education record of a student without the written consent of the parent of the student or the eligible student if the disclosure is:

17.1.1 To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interest;

17.1.2 To officials of another school or school system, or institution of post-secondary education, in which the student seeks or intends to enroll, subject to the requirements set forth in 20.0.

17.1.3 Subject to the conditions set forth in 21.0, to authorized representatives of the Comptroller of the United States, the Secretary of Education and state and local educational authorities.

17.1.4 In connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the students may be disclosed only as may be necessary for such purposes as: to determine the eligibility of the student for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms and conditions of the financial aid.

17.1.5 To state and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to state statute adopted prior to November 19, 1974.

17.1.6 To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of administering predictive tests, administering student aid programs, and improving instruction; provided that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to federal, state, and local agencies, and independent organizations.

17.1.7 To accrediting organizations in order to carry out their accrediting functions.

17.1.8 To parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1954.

17.1.9 To comply with a judicial order or lawfully issued subpoena: provided, that the educational agency or institution makes a reasonable effort to notify the parent of

the student or the eligible student of the order or subpoena in advance of compliance therewith;

17.1.10 The appropriate parties in health or safety emergency subject to the conditions set forth in 22.0.

18.0 Records of Requests and Disclosure Required to be Maintained

18.1 An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

18.1.1 The parties who have requested or obtained personally identifiable information from the education records of the student, and

18.1.2 The legitimate interests these parties had in requesting or obtaining the information.

18.1.3 18.1 does not apply: to requests by or disclosures to a parent of a student or an eligible student, to requests by or disclosures to school officials under 34 CFR §99.31(a)(1); if there is written consent of a parent of a student or an eligible student; or to requests for or disclosure of directory information under 34 CFR §99.37.

18.1.4 The record of requests and disclosures may be inspected:

18.1.4.1 By the parent of the student or the eligible student.

18.1.4.2 By the school official and his or her assistants who are responsible for the custody of the records, and

18.1.4.3 For the purpose of auditing the record keeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in 34 CFR §99.31(a)(1) and (3).

19.0 Limitation on Redisclosure

19.1 An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees, and agents, but only for the purposes for which disclosure was made.

19.2 Section 19.1 does not preclude an agency or institution from disclosing personally identifiable information under 17.0, with the understanding that the information will be redisclosed to other parties under that section; provided, that the recordkeeping requirements of 18.0 are met with respect to each of those parties.

19.3 An educational agency or institution shall, except for the disclosure of directory information under 23.0,

inform the party to whom a disclosure is made of the requirements set forth in 19.1.

20.0 Conditions for Disclosure to Officials of Other Schools and School Systems

20.1 An educational agency or institution transferring the education records of a student pursuant to 17.1.2 shall:

20.1.1 Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, except

20.1.1.1 When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

20.1.1.2 When the agency or institution includes a notice on its policies and procedures formulated under 6.0, that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer.

20.1.2 Provide the parent of the student or the eligible student, upon request with an opportunity for a hearing under these procedures.

20.2 If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; provided, that the disclosure meets the requirements of 20.1.

21.0 Disclosure to Certain Federal and State Officials for Federal Program

21.1 Nothing in these policies shall preclude authorized representatives of officials listed in 17.1.3 from having access to student and other records which may be necessary in connection with the audit and evaluation of federally supported education programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs.

21.2 Except when the consent of the parent of a student or an eligible student has been obtained under 16.0, or when the collection of personally identifiable information is specifically authorized by federal or state law, any data collected by officials listed in 17.1.3 shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with federal and state legal requirements.

22.0 Conditions for Disclosure in Health and Safety Emergencies

22.1 An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

22.2 The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following: the seriousness of the threat to the health or safety of the student or other individuals; the need for the information to meet the emergency; whether the parties to whom the information is disclosed are in a position to deal with the emergency; and the extent to which time is of the essence in dealing with the emergency.

22.3 22.1 shall be strictly construed.

23.0 Conditions for Disclosure of Directory Information

23.1 An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information under 23.3.

23.2 An educational agency or institution may disclose directory information from the educational records of an individual who is no longer in attendance at the agency or institution without following the procedures under 23.3.0

23.3 An educational agency or institution that wishes to designate directory information shall give public notice of the following:

23.3.1 The categories of personally identifiable information which the institution has designated as directory information;

23.3.2 The right of the parent of the student or the eligible student to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

23.3.3 The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

24.0 Safeguards

24.1 Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

24.2 One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

24.3 All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.129

and part 99 of this title.

24.4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. 34 CFR 300.572

25.0 Destruction of Information

25.1 The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

25.2 The information must be destroyed at the request of the parents. However, permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without the time limitation. 34 CFR 300.573

NOTE: Under §300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in 25.2.

26.0 Education Records Required in Delaware Schools:

26.1 Directory information for each student as defined in 4.3.

26.2 A cumulative record for each student which may include identifying data, academic work completed, level of achievement, attendance data, grades, scores on group or individualized — intelligence, — achievement, — aptitude psychological, sociometric, or interest inventory tests, health data, family background information, teacher, counselor, or other school personnel ratings and observations, and verified reports of serious or recurrent behavior patterns.

26.3 Although they may be collected and maintained separately from the cumulative record file, the following education records shall be considered part of the total cumulative record:

26.3.1 A School Health Record Card and Emergency Treatment Data Card for each student.

26.3.2 A file including documents related to the identification, evaluation, placement, and provision of a free appropriate public education for each student with disabilities.

26.3.3 The records of students with disabilities shall be maintained in accordance with 12.1.4.

26.3.4 The total cumulative record shall be disclosed only in accordance with 16.0 to 22.0.

26.4 Maintenance for 100 years is required of certain education records and the following information shall be maintained for each student ever registered and/or in attendance:

26.4.1 Names, addresses and telephone numbers of parents or guardians.

26.4.2 Birthdate, sex and other identifying data of the student.

26.4.3 Academic work completed.

26.4.4 Level of achievement such as grades and standardized achievement test score, including approval for certificate of attendance, early college admission, or alternative/option education.

26.4.5 Attendance data.

26.4.6 Transportation data.

26.4.7 The reason for leaving school—graduated, transferred or dropped out.

26.5 Contracts for storage of student records of graduates, withdrawals and special education students for district storage, shall be initiated between the school district and the Delaware Public Archives. Two or more copies in separate sites are recommended to provide fire safe storage.

26.6 The cumulative records folders for students who have graduated from or who left school prior to graduation from high school are to be stored at the school of last attendance. In those cases where schools have been closed, razed or reorganized a central storage file should be developed and maintained. All clerical staff of the district, especially those typically handling student record requests, should have as a part of an operations manual information about stored records, including site and acquisition procedures.

(NOTE: Records of students graduated from the William C. Jason Comprehensive High School during the years 1951 through 1967 may be obtained by writing directly to the Department of Education.)

In those cases where records are no longer being handled by the original comprehensive high school, it will be impossible to obtain character references on former students. Employers or others requesting character references on former students should be instructed to contact these students for information concerning persons who served as administrators or teachers during the period of time they were in school. They should then contact these individuals directly for the needed information.

Otherwise, the Delaware Public Archives should be contacted immediately to facilitate the transfer and continuing maintenance of the student records in those cases described above.

26.7 Transfer is required of certain education records. A file consisting of the complete up-to-date cumulative record including the school health record card shall follow each student transferred from one school to another. The file for each student with disabilities transferring from one

school to another shall also be included. This transfer of education records from one school to another is subject to the requirements set forth in 16.0 through 22.0. Records of students graduated from or who left school prior to graduation from Wilmington High School, may be obtained by contacting the Delaware Public Archives.

26.8 Transfer of Student Records in the Case of Placement for Adoption and Change of Name

26.8.1 In the case of either placement for adoption, or adoption of a student, it is legally necessary to change the name of that student to modify his or her identity on official records. Delaware law provides that adoption records of this sort are to be held in confidence in the appropriate state agency or court. The Department of Services for Children, Youth, and Their Families, Division of Child Protective Services, is the agency authorized by 13 ~~Del.C.~~ Ch. 9, to undertake the appropriate transactions in the case of placement for adoption, and change of name. This agency is also authorized under Section 901 of that chapter to license or to otherwise authorize adoption procedures by other public or private agencies in the State of Delaware or in other states. When a written request for records of a child being placed for adoption is addressed to the superintendent of a Delaware school district from the Adoption Coordinator, Division of Child Protective Services; the Director, Catholic Social Services, Inc.; or the Director, Children's Bureau of Delaware, the superintendent shall release all pertinent and transferable records relating to that student to that requesting agency. Following any such release, no information concerning the student named is to be released to any other person or agency except for further endorsement from the adoption coordinator. It is recommended that any records considered not appropriate to transfer to any other school be destroyed, and that the permanent record system of the school show that the named student has transferred to the social service agency named. The official agency receiving the records will modify the name wherever it appears and forward the file to the new school. The agency will identify itself as the contact point for further information.

26.9 Transfer of Students

26.9.1 When a student transfers from a public school to any other school in or out of Delaware, a Delaware Student Transfer Form shall be made available to the transferring student or the student's parent or guardian for presentation to the receiving school or district. The principal of the school from which the student is transferring shall hold all cumulative records pending a request for them from the receiving school. A student assigned or admitted to an educational program operated by the Department of Services for Children Youth and Their Families shall be transferred as above. A student on supportive instruction (homebound or hospital) shall continue as an enrollee in the public school attended before being assigned to such a program.

26.9.2 When a student transfers to a Delaware

school, the receiving school shall immediately request all student records, including the cumulative record, from the sending school district. All transferred students shall be enrolled and assigned temporarily to classes upon arrival in the receiving school.

26.9.3 In order for a transfer unit of credit to be valid in the school to which transfer is made, it shall have been completed in the school from which pupil transferred. In no case shall work not satisfactorily completed (failed or left incomplete) in one school be accepted as passed and completed work in another school. Incomplete or failed work shall be repeated if credit is to be granted for that work.

26.9.4 Principals of secondary schools should be constantly alert to the transfer rules as prescribed by the Delaware Code and the regulations of the Department of Education.

26.9.5 In the case of students who transfer to a Delaware school from a foreign country, the local school district or school is responsible for having the transcripts evaluated.

27.0 State and Federal Review

27.1 The Secretary of the U.S. Department of Education is required to establish or designate an office and a review board. The office will investigate, process, and review violations, and complaints that may be filed concerning the Privacy Rights of Parents and Students. The review board will adjudicate cases referred to it by the office under the procedures set forth in §99.65-§99.67 of the Privacy Rights of Parents and Students. The following is the address of the office: The Family Policy Compliance Office, Federal Building No. 6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

27.2 In the case of students with disabilities the reviewing, investigating, and acting on any allegation of substance which may be filed concerning the violation of provisions of this policy by educational agencies or institutions will be processed by the Director, Exceptional Children and Early Childhood Education, Department of Education, Townsend Building, Box 1402, Dover, DE

251 Family Educational Rights and Privacy Act (FERPA)

1.0 Authority and Incorporation of Federal Regulations:

1.1 The Department of Education is authorized by 14 Del.C. §4111, to adopt rules and regulations regarding the educational records of students in public and private schools in Delaware. This regulation is intended to govern access to, confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400

et seq. and its implementing regulations.

2.0 Use and Adoption of FERPA by School Districts, Charter Schools, and Private Schools:

2.1 Each school district, charter school and private school shall develop, adopt, and maintain a written policy regarding the educational records of its students. This policy shall address access to such records, the confidentiality of such records, and the method by which the records may be amended. The policy shall comply with FERPA and its implementing regulations.

2.2 Each school district, charter school and private school shall periodically review and revise its policy on educational records to ensure continued compliance with FERPA.

2.3 Nothing in this regulation shall preclude a school district, charter school, or private school from adopting additional policies regarding educational records so long as those regulations are consistent with FERPA. Nothing in this regulation shall alter a school district or a charter school's duties regarding educational records of children with disabilities pursuant to the Individuals with Disabilities Education Act.

3.0 State Adoption of FERPA:

3.1 Except as otherwise provided, the Department of Education adopts the federal regulation implementing FERPA (34 C.F.R. part 99), including any subsequent amendment or revision to that regulation, to the extent the Department maintains educational records on students in attendance in Delaware schools.

3.2 Notwithstanding section 3.1, the Department shall not be required to annually notify parents or eligible students of their rights under FERPA or this regulation. School districts, charter schools, and private schools shall continue to be responsible for such notification. The Department may also disclose directory information from the educational records it maintains without prior public notification.

3.3 Notwithstanding section 3.1, the Department shall not be required to provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation.

4.0 Federal Complaints and Investigations:

4.1 The Family Policy Compliance Office ("FPCO") of the U.S. Department of Education is responsible for monitoring compliance with FERPA. That office will investigate, process and review violations and complaints that may be filed with it concerning the privacy rights of parents and students. The following is the address of the office: The Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605.

252 Required Educational Records and Transfer and Maintenance of Educational Records

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

"Court Orders" shall mean any written direction from a court of competent jurisdiction directed to the student or affecting the student's care or custody.

"Discipline Record" shall mean information about any and all periods of out of school suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district's code of conduct or other rules.

"Emergency Treatment Card" shall mean the card containing the general emergency information and procedures for the care of a student when the student becomes sick or injured in school as required in 14 **DE Admin Code** 811.1.1.

"Identifying Data" shall mean the name of the student, date of birth, sex, race/ethnicity, address, telephone number, Delaware student identification number and the name of the parent(s), guardian(s) or Relative Caregiver.

"Progress Report" shall mean a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized test(s) scores such as the DSTP and attendance data for each year of the student's attendance.

"School Health Record" shall mean the form required by 14 **DE Admin Code** 811.2.0 for Delaware public school students.

"Student Transcript" shall mean a single record maintained for each student in grades 9 and above that contains the following: end of year and up to date grades; credits earned; class rank; Grade Point Average (GPA); withdrawal or graduation date; standardized test(s) scores such as the DSTP, SAT, PSAT, ACT; the career area competency if applicable list; attendance data and school activities.

2.0 Education Records Required by Schools in Delaware

2.1 Each Delaware school shall maintain a Cumulative Record File either as an electronic or paper file for each student enrolled.

2.1.1 The student Cumulative Record File shall contain the Emergency Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above) and Discipline Record.

2.1.2 The student Cumulative Record File shall also contain any Court Orders in the school or district's possession, to the extent the school or district maintains such documents for an individual student.

2.1.3 In addition, the Cumulative Record File for a child with a disability as defined in 14 **DE Admin**

Code 925 shall contain any records related to the identification, evaluation, placement, and provision of a free appropriate public education. Such documents may be collected and maintained separately.

3.0 Transfer of the Records of Public School and Private Schools Students

3.1 When a student transfers from a public school, private school or an educational program operated by the Department of Services for Children Youth and Their Families to any other school in Delaware, the receiving school shall immediately request the Cumulative Record File from the sending school or program.

3.2 The Cumulative Record File shall follow each student transferred from one school to another including files for each student with disabilities transferred from one school to another.

3.2.1 Public schools, school districts, private schools and educational programs operated by the Department of Services for Children Youth and Their Families shall promptly transfer a student's Cumulative Record File upon the request of a receiving school.

3.2.2 Unpaid student fees or fines shall not be a basis for a public school, school district or an educational program operated by the Department of Services for Children Youth and Their Families to deny or to delay transfer of the Cumulative Record File.

3.2.3 Students shall not be denied enrollment into a public school on the grounds that the student's Cumulative Record File has not been received.

3.3 Before transferring student records, a public school, school district or private school shall specifically confirm that the Cumulative Record File contains the student's Discipline Record.

3.4 When students transfer to a Delaware school from any other school including a school in a foreign country the receiving school is responsible for having the transcripts evaluated.

4.0 Maintenance of the Education Records of Public Schools

4.1 The Delaware School District General Records Retention Schedule published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the maintenance of education records.

4.2. Contracts for storage of student records of graduates, withdrawals and special education students for district storage, shall be initiated between the school district and the Delaware Public Archives.

4.3 The Cumulative Record Files for students who have graduated from or who left school prior to graduation from high school shall be stored at the school or district of last attendance or in the Delaware Public Archives.

5.0 Destruction of Education Records of Public Schools

5.1 The Delaware School District General Records Retention Schedule published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the destruction of any education records.

5.2 The destruction of educational records of children with disabilities shall also comply with the requirements of 14 DE Admin Code 925.

DEPARTMENT OF EDUCATION

Education Impact Analysis Pursuant To

14 Del.C. Section 122(d)

14 DE Admin. Code 278

278 Non-Public School Educator Licensure and Certification

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of the Subject Matter of the Regulation

The Secretary of Education intends to adopt 14 DE Admin. Code 278 Non-Public School Educator Licensure and Certification to provide a system for non public school educators to become licensed and certified. This regulation is required by Senate Bill 162 of the 142nd General Assembly.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses non-public school educator licensure and certification not student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses non-public school educator licensure and certification not equitable education issues.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses non-public school educator licensure and certification not health and safety.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses non-public school educator licensure and certification not students' legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation does not affect the authority of local school boards since this regulation is related to non-public school educators.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels since it is for non-public educators.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is for non-public school educators and does not affect the public schools.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The statute requires that a regulation be promulgated.

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

278 Non-Public School Educator Licensure And Certification

1.0 Purpose:

Consistent with the provisions of 14 Del.C. §121(b), the intent of this regulation is to establish a voluntary licensure and certification system for non-public school teachers, specialists and administrators employed in this State.

2.0 Definitions:

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

“Certification” means the issuance of a certificate, which may occur regardless of a recipient’s assignment or employment status.

“Composite Score” means a total of an applicant’s scores on all three (3) subtests of Praxis I which is equal to, or greater than, the sum of the passing scores on the three subtests. Scores from either the PRAXIS I (PPST) paper and pencil test and/or from the PRAXIS I (CPPST) computerized test may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT) may be used when applying the composite score

provision, but may not be used in conjunction with scores from the PRAXIS I (PPST) paper and pencil test and/or with the PRAXIS I (CPPST) computerized test.

“Department” means the Delaware Department of Education.

“Dismissal” means (1) dismissal of a non-public school educator by his/her employing authority for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty; or (2) the license or certificate holder’s voluntary resignation of employment in the face of disciplinary action for immorality; or (3) the license or certificate holder’s conviction of a crime which is evidence of immorality.

“Examination of General Knowledge” means a standardized test that measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

“Exigent Circumstances” means unanticipated circumstances or circumstances beyond the non-public school educator’s control, including, but not limited to, expiration of a license during the school year, serious illness of the non-public school educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the non-public school educator’s temporarily leaving active service.

“Good Moral Character” means conduct which is consistent with the rules and principles of morality expected of an educator.

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

“Jurisdiction” means a state, territory or country.

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

“Mentoring” means activities prescribed by the employing authority with the consent of the Secretary in which a holder of an initial license must engage during the three-year term of the initial license.

“Non-public School” means a private school as that term is defined in 14 DE Admin. Code 255.2 or any homeschool defined in 14 Del.C. §2703A.

“Non-public School educator” means a non-public school employee who holds a license issued by the Department pursuant to 14 Del.C. §121(b).

“PRAXIS I” or “PPST” means a test from Educational Testing Service of general knowledge in reading, writing, and mathematics.

“PRAXIS I CBT” means the discontinued PRAXIS I computer based test from Educational Testing Service taken between November 1993 and December 2001, with a possible score range of 300 to 335. Scores from the PRAXIS I CBT test may not be combined with scores from

the PRAXIS I paper and pencil test or the PRAXIS I computerized test (CPPST) to derive a composite score.

“PRAXIS I CPPST” means the PRAXIS I computerized test from Educational Testing Service which began in January 2002. This test, which is delivered in a computer format, has a possible score range of 150 to 190. Scores from the CPPST and the PRAXIS I (PPST) paper and pencil test may be combined for a composite score.

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

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

“Student teaching program” means a traditional student teaching placement within a National Association of State Directors of Teacher Education and Certification or National Council for the Accreditation of Teacher Education approved program offered by a college or university, or such alternatives as deemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the regionally accredited non-public school educator preparation program.

“Suspension” means the temporary removal of an initial license for failure to pass the PRAXIS I test.

“Unfit” means lack of good moral character, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

3.0 Performance Appraisal Evaluation

3.1 A licensed and certified non-public school educator must receive at least 1 performance appraisal evaluation annually. The evaluation system and any forms used in connection therewith must be in a form approved by the Secretary and must be consistent with the Delaware Professional Teaching Standards and the Delaware Administrators’ Standards. Further it must be demonstrated that the evaluation system is equivalent to the Delaware Performance Appraisal System (DPAS) or the Delaware Performance Appraisal System II (DPAS II) whichever is in effect for public educators.

3.2 The employing authority shall develop a performance appraisal evaluation to submit to the Secretary for approval. The performance appraisal evaluation shall include an overall rating and a student-improvement component rating, and must identify what constitutes satisfactory performance and unsatisfactory performance on the overall evaluation and on each component of the evaluation.

3.3 Notwithstanding subsection 3.1, any performance appraisal evaluation designed and approved hereunder, may include a provision whereby the minimum annual evaluation requirement for non-public school educators may be waived

for proficient performance on previous evaluations. However, a non-public school educator may not receive 2 consecutive evaluation waivers.

3.4 The performance appraisal evaluation shall have no more than 5 components and must have a strong focus on student improvement, with 1 component dedicated exclusively to student improvement and weighted at least as high as any other component. The measure of student improvement must be approved by the Secretary.

3.5 Nothing herein prevents an employing authority from administering other evaluations in addition to the Department approved performance appraisal evaluation.

4.0 Non-public School Educator Licensure and Certification System.

In order to be eligible for a license and certificate, a non-public school teacher, specialist, or administrator must receive at least one performance appraisal evaluation annually which meets the requirements set forth in section 3.0.

4.1 Initial License

4.1.1 An initial license is valid for three (3) years unless revoked and may not be renewed.

4.1.1.1 During the term of the initial license, license holders are required to participate in mentoring and other prescribed professional development activities offered by their non-public school employer.

4.1.2 The Department shall issue an initial license to a non-public school educator if the applicant demonstrates that:

4.1.2.1 He or she has received a bachelor’s degree from a regionally accredited 4-year college or university; and

4.1.2.2 He or she has completed a student teaching program, as defined in 2.0, or has one (1) year of teaching experience consisting of a minimum of 91 days of long term teaching experience in one (1) assignment; and

4.1.2.3 He or she has achieved a passing score on an examination of general knowledge, such as Praxis I, or such other alternative as might be established by the Department.

4.1.2.4 The Department shall issue an initial license to an applicant currently licensed as an educator in another jurisdiction who has less than three (3) years of teaching experience and meets the requirements of sections 4.1.2.1 through 4.1.2.3. Further, the Department shall issue an initial license to an applicant who previously held a valid Delaware Standard or Professional Status Certificate who has been out of the profession for more than three (3) years.

4.1.3 An applicant for an initial license shall submit the application form, official transcripts, and official scores on an examination of general knowledge, such as the PRAXIS I tests in any format, as defined in 2.0, to the Department.

4.1.3.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened unaltered envelope.

4.1.4 Examination of General Knowledge Requirement

4.1.4.1 A non-public school educator seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests (PPST) or such alternatives as set forth in 4.1.4.4 below.

4.1.4.2 Scores of Examinations of General Knowledge.

4.1.4.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.

4.1.4.2.1.1 Pre-professional Skills Test (PPST) taken between 7/1/83 and 10/22/93: reading - 175, mathematics - 175, writing - 172.

4.1.4.2.1.2 PRAXIS I (PPST)-Paper and Pencil Tests (taken on 10/23/93 and thereafter with a possible score range of 150 to 190) and PRAXIS I Computerized Pre-Professional Skills Tests (CPPST) taken on 1/1/02 and thereafter (both of which have a possible score range of 150 to 190) with passing scores of: reading - 175, mathematics - 174, writing - 173.

4.1.4.2.1.3 PRAXIS I - Computer Based Tests (CBT) (taken between 10/23/93 and 12/31/01) with passing scores of: reading - 322, mathematics - 319, writing - 319.

4.1.4.3 Individuals holding Delaware certificates issued prior to July 1,1983 are exempt from the testing requirements.

4.1.4.4 Acceptable alternatives to the PRAXIS I test scores include:

4.1.4.4.1 Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST/PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.

4.1.4.4.2 Scholastic Aptitude Tests (SAT) taken after 4/1/95 and presented for exemption must meet the scores set forth below due to a re-centering of the SAT.

4.1.4.4.2.1 A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken thereafter will be accepted as fulfillment of the PRAXIS I Mathematics requirement.

4.1.4.4.2.2 A minimum score of 480 on the SAT Verbal test taken prior to 4/1/95, and a

minimum score of 560 on the SAT verbal test taken thereafter will be accepted as fulfillment of the PRAXIS I reading requirement.

4.1.4.4.3 Graduate Record Examination (GRE) scores presented for exemption must meet the scores set forth below.

4.1.4.4.3.1 A minimum score of 490 on the Graduate Record Examination (GRE) Verbal test will be accepted as fulfillment of the PRAXIS I reading requirement.

4.1.4.4.3.2 A minimum score of 540 on the Graduate Record Examination (GRE) Quantitative test will be accepted as fulfillment of the PRAXIS I mathematics requirement.

4.1.4.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the PRAXIS I writing requirement.

4.1.4.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline as that required for PRAXIS I and scores must pre-date the employment date.

4.1.4.6 Timeline for Examination of General Knowledge.

4.1.4.6.1 A non-public school educator seeking initial licensure must pass the three PRAXIS I (PPST) tests in any format or an approved alternative within two years of the issuance of the initial license. Notwithstanding the foregoing, the non-public school employer may submit to the Secretary a written request for a one-year extension. The request must document the effectiveness of the applicant and that the applicant has attempted at least twice to pass Praxis I or an approved alternative within the proceeding two years.

4.1.4.6.2 If proof of passage of PRAXIS I is not provided within two years of the issuance of the initial license and no extension is granted by the Secretary, the initial license shall be suspended for a maximum of two years.

4.1.4.6.2.1 Evidence of passage of PRAXIS I within the time period of the suspension shall result in the reinstatement of the initial license.

4.1.4.6.2.2 An applicant who does not pass PRAXIS I during the time period of the suspension, and whose initial license is expired, must reapply and may be issued an initial license, valid for three years, if he/she meets the requirements for initial licensure then in effect.

4.1.4.7 An applicant for an initial license who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of

passage.

4.1.4.7.1 Scores from either the paper and pencil PRAXIS I (PPST) test or from the computerized PRAXIS I (CPPST) test, begun in January, 2002, both of which have a possible score range of 150 to 190, may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT), taken between November, 1993 and December 31, 2001 may be used when applying the composite score provision, but may not be used in conjunction with the paper and pencil PRAXIS I test or with the computerized PRAXIS I (CPPST) test.

4.1.4.7.2 Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content areas of mathematics or English/language arts must meet the passing score in that content area.

4.1.4.8 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

4.1.4.8.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

4.1.4.9 Submission of Scores of Examination of General Knowledge.

4.1.4.9.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.

4.1.4.9.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

4.1.4.9.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

4.1.5 Applicants with Foreign Credentials.

4.1.5.1 Applicants graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be reviewed by the Department.

4.1.6 This regulation shall apply to all requests for issuance of an initial license, except as specifically addressed herein.

4.1.6.1 Non-public school educators who hold a Limited Standard Certificate or a Temporary Certificate issued prior to August 31, 2003 shall continue on that certificate until the requirements specified are met or the certificate expires, whichever comes first.

4.2 Continuing License

4.2.1 The Department shall issue, upon application, a continuing license to a non-public school

educator who has successfully completed the requirements under the initial licensure as set forth in subsection 4.1. The Department shall issue a continuing license to an applicant licensed as an educator in another jurisdiction who provides evidence of having completed three (3) or more years of successful teaching experience. A continuing license is valid for 5 years unless extended pursuant to 4.4 or revoked for cause, as defined in 4.8.

4.2.1.1 An applicant for a continuing license shall submit the approved application form to the Department. Copies of the non-public school educator's annual performance appraisal evaluation for the period of initial licensure shall be submitted with an initial application for a Continuing License. An applicant with more than one (1) unsatisfactory annual performance appraisal evaluation during the period of initial licensure is ineligible to be issued a continuing license. Incomplete applications will not be processed.

4.2.2 The Department may issue a continuing license to a non-public school educator who previously held a valid Delaware certificate that has expired.

4.2.2.1 A non-public school educator returning to employment and holding a current standard or professional status certificate will be issued a continuing license upon request.

4.2.2.2 A non-public school educator who previously held a valid Delaware standard or professional status certificate which has expired and who has been out of the profession for less than three (3) years may be issued a continuing license, valid for 5 years, upon request and application on the approved form and evidence of previous Delaware certification.

4.2.2.3 A non-public school educator who has completed three (3) or more years of successful teaching and who holds a continuing license which has expired and who has been out of the profession for more than three (3) years may be issued a continuing license upon request, but must, within the first year of employment, successfully complete an employer-sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.

4.2.2.4 A non-public school educator holding a limited standard or temporary certificate and currently employed as a non-public school educator will be issued a continuing license upon completing all requirements for the current standard certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate.

4.2.3 Renewal of a Continuing License: To obtain renewal of a continuing license, a non-public school educator shall participate in professional development activities totaling 90 clock hours every five years. At least one-half of the required hours (45 hours every five years) for non-public school educators must be in activities that relate

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to the non-public school educator's work with students or staff. Satisfactory evidence of such completion, as set forth in Sections 4.2.3.2 and 4.2.3.3, shall be submitted to the Department with the application for renewal.

RE-LICENSURE OPTIONS – SPECIFICATIONS – TEACHERS/SPECIALISTS/ADMINISTRATORS

4.2.3.1 Options for Relicensure

| OPTION | MAX. HOURS | HOUR VALUE | VERIFICATION | CRITERIA |
|---|--|--|---|---|
| College Credit | No limit | 1 semester hour = 15 clock hours. 1 quarter hr./CEU = 10 clock hours. | Official Transcripts. Original Grade Slips. Original Certificate of Completion for CEUs. | Must be completed at a regionally accredited college. Must be taken for credit with grade of "C" or better or a "P" in pass/fail course. |
| Employer Sponsored Professional Development Programs | No Limit | Verified clock hours actively involved in professional development activities | Certificate of attendance provided by the employing authority | Employer professional development programs must focus on identified curriculum, instruction, assessment, school climate or other identified need. |
| Professional Conference/ Workshop/ Institute or Academy | 30 clock hours per year 45 clock hours per cycle | Verified clock hours actively involved in workshop or conference sessions | Original Certificate of Attendance or Completion OR Letter from Supervisor/Conference Staff. Copies/ Exhibits of products developed by Applicant. Course Attendance Slip | Must include only time spent in those portions of the workshop or conference program that contribute to the participant's knowledge, competence, performance, or effectiveness in education. Includes workshops offered by districts or other employing authorities either as part of professional development day or after school hours. |
| Mentoring | 30 per year 45 per cycle | Verified clock hours involved in mentoring activities | Activity Documentation Form. (No prior approval required) | Must be mentoring of teacher, administrator, or specialist. Must be part of a formal program. |
| Cooperating Teacher/Intern Supervisor | 30 per year 45 per cycle | Verified clock hours involved in support of student teacher or intern | Activity Documentation Form completed by higher education director of field-based clinical studies. (No prior approval required) | Must be supervision of graduate or undergraduate intern or student teacher in a state-approved non-public school educator preparation program. |
| Presentation | 10 per 3 clock hour course; 30 per longer course; 45 per cycle | Verified clock hours preparing and presenting | Activity Documentation Form* (Prior approval required) | Must include only actual time preparing and presenting a course, workshop, or presentation. (Clock hours limited to first preparation and presentation of individual course, workshop, or presentation.) |
| Curriculum/ Assessment Development | 30 per year 45 per cycle | Verified clock hours of service; Minimum of 3 clock hours | Original documentation from committee chair verifying actual clock hours of participation | Must be service on formal committee organized by local, state, national, or international education agency or organization. |
| Professional Programs/ Committees | 30 per year 45 per cycle | Verified clock hours of service or experience. | Original documentation from committee chair or activity leader verifying actual clock hours of participation. | Must be a formal activity provided through a recognized local, state, national, or international education agency or organization |
| Peer Coaching | 30 per year 45 per cycle | Verified clock hours of service or experience. | Activity Documentation Form. (No prior approval required) | Must be part of a formal program. |
| Publication | 30 per year 45 per cycle | 30 clock hours for book. Up to 15 clock hours per other publication. | Copy of Publication or Document. | Must contribute to the education profession or add to the body of knowledge in the individual's specific field. Must be commercially published or a formally approved document or formally published in a medium sanctioned by a recognized state or national agency or organization. If a grant, must be approved for funding. |

| | | | | |
|--|-------------------------------------|--|---|--|
| <u>NBPTS Certification or similar National Certification</u> | <u>30 per year 45 per cycle</u> | <u>45 clock hours for attaining national certification</u> <u>Not complete B. verified clock hours completing portfolio activities.</u> | <u>A Valid Copy of the National Certificate.</u> <u>For candidate not completing certificate -</u> <u>Activity Documentation Form.</u> <u>(No prior approval required)</u> | <u>Holds a certificate indicated by NBPTS as related to an individual=s work or assignment.</u> <u>Certificate or participation as a candidate must be completed and verified by the expiration date of the Delaware certificate.</u> |
| <u>Formal Study Groups</u> | <u>30 per year 45 per cycle</u> | <u>Verified clock hours working as a member of a study group.</u> | <u>Activity Documentation Form and The Product of the Study.*</u> <u>(Prior approval required)</u> | <u>Must relate to the individual=s work or assignment.</u> <u>Must include a product.</u> |

4.2.3.2 Documentation of Clock Hours for Relicensure

4.2.3.2.1 For renewal of the continuing license, non-public school educators may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies will be used: 1 semester hour = 15 clock hours, 1 quarter hour = 10 clock hours, 1 CEU = 10 clock hours. To be documented for clock hours, activities must meet the criteria set forth in the regulations and must be appropriately verified and applied for Individuals, schools or school districts, or other agencies organizing or conducting professional development activities which may be used for fulfilling the requirements for renewal of a license are responsible for providing documentation of participation to all participants. Each non-public school educator is responsible for obtaining any necessary approvals, as set forth in Section 4.2.3.1, from his or her employer before participating in a professional development activity. Any employer may not impose additional activity requirements on the award of clock hours towards renewal of a continuing license.

4.2.3.2.1.1 Criteria for determining if activities are acceptable for clock hour credit for a non-public school educator include the following:

4.2.3.2.1.1.1 The activity enhances the knowledge and skills in the non-public school educator's job or contributes to his/her school or profession.

4.2.3.2.1.1.2 The activity meets one of the relicensure options.

4.2.3.2.1.1.3 The activity addresses one of the standards for the non-public school educator's area of the profession.

4.2.3.2.1.1.4 The activity is completed during the term of the non-public school educator's current continuing license.

4.2.3.2.1.1.5 The activity addresses specific Professional Teaching or Administrator Standards.

4.2.3.2.1.1.6 Participation in, or completion of, the activity can be documented.

4.2.3.3 The Re-Licensure Application, Activity Documentation Form, and, where required, original

or official documents will be used to verify activities for renewal of a continuing license. Official transcripts or original grade slips are required documentation for successful completion of college courses.

4.2.3.4 For applicants who change positions (grade levels, content areas, areas of supervisory responsibility, etc.) during the five-year term of a continuing license, clock hours documented must have been appropriate to the non-public school educator's position at the time the clock hours were completed.

4.2.4 The 90 clock hours must be completed during the five-year term of the license. All activities must relate to the 14 DE Admin. Code 1593, Delaware Professional Teaching or 14 DE Admin Code 1594, Delaware Administrator Standards.

4.2.5 The activities selected must be beyond the normal or specified requirements of the position. Professional development activities, which fulfill the criteria for relicensure for which non-public school educators receive compensation, may be submitted in fulfillment of the 90-clock hour requirement for relicensure.

4.2.6 This regulation shall apply to all requests for continuing license, issuance and renewal, except as specifically addressed herein. Non-public school educators holding a Professional Status Certificate or a Standard Certificate expiring on June 30, 2001 shall have until June 30, 2007 to meet the new continuing license renewal standards. All administrators in instructional areas issued a continuing license as of July 1, 2001, shall have until June 30, 2007 to meet the new continuing license renewal standards. Non-public school educators holding a Professional Status Certificate or a Standard Certificate expiring July 1, 2001 or thereafter shall be required to satisfy the new continuing license renewal standards as set forth herein.

4.3 Advanced License

4.3.1 The Department, upon receipt of the list of successful candidates provided annually by the National Board of Professional Teaching Standards, shall issue an advanced license to any non-public school educator who has successfully obtained National Board for Professional Teaching Standards. An advanced license is valid for 10 years unless extended pursuant to 4.4 or revoked for cause, as defined in 4.8.

4.3.1.1 The Department shall issue, upon application, an advanced license to a non-public school educator licensed in another jurisdiction who provides verification of receipt of National Board certification.

4.3.2 The Department shall renew an advanced license, valid for an additional 10 years, to a non-public school educator who has maintained proficiency through the National Board for Professional Teaching Standards.

4.3.2.1 The Department shall renew an advanced license upon receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards.

4.3.2.2 An applicant who elects not to renew with the National Board for Professional Teaching Standards or who fails to meet the recertification requirements set forth by the National Board will be issued a continuing license.

4.4 License Extension

4.4.1 The Department may extend an initial license for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

4.4.2 A license holder whose license expires during the school year may have the license extended until the last day of the fiscal year upon a request from the employing authority. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

4.5 Leave of Absence

4.5.1 A non-public school educator may take a leave of absence of up to three (3) years with no effect upon the validity or expiration of the initial license.

4.6 The Department shall not act on an application for licensure if the applicant is official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

4.7 Criminal Conviction History

4.7.1 An applicant shall disclose his or her criminal conviction history upon application for an initial license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an initial license.

4.8 License Denial

4.8.1 Upon a finding that an applicant is unfit to be licensed in the State, the Department may refuse to issue an initial license, continuing license or an advanced license to an applicant who otherwise meets the requirements set forth herein.

4.8.1.1 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his/her designee within

thirty (30) days.

4.8.2 Notwithstanding any other provisions stated herein, no license shall be issued to an applicant for an initial, continuing or advanced license if:

4.8.2.1 There is legal evidence that the applicant is not of good moral character; or

4.8.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

4.9 License Revocation

4.9.1 An initial, continuing or advanced license; or a limited standard, standard, or professional status certificate issued prior to August 31, 2003, issued to a non-public school educator may be revoked upon the dismissal of the license or certificate holder for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty, and must be revoked upon a finding that the license or certificate holder made a materially false or misleading statement in his or her license or certificate application.

4.9.1.1 Revocation Requested by an Employing Authority

4.9.1.1.1 When any license or certificate holder is dismissed by an employing authority for immorality, the body making such a determination shall, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license or certificate.

4.9.1.1.2 When any license or certificate holder is dismissed by an employing authority for misconduct in office, incompetence, willful neglect of duty or disloyalty, the body making such a determination may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license or certificate.

4.9.1.1.3 When a license or certificate holder voluntarily resigns in the face of disciplinary action for immorality and an investigation has been initiated by the employing authority, the employer shall, upon accepting the resignation, give written notice to the Secretary.

4.9.1.1.4 Upon receipt of written notification from the employing authority, the Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his/her designee within thirty (30) days.

4.9.1.1.5 If the licensee fails to request a formal hearing before the Secretary or his/her designee within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license or certificate.

4.9.1.2 Revocation by the Secretary of Education

4.9.1.2.1 The Secretary may initiate proceedings to revoke a license or certificate holder's license or certificate when she/he has good reason to believe that any of the following circumstances exist:

4.9.1.2.1.1 The license or certificate holder has been convicted of a crime which is evidence of immorality; or

4.9.1.2.1.2 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty or falsification of credentials.

4.9.1.2.2 The Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his/her designee within thirty (30) days.

4.9.1.2.3 If the licensee fails to request a formal hearing before the Secretary or his/her designee within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license or certificate.

4.9.2 Duty of License or Certificate Holder to Report.

4.9.2.1 Notwithstanding any other provisions stated herein, a license or certificate holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:

4.9.2.1.1 The license or certificate holder is dismissed by an employing authority for immorality;

4.9.2.1.2 The license or certificate holder voluntarily resigns employment in the face of disciplinary action for immorality or an open investigation for immorality;

4.9.2.1.3 The license or certificate holder is convicted of a crime which is evidence of immorality; or

4.9.2.1.4 The license or certificate holder has had a certificate or license revoked in another jurisdiction for immorality, misconduct in office, incompetency, willful neglect of duty, disloyalty or falsification of credentials.

4.9.2.2 The failure of the license or certificate holder to report any of the above events to the Secretary shall be grounds for revoking a license or certificate.

4.9.2.3 When a license or certificate is revoked, all standard and emergency certificates held by the license or certificate holder shall be revoked.

4.10 Standard Certificate

4.10.1 The Department shall issue a standard certificate to a non-public school educator who holds a valid Delaware initial, continuing or advanced license; or limited

standard, standard, or professional status certificate issued prior to August 31, 2003, who has:

4.10.1.1 Acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

4.10.1.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a standard certificate is requested; or

4.10.1.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a standard certificate in the area for which a standard certificate is sought; or

4.10.1.1.3 Graduating from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in the area of the standard certificate requested; or

4.10.1.1.4 Graduating from a state approved educator preparation program offered by a regionally accredited college or university, with a major in the area of the standard certificate requested, where the state approval body employed the appropriate NCATE specialty organization standards; or

4.10.1.1.5 Meeting any additional options set forth in 14 **DE Admin. Code** 1516.3.1; or

4.10.1.2 Graduated from an educator preparation program offered by a Delaware higher education institution approved by the Department pursuant to 14 **DE Admin. Code** 399, with a major in the area of the standard certificate requested; or

4.10.1.3 Achieved a passing score on a Praxis II examination in the area requested, as established by the Professional Standards Board, in consultation with the Department and with concurrence with the State Board of Education; or

4.10.1.4 A valid and current certificate from another state in the area for which a standard certificate is sought.

4.10.1.4.1 A "valid and current certificate from another state" means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

4.10.1.4.2 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

4.10.2 Educators may hold certificates in more

than one area.

4.10.3 An applicant for a standard certificate shall submit:

4.10.3.1 official transcripts; or

4.10.3.2 official scores on the Praxis II examination; or

4.10.3.3 evidence of passage of the National Board for Professional Teaching Standards Certificate; or

4.10.3.4 an official copy of the out-of-state license or certification, if applicable.

4.10.3.5 If applied for simultaneously with application for an initial license, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

4.10.4 If an applicant holds a valid initial, continuing, or advanced Delaware license; or a limited standard, standard or professional status certificate issued prior to August 31, 2003 and is requesting additional standard certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill and/or education required for the additional standard certificate requested is required.

4.10.5 A standard certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's initial, continuing, or advanced license or limited standard, standard, or professional status certificate is revoked in accordance with section 4.8.

DEPARTMENT OF EDUCATION

**Education Impact Analysis Pursuant To
14 Del.C. Section 122(d)
14 DE Admin. Code 714**

714 Professional Employee Work Stoppage or Strike

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 714 Professional Employee Work Stoppage or Strike by adding charter schools to the regulation. In addition the words "of Education" have been added to the references to a local board and the reference to the **Delaware Code** has been corrected.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement

standards? The amended regulation addresses employee work stoppages and strikes not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses employee work stoppages and strikes not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses employee work stoppages and strikes not students' healthy and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses employee work stoppages and strikes not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity?

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

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

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

714 Professional Employee Work Stoppage or Strike

1.0 If it is determined that illegal activity such as a work stoppage or strike has taken place, the local board Board of Education or charter school shall:

1.1 Adopt a resolution informing the exclusive negotiating representative that the employee organization has violated the terms of 14 ~~Del.C. §4014~~ Del.C. §4016, and ~~that the certification of~~ such organization as the exclusive representative will be revoked at a time to be determined by the ~~board of education~~ local Board of Education or charter school;

1.2 Refrain from making payroll deductions for the dues of any employee organization, which violated the law unless such dues are deducted pursuant to a court order entered for the purpose of securing the payment of a contempt fine;

1.3 Deduct salary for unexcused absence in accordance with 14 ~~Del.C. §1320~~;

1.4 Execute items 1.2 and 1.3 above in the preparation of the next regular payroll;

1.5 Require a medical certificate for each employee absent claiming sick leave during the period of the strike.

2.0 As a part of any settlement following a strike or work stoppage, the local ~~board~~ Board of Education or charter school shall not enter into any direct or implied agreement, which would permit school days lost because of the strike to be rescheduled. Similarly, the local ~~board~~ Board of Education or charter school shall not agree to extend the school year or to request such an extension from the Secretary of Education.

DEPARTMENT OF EDUCATION

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d) 14 DE Admin. Code 725

725 School Administrator Contracts/Agreements

A. Type of Regulatory Action Required

Re-authorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to re-authorize regulation 14 **DE Admin Code 725** School Administrator Contracts/Agreements. The only change is to add the words "of Education" after the words "local Board" for the purpose of clarity.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses school administrator contracts/agreements not student achievement.

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

regulation addresses school administrator contracts/agreements not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses school administrator contracts/agreements not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses school administrator contracts/agreements not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

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

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

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

725 School Administrator Contracts/Agreements

1.0 Duties of a School Administrator

1.1 The Administrator shall faithfully perform those duties which may be assigned by the local Board of Education and shall serve the School District in a professional manner. The Administrator shall observe and comply with the laws of the State of Delaware and with the regulations of the State Department of Education and the

local Board of Education as currently in force and as from time to time amended, enacted or promulgated.

2.0 Non-renewal of the Existing Contracts/Agreements

2.1 Failure on the part of the local Board of Education or the Administrator to notify the other in writing by certified mail, no later than six (6) months prior to the expiration of the Agreement, of either party's intent not to renew the Agreement, will automatically result in a one year extension of the existing Agreement.

3.0 Termination of a Contract with a School Administrator Prior to Expiration of the Agreement

3.1 The Administrator shall not vacate his or her position during the term of this Agreement without the written consent of the local Board of Education.

3.2 The local Board of Education shall not terminate the Contract, prior to the expiration date, except for good and just cause and shall provide the opportunity for a fair hearing before the local Board of Education or before a Hearing Officer designated by the local Board of Education. Prior to any hearing in regard to the termination of the Administrator, the local Board of Education shall serve the Administrator with a written statement of the reasons for termination.

3.3 If the local Board of Education designates a Hearing Officer to conduct such a hearing, a majority of the local Board of Education shall convene to review the record of the proceedings before the Hearing Officer and the Hearing Officer's report and recommendation to the local Board of Education, and within fifteen (15) days of the hearing before the Hearing Officer, shall submit to the Administrator its decision in writing.

3.4 If the Administrator chooses to be represented by legal counsel, all legal expenses incurred by the Administrator in connection with any termination hearing shall be borne by the Administrator.

3.5 Appeal from a decision of the local Board of Education concerning the provisions of the Agreement may be made to the State Board of Education.

3 DE Reg. 1077 (2/1/00)

DEPARTMENT OF EDUCATION

Education Impact Analysis Pursuant To

14 Del.C. Section 122(d)

14 DE Admin. Code 805

805 The School Health Tuberculosis (TB) Control Program

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 805 The School Health Tuberculosis (TB) Control Program. The amendments change the requirement for school staff, volunteers and new school enterers concerning the Mantoux tuberculin skin test. This regulation was advertised previously in the May 1, 2004 Volume 7 Issue 11, the July 1, 2004 Volume 8 Issue 1 and the September 1, 2004 Volume 8 Issue 3 *Register of Regulations*. In this version two additional definitions have been added and the definitions are all at the beginning of the regulation. Changes have been made to the last section (now 5.0) and the new title is Tuberculosis Status Verification and Follow Up. In addition changes have been made to the other sections for clarity and accuracy. A non-regulatory note was also added for 14 DE Admin. Code 930 Supportive Instruction (Homebound).

C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses TB testing not achievement standards.

2. Will the regulation help ensure that all students receive an equitable education? The amended regulation addresses TB testing not equity issues.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses TB testing which is a health and safety issue and the change from requiring a skin test to using a questionnaire is recommended by the Delaware Division of Public Health.

4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation addresses TB testing not students' legal rights.

5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will add the process of administering the questionnaire but will substantially reduce the amount of actual testing.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? No, there is not a less burdensome method for addressing the purpose of the regulation than amending the regulation.

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

805 The School Health Tuberculosis (TB) Control Program

1.0 School Employees, Substitutes, Student Teachers, and Contract Employees

All school employees, substitutes, student teachers, and contract employees (including bus drivers) shall receive the Mantoux tuberculin skin test or show proof of being tested in the past 12 months during the first 15 working days of employment.

1.1 Present employees, substitutes, and contract employees shall show proof of Mantoux tuberculin skin test results to the district designee by October 15, every fifth year of employment.

1.2 Student teachers need not be retested if they move from district to district as part of their student teaching assignments.

2.0 Volunteers

Volunteers, those persons who give their time to help others for no monetary reward and who share the same air space with students and staff on a regularly scheduled basis, shall complete the Delaware Department of Education's Health Questionnaire for Volunteers in Public Schools prior to their assignment. Should the volunteer answer affirmatively to any of the questions, he/she must provide proof of a Mantoux tuberculin skin test in the past 12 months before beginning their assignment.

2.1 Volunteers shall complete the Delaware Department of Education's Health Questionnaire for Volunteers in Public Schools every fifth year.

2.1.1 The district designee(s) shall collect and monitor the volunteer questionnaires. These questionnaires will be stored in the School Nurse's office in a confidential manner.

3.0 Students

All new school enterers shall show proof of a Mantoux tuberculin skin test results within the past 12 months or follow the recommendations of the American Academy of Pediatrics (AAP). Health Care Providers must send documentation of the decisions. Multi-puncture skin tests will not be accepted. A school enterer is defined as any child between the ages of one year and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools.

3.1 School nurses shall record the results of the Mantoux tuberculin skin test in the School Health Record.

3.2 Tuberculin skin test requirements may be waived for children whose parent(s) or guardian(s) present a notarized document that tuberculin skin testing is against their religious beliefs.

4.0 Positive Reactors

4.1 Positive reactors (those currently identified and those with a history) need verification from a Health Care Provider or Division of Public Health indicating:

4.1.1 Skin test reaction recorded in millimeters.

4.1.2 Current disease status, i.e. contagious or non-contagious.

4.1.3 Current treatment, completion of preventive treatment for TB infection, or chemotherapy for TB disease.

4.1.4 Date when the individual may return to their school assignment without posing a risk to the school setting.

4.2 If documentation of the test is available, the known positive reactor need not have this tuberculin skin test but provide the above information related to disease status and treatment.

4.1.1 Verification from a Health Care Provider or Division of Public Health shall be required only once if treatment was completed successfully.

4.2 If documentation of the test is unavailable, the individual should be tested. If the individual refuses to be skin tested again, the individual shall provide from a Health Care Provider or the Division of Public Health information related to disease status and treatment.

4.3 Updated information regarding disease status and treatment shall be provided to the district designee by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.

1 DE Reg. 1971 (6/1/98)

3 DE Reg. 440 (9/1/99)

1.0 Definitions:

"New School Enterer" means any child between the ages of one year and twenty one (21) years entering or being admitted to a Delaware public school for the first time.

including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools. For purposes of this regulation, "new school enterer" shall also include any child who is re-enrolled in a Delaware public school following travel or residency of one month in a location or facility identified by the Delaware Division of Public Health as an area at risk for TB exposure.

"School Staff and Extended Services Personnel" means all persons hired as full or part time employees in a public school who are receiving compensation to work directly with students and staff. This includes, but is not limited to teachers, administrators, substitutes, contract employees, bus drivers and student teachers whether compensated or not.

"Tuberculosis Risk Assessment" means a formal assessment by a healthcare professional to determine possible tuberculosis exposure through the use of a health history or questionnaire.

"Verification" means a documented evaluation of the individual's disease status.

"Volunteers" mean those persons who give their time to help others for no monetary reward and who share the same air space with public school students and staff on a regularly scheduled basis.

2.0 School Staff and Extended Services Personnel

2.1 School staff and extended services personnel shall provide the Mantoux tuberculin skin test results from a test administered within the past 12 months during the first 15 working days of employment.

2.1.1 Tuberculin skin test requirements may be waived for public school staff and extended services personnel who present a notarized statement that tuberculin skin testing is against their religious beliefs. In such cases, the individual shall complete the *Delaware Department of Education TB Health Questionnaire for School Employees* or provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

2.1.1.1 If a school staff member or extended services person, who has received a waiver because of religious beliefs, answers affirmatively to any of the questions in the *Delaware Department of Education TB Health Questionnaire for School Employees* he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

2.1.2 Student teachers need not be retested if they move from district to district as part of their student teaching assignments.

2.2 Every fifth year, by October 15th, all public school

staff and extended services personnel shall complete the *Delaware Department of Education TB Health Questionnaire for School Employees* or, within two (2) weeks, provide Mantoux tuberculin skin test results administered within the last twelve (12) months.

2.2.1 If a school staff member or extended services staff member answers affirmatively to any of the questions in the *Delaware Department of Education TB Health Questionnaire for School Employees* he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

2.3 All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential personnel medical information.

3.0 Volunteers

3.1 Volunteers shall complete the *Delaware Department of Education's TB Health Questionnaire for Volunteers in Public Schools* prior to their assignment and every fifth year thereafter.

3.1.1 If the volunteer answers affirmatively to any of the questions, he/ she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to the students or staff.

3.2 Each public school nurse shall collect and monitor all documentation related to the School Health Tuberculosis (TB) Control Program and store them in the school nurse's office in a confidential manner.

4.0 New School Enterers

4.1 New school enterers shall show proof of tuberculin screening results as described in 4.1.1 and 4.1.2 including either results from the Mantoux Tuberculin test or the results of a tuberculosis risk assessment.

4.1.1 Health care providers shall provide documentation of the Mantoux Tuberculin test results or the tuberculosis risk assessment results for the school. Multi-puncture skin test results will not be accepted.

4.1.2 If the new school enterer is in compliance with the other school entry health requirements, a school nurse who is trained in the use of the *Delaware Department of Education TB Risk Assessment Questionnaire for Students* may administer the questionnaire to the student's parent(s), guardian(s) or Relative Caregiver or to a new school enterer who has reached the statutory age of majority (18).

4.1.2.1 If a student's parent(s), guardian(s) or Relative Caregiver or a student 18 years or older answers affirmatively to any of the questions, he/she shall, within two (2) weeks, provide proof of Mantoux tuberculin skin test

results or provide verification from a licensed health care provider or the Division of Public Health that the student does not pose a threat of transmitting tuberculosis to staff or other students.

4.2 School nurses shall record and maintain documentation relative to the School Health Tuberculosis (TB) Control Program.

5.0 Tuberculosis Status Verification and Follow-up

5.1 Tuberculosis Status shall be determined through the use of a tuberculosis risk assessment, tuberculin skin test and other testing, which may include x-ray or sputum culture. Individuals who either refuse the tuberculin skin test or have positive reactions to the same, or give positive responses to a tuberculosis risk assessment shall provide verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to staff or other students.

5.1.1 Verification shall include Mantoux results recorded in millimeters (if test was administered), current disease status (i.e. contagious or non-contagious), current treatment (or completion of preventative treatment for TB) and date when the individual may return to their school assignment without posing a risk to the school setting.

5.1.2 Verification from a health care provider or Division of Public Health shall be required only once if treatment was completed successfully.

5.1.3 Updated information regarding disease status and treatment shall be provided to the public school by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.

5.2 In the event an individual shows any signs or symptoms of active TB infection, he/she must be excluded from school until all required medical verification is received by the school.

1 DE Reg. 1971 (6/1/98)

3 DE Reg. 440 (9/1/99)

Non-regulatory note: See 14 DE Admin. Code 930 Supportive Instruction (Homebound)]

PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 307

Educational Impact Analysis Pursuant To

14 Del.C. Section 122(d)

307 Certification Administrative – Director Of Special Education

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to amend **DE Admin. Code 307 Certification Administrative – Director of Special Education**. The regulation applies to the certification of educators as Directors of Special Education, as established by 14 **Del.C.** §1220(a). The regulation is being amended to align it with the statutory changes in 14 **Del.C.** §1220(a), and to require that a candidate complete an NCATE or NASDTEC approved educator preparation program or an approved alternative routes to certification program for school leaders. The requirements for Supervisor of Special Education, as set forth in **DE Admin. Code 309**, are incorporated into the amended regulation. The regulation will be renamed to make it consistent with the titles of other Professional Standards Board regulations and will be renumbered 1523 to reflect its movement to the Professional Standards Board section of the **DE Admin. Code**.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by educational leaders support and lead Delaware educators and establish and sustain positive environments which encourage high student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all school administrators hired to lead buildings or districts meet high standards for certification.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation address educator certification. Regulations concerning high standards and appropriate credentials and training for school leaders help to ensure that all students' health and safety are adequately protected. Specific issues governed by IDEA concerning the rights of students with disabilities will be protected by having adequately prepared administrators leading programs for students with disabilities.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses school leader certification, not students' legal rights. Appropriate credentials and training for school leaders will help to ensure that all 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 will preserve the necessary authority and flexibility of decision makers at the

local board and school level.

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

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subjects to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

1523 307 Certification Administrative Standard Certificate - Director of Special Education Effective July 1, 1993

1.0 Content.

1.1 This regulation shall apply to the issuance of a Standard Certificate for Director of Special Education, pursuant to 14 **Del.C.** §1220(a).

2.0 Definitions.

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

“Administrative Experience” means experience in a pK-12 setting as an assistant principal, principal, School Leader I, or School Leader II.

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

“Standard Certificate” means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a

particular subject, or teach a category of students.

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

“Teaching Experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

3.0 The following shall be required for the Standard Certificate for a Director of Special Education.

~~1.0~~ The following is required for the Standard License

~~1.1~~ Degree required

3.1 Educational requirements.

3.1.1 A master’s degree in special education from a regionally accredited college or university where the program is NCATE approved or state approved, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; and

3.1.1.1 Successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates shall fulfill the following requirements:

3.1.1.1.1 A minimum of twenty-four (24) semesters hours of graduate level course work in administration, completed either as part of the master’s degree or in addition to it, to include at least one course in each of the following areas, unless otherwise indicated:

3.1.1.1.1.1 Supervision/Evaluation of Staff;

3.1.1.1.1.2 Curriculum Development;

3.1.1.1.1.3 School Law/Legal Issues in Education;

3.1.1.1.1.4 Human Relations; and

3.1.1.1.1.5 Special Education (12 credits)(may include courses in curriculum, instruction, methods, and/or administration); or

3.1.2 ~~4-1-1~~ A Master's degree in any field from a regionally accredited college or university; ~~plus and~~

3.1.2.1 30 graduate level credits—semester hours in Special Education, to include at least one course in each of the areas set forth in 3.1.1.1.1.1 through 3.1.1.1.1.5; or

3.1.3 A current and valid special education administrative certificate from another state or the District of Columbia.

3.2 Experience requirements.

3.2.1 A minimum of three (3) years of teaching experience with children with disabilities at the pK-12 level; or

3.2.2 A minimum of three (3) years of professional experience with children with disabilities at the

pK-12 level, in any setting, in a position requiring certification or licensing by the appropriate regulatory body, including, but not limited to a school psychologist, speech pathologist, or audiologist, regardless of whether the applicant's position meets the definition of "teaching experience"; or

3.2.3 A minimum of three (3) years administrative experience with children with disabilities at the pK-12 level; or

3.2.4 Any combination of these types of experiences which totals a minimum of three (3) years.

1.5 Experience

1.2.1 three years of administrative experience as a supervisor of programs for Special Education or as an administrator in a school for the disabled and,

1.3 Specialized Professional Preparation

1.3.1 Master's degree in Administration and Supervision of Programs for Special Education from a regionally accredited college plus 30 graduate level semester hours in Special Education or,

1.3.2 A Master's degree from a regionally accredited college, in any field, plus 30 graduate semester hours. A total of 30 semester hours of graduate level course work shall be from the area of Special Education, taken either within or beyond the Master's degree and,

1.3.3 The individual shall meet the State of Delaware requirements for a Standard License as a Supervisor of Special Education or a Principal/ of a School for the Disabled.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in section 1.0.

2.1.1 Master's degree from a regionally accredited college and,

2.1.2 Meets the requirement in 1.2 and,

2.1.3 Within six semester hours of meeting the requirements in 1.3.1 or 1.3.2, and 1.3.3

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

**PROFESSIONAL STANDARDS BOARD
14 DE Admin. Code 309**

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

309 Certification Administrative – Supervisor Of Special Education

A. Type Of Regulatory Action Requested
Repeal

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to repeal 14 **DE Admin. Code** 309 Certification Administrative – Supervisor of Special Education. It is necessary to repeal this regulation as it is being incorporated into amended 14 **DE Admin. Code** 1523, Director of Special Education, as part of the Professional Standards Board's continuing efforts to reduce the number and complexity of regulations governing the licensure and certification of educators.

~~**309 Certification Administrative – Supervisor of Special Education Effective July 1, 1993**~~

~~1.0 The following shall be required for the Standard License~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college and,~~

~~1.3 Experience~~

~~3.3.1 Three years of full time, classroom teaching experience as a special education teacher, while holding a Standard License for teaching Exceptional Children Standard certification is limited to LD, SED, MD, VI, HI, PI, Autistic/Severely Disabled and combinations thereof and,~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Master's degree from a regionally accredited college or university with a major in Administration and Supervision of Programs for Exceptional Children and,~~

~~1.3.2 Eligible for a Standard License to teach Exceptional Children LD, SED, MD, VI, HI, Autistic/ Severely Disabled and combinations thereof or,~~

~~1.3.3 Master's degree from a regionally accredited college and,~~

~~1.3.3.1 Eligible for a Standard Administrative License as an Administrative Supervisor in the State of Delaware and,~~

~~1.3.3.2 A three semester hour, graduate level course in the Administration and Supervision of Programs for Exceptional Children and,~~

~~1.3.3.3 Eligible for a Standard License in Exceptional Children LD, SED, MD, VI, HI, Autistic/ Severely Disabled and combinations thereof.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0 or,~~

~~2.1.1 Master's degree from a regionally accredited college and,~~

~~2.1.2 Meets the requirements in 1.2 and,~~

~~2.1.3 Is eligible for a Standard License to teach Exceptional Children in 1.3.2 and,~~

~~2.1.4 Within six semester hours of meeting the course work requirements in 1.3.4.1 and 1.3.4.2.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

PROFESSIONAL STANDARDS BOARD 14 DE Admin. Code 1501

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

1501 Knowledge, Skills And Responsibility Based Supplements For Educators

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** §1501 Knowledge, Skills and Responsibility Based Salary Supplements for Educators. This regulation includes the requirements for, and payment of, salary supplements established by 14 **Del.C.** §1305. This regulation applies to the awarding of salary supplements as a percentage of the state portion of an educator's annual salary for gaining knowledge and skills that lead to more effective instruction, for achieving certification from the National Board for Professional Teaching Standards, or from an equivalent program, and/or for accepting additional responsibility supplements that impact student achievement. It is necessary to amend this regulation to clarify the effective date of salary supplements paid to educators who

complete professional development clusters.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement through enhanced educator knowledge and skills. The regulation requires that knowledge and skills lead to more effective instruction and that responsibility supplements impact student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that all educators have access to high quality opportunities to acquire knowledge and skills that lead to more effective instruction. It does not address student equity.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator knowledge, skills, and responsibility based salary supplements, not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator knowledge, skills, and responsibility based salary supplements, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? The knowledge, skills, and responsibility based salary supplements are subject to an annual appropriation by the Legislature. The Department of Education shall provide for funding the supplement provisions of this regulation in its annual budget. There is no additional cost to local school boards for compliance with the regulation.

1501 Knowledge, Skills, And Responsibility Based Salary Supplements For Educators

1.0 Content:

1.1 The following requirements shall be met in order to receive the salary supplements established by 14 **Del.C.** §1305. This regulation shall apply to the awarding of salary supplements as a percentage of the state portion of an educator's annual salary paid in accordance with the provisions of 14 **Del.C.** §1305 for gaining knowledge and skills that lead to more effective instruction, for achieving certification from the National Board for Professional Teaching Standards, or from an equivalent program, and for accepting additional responsibility assignments that impact student achievement. Supplements are available subject to an annual appropriation from the Legislature.

5 DE Reg. 2297 (6/1/02)

8 DE Reg. 73 (7/1/04)

2.0 Definitions:

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

"Approved Cluster" means a professional development cluster that meets the criteria specified in 3.1 of this Regulation and that has been approved by the Standards Board and the State Board as the basis for awarding a specific salary supplement.

"Delaware Administrator Standards" means standards for education administrators approved by the Standards Board and the State Board of Education, as per 14 **DE Admin. Code** 1594, Delaware Administrator Standards.

"Delaware Content Standards" means K-12 curriculum content standards approved by the Secretary of Education and the State Board of Education, as per 14 **DE Admin. Code** 501, State Content Standards.

"Delaware Professional Teaching Standards" means standards for teachers approved by the Standards Board and the State Board of Education, as per 14 **DE Admin. Code** 1593, Delaware Professional Teaching Standards.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 **Del.C.** Ch. 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 **Del.C.** §1203, but does not include substitute teachers.

"Hours of Engagement" means time spent in classes, seminars, workshops, collaborative work groups, learning communities, cohort, school, or district teams, and time engaged in research-based activities which result in the acquisition of knowledge and skills which lead to more effective instruction.

"Knowledge and Skills" means understandings and abilities that, when acquired by educators, lead to more effective instruction.

"NSDC Standards for Staff Development" means standards adopted by the National Staff Development Council for high quality staff and professional development.

"Professional Development Cluster" or **"Cluster"** means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

"Provider" means a local school district, charter school, college, educationally related organization, or professional organization that delivers professional development clusters approved by the Standards Board and the State Board to educators.

"Reauthorization of an Approved Cluster" means the process a provider uses to seek continued approval, after the initial five year approval period, of an approved cluster.

"Replication of Approved Clusters" means an approved cluster being delivered by a provider other than the developer of the cluster.

"Re-qualification of an Approved Cluster" means the process a provider uses to set forth the activities that an educator would engage in to qualify for an extension of five(5) additional years of a salary supplement.

"Responsibility Assignments" means additional assignments for educators that are academic in nature and that impact student achievement. For purposes of this regulation and pursuant to 14 **Del.C.** §1305(o) extra curricular or non-instructional supervisory activities are specifically excluded from responsibility assignments.

"Salary Supplement", when referring to knowledge, skills, and responsibility based supplements, means additional state salary, as described in 14 **Del.C.** §1305.

"Standards Board" means the Professional Standards Board of the State of Delaware established in response to 14 **Del.C.** §1205.

"State Board" means the State Board of Education of the State of Delaware established in response to 14 **Del.C.** §104.

8 DE Reg. 73 (7/01/04)

3.0 Knowledge and Skills:

3.1 The Standards Board shall, on no less than an annual basis, submit to the State Board for approval, lists of proposed new professional development clusters in specific areas of knowledge and skills which shall serve as the basis for awarding salary supplements.

3.2 The criteria for evaluating professional development clusters designed to promote acquisition of knowledge and skills are based upon:

3.2.1 Delaware Professional Teaching Standards or Delaware Administrator Standards or their equivalent (i.e., national standards from educators' specialty-area organizations that complement the Delaware standards).

3.2.2 Delaware content standards or their equivalent (i.e., national standards from content-specialty groups, if there are no Delaware standards for the content area).

3.2.3 National Staff Development Council Standards for Staff Development (NSDC, 2001).

3.3 Clusters may include a combination of formal courses at graduate or undergraduate levels, and other research-based activities which conform to the NSDC Standards for Staff Development.

3.4 Clusters may be comprised of related segments which may be completed separately over a specified period of time, not to exceed 5 years, as included in the cluster design and approved by the Standards Board and the State Board.

3.5 Voluntary performance or assessment-based specialty certifications awarded for meeting standards established by national professional organizations shall be evaluated as proposed clusters in accordance with this regulation.

3.6 The specific percentage of salary assigned to each knowledge and skills supplement, provided that no supplement may be less than 2% nor more than 6% of an educator's base state salary, shall be submitted with the list of professional development clusters and specific areas of knowledge and skills.

3.6.1 A cluster qualifying an educator for a supplement of 2% shall consist of no less than 90 hours of engagement by the educator.

3.6.2 A cluster qualifying an educator for a supplement of 4% shall consist of no less than 180 hours of engagement by the educator.

3.6.3 A cluster qualifying an educator for a supplement of 6% shall consist of no less than 270 hours of engagement by the educator.

3.7 Knowledge and skills which, once acquired, are expected to lead to more effective instruction for the duration of an educator's career are designated as permanent supplements.

3.8 Knowledge and skills related to new technologies, curriculum adoptions, and short-term strategies shall have a

duration of five (5) years, Educators may re-qualify for a cluster for an additional five (5) years by completing the activities set forth in accordance with cluster re-qualification procedures established by the Standards Board.

3.9 The provider shall present an educator who satisfactorily completes an approved cluster with a certificate of completion to verify eligibility for a salary supplement. The certificate shall certify the knowledge and skills acquired and demonstrated by the educator. The provider shall provide the Department with a list of educators who have satisfactorily completed an approved cluster.

8 DE Reg. 73 (7/01/04)

4.0 Replication of Approved Clusters.

4.1 The developer of an approved cluster shall decide if a cluster can be replicated, and shall set forth the conditions, if any, under which the approved cluster may be offered by a provider other than the developer of the approved cluster. The Professional Development and Associated Compensation Committee shall review and approve applications for replication of a cluster, and shall forward approved applications for replication to the Standards Board for action. The Standards Board shall forward approved applications for replication to the State Board for concurrence.

5 DE Reg. 2297 (6/1/02)

8 DE Reg. 73 (7/01/04)

5.0 Procedures for Re-qualification of a Cluster.

5.1 The cluster provider may submit a proposal for activities for re-qualification to update an individual educator's skills and knowledge acquired in an approved cluster to the Professional Development and Associated Compensation Committee for review. The Professional Development and Associated Compensation Committee may recommend to the Standards Board approval of activities for re-qualification of a cluster for a period not to exceed five (5) years. The Standards Board and the State Board shall review and approve all re-qualification requirements.

5.2 The proposal for re-qualification activities of an approved cluster must include activities which are at least as rigorous as the original activities of the cluster and shall include, but are not limited to, the following:

5.2.1 The planned activities required to update the skills and knowledge acquired.

5.2.2 The number of hours of engagement the participant must participate in to be eligible for re-qualification of a salary supplement. The number of hours of engagement for the re-qualification of a cluster must be the same level as the original cluster, unless the provider submits re-qualification activities for a lesser percentage (i.e., a 4% cluster re-qualifies as a 2% cluster).

5.2.3 The specific skills and knowledge that will

be updated or re-qualified and how such activities will directly impact students in the classroom.

5.3 All proposals for re-qualification activities must be reviewed by the Professional Development and Associated Compensation Committee, and approved by the Standards Board and the State Board.

8 DE Reg. 73 (7/01/04)

6.0 Procedures for Reauthorization of Approved Clusters.

6.1 A provider of a cluster may apply for reauthorization of a cluster by submitting an application for reauthorization to the Professional Development and Associated Compensation Committee, which shall review the application and, if appropriate, forward a recommendation to the Standards Board and the State Board for approval. Reauthorization approval of a cluster shall be for a period of five (5) years.

6.2 Approval of a cluster is valid for five years, and may be reauthorized upon review and approval of an application for reauthorization from the provider.

6.3 Cluster developers shall, when applying for reauthorization, provide the Professional Development and Associated Compensation Committee with an evaluation of the effectiveness of a cluster in achieving the stated goals. The evaluation shall include evidence of a positive impact on educators' skills and knowledge and student learning. Evaluation reports shall be submitted on the form provided by the Standards Board.

8 DE Reg. 73 (7/01/04)

7.0 Revocation of Approval of a Cluster.

7.1 Cluster applications are approved for a period of five years. The Standards Board may, however, revoke the approval of a cluster at any time during the five year period of approval for good cause. "Good cause" includes, but is not limited to:

7.1.1 Failure on the part of the provider to complete the delivery of a cluster; or

7.1.2 Failure of the provider to submit evidence of completers to DOE; or

7.1.3 Evidence, as supplied by participant evaluation and verified by the Professional Development and Associated Compensation Committee, of failure to provide content and activities as set forth in the approved application.

7.1.4 Other conduct which negatively impacts the ability of educators to gain new knowledge and skill, such as misrepresentation of the cluster content on the application.

8 DE Reg. 73 (7/01/04)

8.0 Responsibility Assignments.

8.1 The Standards Board shall, on no less than an

annual basis, submit to the State Board a list of specific responsibility assignments for approval as the basis for awarding responsibility salary supplements.

8.2 Responsibility assignments shall be:

8.2.1 Focused on school improvement issues that impact student achievement;

8.2.2 Supported by high quality, targeted professional development, and

8.2.3 Academic in nature.

8.3 In order to qualify for a responsibility assignment salary supplement, an educator shall have completed the state approved training program for the position, or, in the absence of a training program, shall meet the criteria set forth for the position by the Standards Board or local district, charter school, or other employing authority, and shall provide state and district approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified responsibility assignment.

8.4 Extra responsibility salary supplements may be renewed.

5 DE Reg. 2297 (6/1/02)

8 DE Reg. 73 (7/01/04)

9.0 Approval of Professional Development Clusters and Responsibilities:

9.1 The Standards Board's Standing Committee on Professional Development and Associated Compensation shall provide the Standards Board with recommendations for approval of professional development clusters, reauthorized clusters, re-qualification activities, and responsibility assignments in accordance with this regulation.

9.2 The Standards Board shall examine the proposed lists and previously approved lists of clusters to evaluate the system of professional development to determine its overall balance and accessibility.

9.3 If approved by the Standards Board, the lists of professional development clusters, reauthorized clusters, re-qualification requirements and responsibility assignments shall be forwarded to the State Board with a recommendation for approval.

9.4 Each district, charter school or other employing authority shall notify educators at least annually, in writing, of the clusters it disapproves from the State Board approved list of knowledge and skills clusters.

8 DE Reg. 73 (7/01/04)

10.0 Educators' Eligibility for Salary Supplements

10.1 Skills and Knowledge Salary Supplements.

10.1.1 The provider will present an educator who satisfactorily completes an approved cluster with a certificate of completion to verify eligibility for a salary supplement. The certificate shall certify the knowledge and skills acquired and demonstrated by the educator.

10.1.2 After completing the entire cluster, the cluster provider shall submit documentation to the Department certifying that the educator fulfilled the requirements of the cluster's design.

10.2 Responsibility Assignments: An educator shall provide the local district, charter school or other employing authority with such information as may be required to enable the local district, charter school or other employing authority to verify that the educator has fulfilled the requirements of 8.3 of this regulation.

8 DE Reg. 73 (7/01/04)

11.0 Payment of Salary Supplements:

11.1 Salary Supplements for Clusters.

11.1.1 Salary supplements earned by educators who are paid in accordance with the provisions of 14 **Del.C.** §1305 as a result of completion of an approved knowledge and skills cluster shall be effective the first of the month following receipt by the Department of satisfactory completion of a cluster, and shall be paid as part of the educator's salary for the duration of the time approved for the cluster by the Standards Board and the State Board. All applications for a salary supplement for the current fiscal year (July 1 - June 30) must be received in the Office of Professional Accountability no later than June 1. Applications received after June 1 will be approved effective the first day of the next fiscal year. No educator is entitled to payment for the same cluster more than once.

11.2 Salary Supplements for Extra Responsibility Assignments.

11.2.1 Salary supplements earned by educators who are paid in accordance with the provisions of 14 **Del.C.** §1305 as a result of fulfilling extra responsibility assignments shall be effective the first of the month following receipt by the Department of documentation from the school district, charter school, or other employing authority of satisfactory completion of the duties associated with the extra responsibility assignment, and shall be paid annually as a single payment or as an additional salary amount spread evenly across an educator's contract period.

8 DE Reg. 73 (7/01/04)

12.0 Salary supplements paid to an educator paid in accordance with the provisions of 14 **Del.C.** §1305 shall not exceed 15% of the State share of the educator's salary.

8 DE Reg. 73 (7/01/04)

PROFESSIONAL STANDARDS BOARD

14 **DE Admin. Code** 1531

Educational Impact Analysis Pursuant To

14 **Del.C.** Section 122(d)

1531 Certification Administrative – School Leader I

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to amend **DE Admin. Code** 1531 Certification Administrative – School Leader I. This regulation applies to the certification of educators as school administrators, as established by 14 **Del.C.** §1220(a). The regulation is being amended to delete references to Director of Special Education, which will remain as an independent regulation.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by educational leaders who support and lead Delaware educators and establish and sustain positive environments which encourage high student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all school administrators hired to lead buildings or districts meet high standards for certification.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification. Regulations concerning high standards and appropriate credentials and training for school leaders help to ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses school leader certification, not students' legal rights. Appropriate credentials and training for school leaders will help to ensure that all 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 will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon

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

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate these regulation.

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

1531 Standard Certificate--School Leader I

1.0 Content.

1.1 The following shall apply to the issuance of a Standard Certificate for Directors, Supervisors, Administrative Assistants, Coordinators, and Managers in instructional areas, except Directors of Special Education (See 14 **DE Code** 1523), pursuant to 14 **Del.C.** §1220.

7 DE Reg. 190 (8/1/03)

7 DE Reg. 1744 (6/1/04)

2.0 Definitions.

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

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

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

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

“Teaching Experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

7 DE Reg. 190 (8/1/03)

7 DE Reg. 1744 (6/1/04)

3.0 The following shall be required for the Standard Certificate for Directors, Supervisor, Administrative Assistants, Coordinators, and Managers in instructional areas.

3.1 Educational requirements

3.1.1 A master’s degree in educational leadership from an NCATE or state approved program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards from a regionally accredited college or university, or

3.1.2 A master’s degree in 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 from a regionally accredited college or university and a current and valid equivalent central office administrative certificate from another state, or

3.1.3 A master’s degree in any field from a regionally accredited college or university and successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternatives routes to certification program occurs, candidates completing the Standard Certificate in accordance with 3.1.3.1 of this regulation shall fulfill the following requirements;

3.1.3.1 A minimum of twenty-four semester hours of graduate level course work, completed either as part of the master’s degree or in addition to it, in administration, to include at least one course in each of the following areas:

3.1.3.1.1 Curriculum Development,

3.1.3.1.2 Supervision/Evaluation of

Staff,

3.1.3.1.3 Human Relations, and

3.1.3.1.4 School Law/Legal Issues and

3.1.3.1.5 In the area(s) to be

supervised (may include courses in curriculum, instruction, and/or methods), and

3.2 Experience requirements

3.2.1 A minimum of three (3) years of teaching experience at the pK-12 level. ~~Teaching experience for Directors, Supervisors, Administrative Assistants, Coordinators, and Managers of programs for exceptional children must have been with exceptional children.~~

7 DE Reg. 190 (8/1/03)

7 DE Reg. 1744 (6/1/04)

PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 1540

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

1540 Standard Certificate Science Teacher

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1540 Certification Science Teacher. It is necessary to amend this regulation to clarify some of the requirements for a standard certificate and to add an additional category of certification for integrated science, which is aligned with the Delaware content standards in Science.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? 14 **Del. C.** requires that we promulgate this regulation.

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

1540 Standard Certificate Science Teacher

~~1.0 Content: This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del. C.** §1220 (a), for Science Teacher (required for grades 9-12, and valid in a middle level school, grades 5-8). Certificates issued include chemistry, physics, earth science, biology, general science, and physical science.~~

~~2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

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

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

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

~~3.0 In accordance with 14 **Del. C.** §1220 (a), the Department shall issue a Standard Certificate as a Science~~

Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from a regionally accredited college or university and;

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in Science; or

3.3 Specific Teaching Field

3.3.1 Major in the area of the certificate sought; or,

3.3.2 Completion of an approved teacher education program in the area of the certificate sought; or,

3.3.3 Completion of (at least) the semester hours indicated below for the area of the certificate sought:

3.3.3.1 Chemistry:

3.3.3.1.1 45 semester hours (Required 9-12, valid Chemistry only) Courses should include at least 24 semester hours of Inorganic Chemistry and one course chosen from each of the following pairs: Advanced Inorganic or Physical Chemistry, Organic Chemistry or Biochemistry, Quantitative Analysis or Instrumental Analysis; Laboratory Safety 3 semester hours; Biology 3 semester hours; Physics 3 semester hours; Mathematics 6 semester hours of college algebra or above; Earth Sciences 3 semester hours; Environmental Education 3 semester hours

3.3.3.2 Physics:

3.3.3.2.1 45 semester hours (Required 9-12, valid Physics only) Courses should include at least 24 semester hours with at least 3 semester hours in each of the following areas: Classical Thermodynamics, Electronics, Atomic Physics, and Nuclear Physics; Laboratory Safety 3 semester hours; Biology 3 semester hours; Chemistry 3 semester hours; Mathematics (6 semester hours of college algebra or above); Earth Sciences 3 semester hours; Environmental Education 3 semester hours.

3.3.3.3 Earth Science:

3.3.3.3.1 42 semester hours (Required 7-12, valid Earth Science only) Courses should include at least 24 semester hours with at least 3 semester hours in each of the following areas: Geology, Geography, Climatology, Meteorology, Oceanography, Astronomy; Laboratory Safety 3 semester hours; Biology 3 semester hours; Chemistry 3 semester hours; Mathematics 3 semester hours of college algebra or above; Physics/Physical Science 3 semester hours; Environmental Education 3 semester hours.

3.3.3.4 Biology:

3.3.3.4.1 42 semester hours (Required 9-12, valid Biology and Life Science only) Courses should include at least 24 semester hours with at least 3 semester hours in each of the following areas: Botany; Zoology, Ecology, Genetics, Biochemistry, Physiology and; Laboratory Safety 3 semester hours; Chemistry 3 semester

hours; Physics/Physical Science 3 semester hours; Mathematics 3 semester hours of college algebra or above; Earth Sciences 3 semester hours; Environmental Education 3 semester hours.

3.3.3.5 Physical Science:

3.3.3.5.1 42 semester hours (Required 9-12, Physical Science only, not Physics) Chemistry — coursework to include 12 semester hours including content in structure of matter, bonding acids and bases, chemical reactions, equations, periodicity metals, non-metals and thermodynamics; Physics — coursework to include 12 semester hours content in heat, light, waves electricity, mechanics, sound, and simple machines; Laboratory Safety 3 semester hours; Biology 3 semester hours; Mathematics 6 semester hours of college algebra or above; Earth Science 3 semester hours; Environmental Education 3 semester hours.

3.4 A bachelor's degree with a major in the science discipline for which a Standard Certificate is sought; and a minimum of 24 semester hours Human Development, Methods of Teaching Secondary Science, Teaching of Reading in Science or Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a science teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220 (a), for Science Teacher (required for grades 9-12, and valid in a middle level school, grades 5-8). Certificates issued include Chemistry, Physics, Earth Science, Biology, Physical Science, and Integrated Science.

2.0 Definitions

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

“Department” means the Delaware Department of Education.

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

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

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

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

3.0 In accordance with 14 **Del.C.** §1220 (a), the Department shall issue a Standard Certificate as a Science Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A bachelor's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in the science discipline for which a Standard Certificate is sought; or

3.2 A bachelor's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in the science discipline for which a Standard Certificate is sought, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards; or

3.3 Passage of the appropriate PRAXIS™ II test approved by the Standards Board and the State Board in the science discipline for which a Standard Certificate is sought; or

3.4 A bachelor's degree from a regionally accredited college or university with a major in the science discipline for which a Standard Certificate is sought; and

3.4.1 A minimum of twenty-four (24) semester hours of pedagogy courses from a regionally accredited college or university to include at least three (3) credits in each of the following:

3.4.1.1 Human Development;

3.4.1.2 Methods of Teaching Secondary Science;

3.4.1.3 Teaching of Reading in the Content Areas or Identifying/Treating Exceptionalities;

3.4.1.4 Effective Teaching Strategies; and

3.4.1.5 Multicultural Education; or

3.5 A bachelor's degree and completion of the semester hours indicated below from a regionally accredited college or university for the science discipline for which the Standard Certificate is sought, and completion of the course work set forth in 3.4.1:

3.5.1 Chemistry (Required grades 9-12; valid for Middle Level Science):

3.5.1.1 Forty-two (42) semester hours, including:

3.5.1.1.1 At least twenty-four (24) semester hours in Chemistry with at least three (3) semester hours in each the following, unless otherwise indicated:

3.5.1.1.1.1 Inorganic Chemistry (6 semester hours)

3.5.1.1.1.2 Advanced Inorganic or Physical Chemistry;

3.5.1.1.1.3 Organic Chemistry or Biochemistry;

3.5.1.1.1.4 Quantitative Analysis or

Instrumental Analysis; and

3.5.1.1.2 At least three (3) semester hours in each of the following, unless otherwise indicated:

3.5.1.1.2.1 Biology

3.5.1.1.2.2 Physics;

3.5.1.1.2.3 Mathematics (6

semester hours of college algebra or above);

3.5.1.1.2.4 Earth Sciences; and

3.5.1.1.2.5 Environmental

Education.

3.5.2 Physics (Required grades 9-12; valid for Middle Level Science):

3.5.2.1 Forty-two (42) semester hours, including:

3.5.2.1.1 At least twenty-four (24) semester hours in physics with at least three (3) semester hours in each of the following:

3.5.2.1.1.1 Classical

Thermodynamics;

3.5.2.1.1.2 Atomic Physics;

3.5.2.1.1.3 Nuclear Physics; and

3.5.2.1.2 At least three (3) semester hours in each of the following, unless otherwise indicated:

3.5.2.1.2.1 Biology;

3.5.2.1.2.2 Chemistry;

3.5.2.1.2.3 Mathematics (6

semester hours of college algebra or above);

3.5.2.1.2.4 Earth Science; and

3.5.2.1.2.5 Environmental

Education.

3.5.3 Earth Science (Required grades 9-12; valid for Middle Level Science):

3.5.3.1 Thirty-nine (39) semester hours, including:

3.5.3.1.1 At least twenty-four (24) semester hours in earth science with at least three (3) semester hours in each of the following:

3.5.3.1.1.1 Geology;

3.5.3.1.1.2 Geography;

3.5.3.1.1.3 Climatology;

3.5.3.1.1.4 Meteorology;

3.5.3.1.1.5 Oceanography;

3.5.3.1.1.6 Astronomy; and

3.5.3.1.2 At least three (3) semester hours in each of the following:

3.5.3.1.2.1 Biology;

3.5.3.1.2.2 Chemistry;

3.5.3.1.2.3 Mathematics (college

algebra or above);

3.5.3.1.2.4 Physics/Physical

Science ; and

3.5.3.1.2.5 Environmental

Education.

3.5.4 Biology (Required grades 9-12; valid for

Middle Level Science):

3.5.4.1 Thirty-nine (39) semester hours, including:

3.5.4.1.1 At least twenty-four (24) semester hours in biology, with at least three (3) semesters hours in each of the following:

- 3.5.4.1.1.1 Botany;
- 3.5.4.1.1.2 Zoology;
- 3.5.4.1.1.3 Ecology;
- 3.5.4.1.1.4 Genetics;
- 3.5.4.1.1.5 Biochemistry;
- 3.5.4.1.1.6 Physiology; and

3.5.4.1.2 At least three (3) semester hours in each of the following:

- 3.5.4.1.2.1 Chemistry;
- 3.5.4.1.2.2 Physics/Physical

Science;

3.5.4.1.2.3 Mathematics (college algebra or above);

- 3.5.4.1.2.4 Earth Sciences; and
- 3.5.4.1.2.5 Environmental

Education.

3.5.5 Physical Science (Required grades 9-12; valid for Middle Level Science):

3.5.5.1 Thirty-nine (39) semester hours in science, with at least three (3) semester hours in each of the following, unless otherwise indicated:

3.5.5.1.1 Chemistry (3 semester hours);

- 3.5.5.1.2 Physics (3 semester hours);
- 3.5.5.1.3 Biology (3 semester hours);
- 3.5.5.1.4 Mathematics (6 semester

hours of college algebra or above);

3.5.5.1.5 Earth Science (3 semester hours); and

3.5.5.1.6 Environmental Science (3 semester hours).

3.5.6 Integrated Science (Required grades 9-12; valid for Middle Level Science):

3.5.6.1 A degree in biology, chemistry, physics, earth science, agriscience, or biochemistry or a major in one science discipline; and

3.5.6.2 Twenty-seven (27) semester hours of course work, taken either as part of a degree program or in addition to it, as follows:

3.5.6.2.1 At least nine (9) semester hours of credit in biology, with at least three (3) semester hours in each of the following:

3.5.6.2.1.1 Organismic or Macro Biology;

3.5.6.2.1.2 Molecular or Micro Biology; and

3.5.6.2.1.3 Systems/Environmental Biology; and

3.5.6.2.2 At least three (3) semester hours of credit in earth science, with courses from among the following:

3.5.6.2.2.1 Introductory geology;
3.5.6.2.2.2 Geological processes;
3.5.6.2.2.3 Air/land/water processes;

3.5.6.2.2.4 Weather systems;
3.5.6.2.2.5 Oceanography;
3.5.6.2.2.6 Coastal processes; or
3.5.6.2.2.7 Geophysics; and

3.5.6.2.3 At least six (6) semester hours in chemistry, which may include biochemistry; and

3.5.6.2.4 At least three (3) semester hours in physics, including Newtonian physics or Physics I; and

3.5.6.2.5 At least three (3) semester hours in astronomy.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a science teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

PROFESSIONAL STANDARDS BOARD
14 DE Admin. Code 1542

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

1542 Standard Certificate Science Teacher Middle Level

A. Type Of Regulatory Action Requested
Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1542 Certification Science Teacher Middle Level. It is necessary to amend this regulation to remove the requirements for earth science and physical science from this regulation, as middle school science is taught as an integrated science. This amendment aligns the requirements for a Standard Certificate with the Delaware content standards in Science.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student

achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? 14 Del. C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There

is no additional cost to local school boards for compliance with the regulation.

1542 Standard Certificate B Science Teacher B Middle Level

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Science Teacher - Middle Level (required for grades 7-8, and valid in a middle level school, grades 5-6).

7 DE Reg. 775 (12/1/03)

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

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

7 DE Reg. 775 (12/1/03)

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Science Teacher – Middle Level to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 ~~A Bachelor's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in general science, middle school science, or a science discipline; and or~~

3.2 ~~Professional Education~~ A bachelor's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in general science, middle school science, or a science discipline where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards; or

3.3 Passage of the appropriate PRAXIS™ II test approved by the Standards Board and the State Board in science; or

3.4 A bachelor's degree from a regionally accredited college or university with a major in general science, middle

level science, or a science discipline; and

~~3.4.1 Completion of at least the semester hours indicated below~~ A minimum of twenty-four (24) semester hours of pedagogy courses from a regionally accredited college or university to include:

~~3.4.1.1~~ Human development;

~~3.4.1.2~~ Methods of teaching middle school or secondary science;

~~3.4.1.3~~ Teaching of reading in the content areas or identifying/treating exceptionalities;

~~3.4.1.4~~ Effective teaching strategies; and

~~3.4.1.5~~ Multicultural education; and or

~~3.3.3.1~~ Earth science:

~~3.3.3.1.1~~ Courses should include at least 42 semester hours, with at least 3 semester hours in each of the following: geology, geography, climatology, meteorology, oceanography, astronomy, laboratory safety, biology, chemistry, and mathematics.

~~3.4.1.2~~ General Science:~~3.3.3.2.1~~ Courses should include at least 39 semester hours, with at least 3 semester hours in each of the following, except where noted: laboratory safety,

3.5 Completion of the pedagogy requirements set forth in section 3.4.1 and a total of thirty-six (36) semester hours in science, with a minimum of:

3.5.1 Mathematics (3 semester hours);

3.5.2 Environmental education (3 semester hours);

3.5.3 Earth science (6 semester hours); and

3.5.4 12 semester hours in bBiology (12 semester hours); and

3.5.5 12 semester hours in Cchemistry, physics, and physical science (12 semester hours combined with a minimum of 3 semester hours in each area).

~~3.3.3.3~~ Physical science:

~~3.3.3.3.1~~ Courses should include at least 42 semester hours, with at least 3 semester hours in each of the following, except where noted: chemistry (12 semester hours); physics (12 semester hours); laboratory safety, biology, mathematics (6 semester hours); and earth science.

~~3.2.1~~ Completion of an approved teacher education program in science; or

~~3.2.2~~ Aa minimum of 24 semester hours to include human development; methods of teaching middle school or secondary science; teaching of reading in science or identifying/treating exceptionalities; effective teaching strategies; multicultural education; and

3.3 Specific Teaching Field

3.3.1 Major in the area of the certificate sought;
or

3.3.2 Completion of an approved teacher education program in the area of the certificate sought; or

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Science Teacher B Middle School after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

7 DE Reg. 775 (12/1/03)

PROFESSIONAL STANDARDS BOARD
14 DE Admin. Code 1584

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

1584 Permits Paraeducators

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1584 Permits – Paraeducators. The amendment is necessary to change the date when Title I paraeducators employed prior to January 8, 2002 must meet the requirements from June 30, 2006 to January 8, 2006 to align with the enactment date of *No Child Left Behind*.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for paraeducators.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all paraeducators employed by school districts meet high standards of performance.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the credentialing and training requirements for paraeducators, not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the credentialing and training requirements for paraeducators, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

1584 Permits Paraeducators

1.0 Content

Pursuant to 14 **Del.C.** §1205(a) this regulation shall apply to the qualifications required of Title I Paraeducators, Instructional Paraeducators, and Service Paraeducators employed, either full-time or part-time, in support positions in public schools.

2.0 Definitions

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

"Associate's or Higher Degree" means that the degree is conferred by a regionally accredited institution of higher education or by a distance education institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education.

"Completed at Least 2 Years of Study at an Institution of Higher Education" means the satisfactory completion of a minimum of 60 semester hours of instruction at a regionally accredited institution of higher

education or by a distance education institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education, in general or educational studies, including reading, writing, and mathematics content and pedagogy, unless the institution of higher education defines two years of full-time study as the successful completion of a minimum of 48 semester hours, and provides documentation of such definition.

"Department" means the Delaware Department of Education.

"Instructional Paraeducator" means a public school employee who provides one-on-one or small group instruction; assists with classroom management or individual student behavior; provides assistance in a computer laboratory; provides support in a library or media center; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher. Instructional Paraeducators are those working with regular education students and students with disabilities in schools other than Title I schoolwide schools or with students not receiving Title I services in Title I targeted assistance schools.

"Paraeducator", as used herein, means a paraprofessional, as it is used in 14 **Del.C.** §1205. Paraeducators are not "educators" within the meaning of 14 **Del.C.** §1202 (6).

"Permit" means a document issued by the Department that verifies an individual's qualifications and training to serve as a Title I, Instructional or Service Paraeducator.

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

"Service Paraeducator" means a public school employee who provides support services other than instructional assistance to students.

"Standards Board" means the Professional Standards Board of the State of Delaware as established in response to 14 **Del.C.** §1205.

"State Board" means the State Board of Education of the State of Delaware established in response to 14 **Del.C.** §104.

"Title I Paraeducator" means a public school employee who provides one-on-one or small group tutoring; assists with classroom management; provides assistance in a computer laboratory; provides support in a library or media center; or provides instructional services to students under the direct supervision of a teacher. Additionally, Title I Paraeducators are all Instructional Paraeducators who work with regular students and children with disabilities in Title I schoolwide schools and all Title I Paraeducators who work with children receiving Title I services in Title I targeted assistance schools, except those whose duties are limited to acting as a translator or as a home-school liaison.

3.0 Title I Paraeducators.

A Title I Paraeducator must hold a Title I Paraeducator Permit.

3.1 The Department shall issue a Permit to a Title I Paraeducator applicant who submits evidence to his/her district, charter school, or other employing authority of:

3.1.1 completion of at least two years of study in general or educational studies at an institution of higher education; or

3.1.2 receipt of an associate's or higher degree; or

3.1.3 evidence of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.

3.1.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:

3.1.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.

3.1.3.1.2 Accuplacer Test, if taken before April 1, 2003, with the following qualifying scores:

3.1.3.1.2.1 Mathematics: greater than or equal to a total right score of 94 on arithmetic.

3.1.3.1.2.2 English: greater than or equal to a total right score of 87.

3.1.3.1.2.3 Reading: greater than or equal to a total right score of 78.

3.1.3.1.3 Such alternative as may be established by the Standards Board, with the approval of the State Board.

3.2 Pursuant to the provisions of the No Child Left Behind Act, Title I Paraeducators hired after January 8, 2002 must meet the requirements set forth in 3.1 immediately.

3.3 Notwithstanding the above, and pursuant to the provisions of the No Child Left Behind Act, Title I Paraeducators hired before January 8, 2002 must hold a high school diploma or its recognized equivalent and shall have until ~~June 30~~ January 8, 2006 to meet the requirements of 3.1.

3.3.1 Accordingly, Title I Paraeducators hired before January 8, 2002 who do not meet the requirements set forth in 3.1 above, with the exception of the high school diploma or its recognized equivalent, shall be issued a Title I Paraeducator Permit which shall expire on ~~June 30~~ January 8, 2006 unless evidence of meeting the requirements set forth in 3.1 above is provided prior thereto. If such evidence is provided to the Department prior to ~~June 30~~ January 8, 2006, the Permit shall expire five years from the date of issuance and may be renewed pursuant to 5.0.

3.4 Application Procedures.

3.4.1 The district, charter school, or other employing authority shall submit the approved application form, official transcripts or official scores on an assessment

of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics, to the Department on behalf of the applicant. The district, charter school or other employing authority shall certify as part of the application form that the applicant, in their opinion, meets the requirements of 3.0.

3.4.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope to the district, charter school or other employing authority.

3.4.1.2 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the district, charter school or other employing authority. Unopened, unaltered envelopes containing test scores sent to an individual may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.

4.0 All Instructional Paraeducators and Service Paraeducators must hold the appropriate Permit.

The Department shall issue a Permit to an Instructional Paraeducator applicant or a Service Paraeducator applicant for whom the district, charter school, or other employing authority has submitted a Department approved application form and who provides evidence of a high school diploma or its recognized equivalent.

4.1 Notwithstanding the above, Instructional Paraeducators and Service Paraeducators hired before February 11, 2004 and who do not have a high school diploma may be issued the applicable permit which shall expire June 30, 2006 unless evidence of a high school diploma or its recognized equivalent is provided prior thereto. If such evidence is provided prior to June 30, 2006, the Permit shall expire five years from the date of issuance and may be renewed pursuant to section 5.0

5.0 Unless stated otherwise herein, a Title I, Instructional, or Service Paraeducator Permit shall be valid for five years from the date of issuance.

The Department shall renew a Paraeducator Permit, valid for an additional five years, to a Paraeducator whose school district, charter school, or other employing authority provides evidence to the Department of successful completion of a minimum of 15 clock hours of professional development.

5.1 Fifteen clock hours of professional development is required to be completed during the term of validity of the Paraeducator Permit.

5.2 Options for Renewal: The following professional development activities are approved options for the renewal of a Paraeducator Permit. Unless otherwise stated, there is no limit to the number of hours that may be taken in any of the options listed below:

5.2.1 College credit completed at a regionally

accredited college or university with a grade of "C" or better or a "P" in a pass/fail course (1 semester hour equals 15 clock hours).

5.2.2 Planned school professional development day (maximum 6 clock hours per day).

5.2.3 Professional conference, workshop, institute, or academy that contributes to the participant's knowledge, competence, performance, or effectiveness as a (verified clock hours actively involved in workshop or conference sessions).

5.2.4 Participation on school, district, or state-sponsored committee which has as its focus curriculum, instruction, or school or district improvement (verified clock hours of service or experience).

6.0 An applicant shall disclose his or her criminal conviction history upon application for any Paraeducator Permit. Failure to disclose a criminal conviction history is grounds for denial or revocation of a as specified in 14 **Del.C.** §1219.

7.0 A Paraeducator Permit may be denied an applicant upon a finding that an applicant is unfit to be issued a Permit in the State in accordance with 14 **Del.C.** §1513 or revoked upon the dismissal of the permit holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application in accordance with 14 **Del.C.** §1514.

5 DE Reg. 856 (10/1/01)

7 DE Reg. 1006 (2/1/04)

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code,
Section 4805(a) (29 **Del.C.** §4805(a))

PUBLIC NOTICE

The Delaware Lottery Office proposes to amend the Video Lottery Regulations. The Lottery's proposed amendments are: i) amend Video Lottery Regulation 4.2 to provide that any entity proposing to contract with the Lottery or a video lottery agent must obtain a technology provider license; ii) amend Video Lottery Regulation 6.34(5) to provide that temporary employees, consultants, or contractors must obtain a license and vendors who propose to contract with the Lottery or a video lottery agent must obtain a technology provider license; iii) amend Video Lottery Regulation 6.35 to require video lottery agents to file

copies of video lottery-related contracts in excess of \$50,000; iv) amend Video Lottery Regulation 7.16.2 to require a video lottery agent to update the self-exclusion list within forty-eight (48) hours after receiving notice from the Lottery or VLEU. The proposed amendments are issued pursuant to 29 **Del.C.** §4805(a) and 29 **Del.C.** §10115. The Lottery will accept written comments on the proposed amendments to the Video Lottery Regulations from December 1, 2004 through December 30, 2004. The Lottery will hold a public hearing on the proposed amendments to the Video Lottery Regulations on December 21, 2004 at 10:00 a.m. at the Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments or requests for copies of the proposed Regulation amendments should be submitted to Don Johnson at the Delaware Lottery Office.

4.0 Licensing of Technology Providers

4.1 As deemed necessary, the Director shall give public notice of the agency's intent to select technology providers of video lottery machines through a request for proposal and qualifications by advertising in a newspaper of general circulation in Delaware and in a prominent trade publication requesting expressions of interest to serve as a technology provider. The licensing of a technology provider shall not serve as the basis of requiring the Director to select the technology provider under the procurement procedures set forth in Chapter 69 of Title 29 of the **Delaware Code**.

4.2 Each person desiring to obtain a license from the agency as a technology provider shall submit a license application on a form specified and supplied by the agency. Any person or entity, including video lottery manufacturers, who proposes to contract with a video lottery agent or the Lottery for the provision of goods or services, including management services, related to video lottery operations, must obtain a technology provider license pursuant to these Video Lottery Regulations. The license application shall, among other things:

4.2.1 Give notice that the applicant may be required to submit to a background investigation, the cost of which must be borne by the applicant.

4.2.2 Require the applicant to supply specified information and documents related to the applicant's fitness and the background of its owners, partners, directors, officers, key employees, and video lottery operations employees, including but not limited to copies of financial statements, tax returns, insurance policies, and lists of creditors.

4.2.3 Require the applicant to disclose the identity of all customers to whom it has furnished video games or other gambling equipment or technology within the three years immediately preceding the date of the application.

4.2.4 Require the applicant to list all persons

with whom the applicant has a communications protocol agreement.

4.2.5 Require the applicant to disclose whether the applicant, or any of its present or former officers, directors, owners, partners, key employees, or video lottery operations employees, is or has been the subject of an investigation in another jurisdiction, the nature of the investigation, and the outcome, if any, of such investigation.

4.2.6 Provide a description of the means by which the applicant exercises security and financial control over the activities of service technicians in order to insure the integrity of video lottery operations.

4.2.7 Require the applicant to disclose its legal name, form or entity (e.g., general or limited partnership, corporation), the names, addresses, social security numbers and dates of birth of its directors, officers, partners, owners, key employees and video lottery operations employees.

4.2.8 Require the applicant to disclose the names and addresses of individuals who have been authorized by the applicant to engage in dealings with the agency for purposes of representing the interests of the applicant.

4.2.9 Require the applicant to enclose copies of its audited financial statements for the preceding three (3) fiscal years and a copy of internally prepared financial statements for the current fiscal year or at the close of the most recent fiscal quarter.

4.2.10 Require the applicant to provide a description of its engineering and software development resources, technical support capabilities and ability to manufacture and deliver the video lottery machines.

4.2.11 Require persons who are proposing to contract with the agency or a video lottery agent to provide a copy of their contract proposal.

4.3 Upon request, the applicant shall supplement the information provided in the application form as deemed necessary by the Director.

4.4 To the extent, if any, that the information in the application or the supplemental information provided by the applicant becomes inaccurate or incomplete, the applicant shall so notify the agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to make the application or supplementary information accurate and complete.

4.5 The applicant shall cooperate fully with the agency and the Delaware State Police VLEU in any background investigation of the applicant.

4.6 The applicant, upon request of the agency or the Delaware State Police VLEU, shall make any and all of its books and records available for inspection by the agency or the Delaware State Police VLEU. Provided, however, that any information obtained pursuant to this subsection shall, to

the extent provided by law, be held in confidence and not subject to the Delaware Freedom of Information Act.

4.7 As soon as the agency has determined that the application form is complete and that the applicant is otherwise qualified, it shall forward the same to the Delaware State Police VLEU which shall conduct as soon as practicable a background investigation of the applicant, its officers, partners, owners, directors, key employees, and video lottery operations employees and report its findings to the agency.

4.8 Notwithstanding any other provision contained herein to the contrary, the Director may determine, upon review of the licensing standards of another state, that such standards are so comprehensive, thorough, and provide similar adequate safeguards, that the license of an applicant in such other state precludes the necessity of a full application and background check. In such case, the Director shall require a limited application and background check, as determined by the Director in his sole discretion, as are necessary to assure that the applicant is fit for the license and does not pose a threat to the public interest of the State or to the reputation of or effective regulation of the video lottery.

4.9 In evaluating applications, the Director shall consider:

4.9.1 Whether the applicant has demonstrated an ability to interface its technical capabilities with the selected central system and that it has the resources, experience and ability necessary to manufacture, deliver, install and service such number of video lottery machines as it may be required to supply under a contract with an agent.

4.9.2 Any past conduct of the applicant, or any of its present or former officers, directors, partners, owners, key employees, or video lottery operations employees which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within ten years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.

4.9.3 Any findings provided by the State Police following its background investigation.

4.9.4 The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the Federal, State or local governments.

4.9.5 The association of the applicant, or any of its officers, directors, owners, partners, key employees, or video lottery operations employees with persons of known criminal background or persons of disreputable character, that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of video lottery operations.

4.9.6 Any other information supplied in connection with the application, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competence, financial capability, honesty, integrity, reputation, habits, or associations.

4.9.7 The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.

4.10 A license shall not be issued to a technology provider if the applicant technology provider has any direct or indirect financial interest in an agent licensee or the real or personal property of an agent licensee.

4.11 A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 4.9, that the applicant would be a fit technology provider and not pose a threat to the public interest, the reputation of the lottery or to the effective control of the lottery.

4.12 An applicant for a technology provider's license shall, prior to issuance of the license, post a bond or irrevocable letter of credit in a manner and in an amount established by the agency. Any such bond shall be issued by a surety company authorized to transact business in Delaware and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.

4.13 The agency, with the assistance of the VLEU, may require licensed technology providers to annually update information submitted with their initial license application.

2 DE Reg. 115 (7/1/98)

3 DE Reg. 1082 (2/1/00)

7 DE Reg. 958 (1/1/04)

6.0 Agents: Duties

The following duties are required of all licensed agents:

6.1 Provide a secure location for the placement, operation, and play of all licensed video lottery machines located on the licensed agent's premises.

6.2 Permit no person to tamper with or interfere with the approved operation of any licensed video lottery machine without prior written approval of the agency and the VLEU, unless otherwise directed by the Lottery.

6.3 Assure that telephone lines from the agency's central computer to the licensed video lottery machines located on the licensed agent's premises are at all times connected, and prevent any person from tampering or interfering with the continuous operation of the lines.

6.4 With respect to video lottery operations, contract only with officers, directors, owners, partners, key employees, and suppliers of video lottery equipment and paraphernalia authorized by the agency to participate in video lottery operations within the State of Delaware.

6.5 Ensure that licensed video lottery machines are

placed and remain as placed unless the agency authorizes their movement within the sight and control of the agent or a designated employee, through physical presence and by the use of surveillance cameras at all times.

6.6 Ensure that licensed video lottery machines are placed and remain as placed in the specific area of the premises as approved by the lottery. The initial placement and any subsequent relocation of any video lottery machine requires the prior written approval of the agency and the VLEU.

6.7 Monitor video lottery machine play and prevent access to or play by persons who are under the age of twenty-one (21) years or who are intoxicated, or whom the agent has reason to believe are intoxicated, and prohibit play by persons who are barred by law or self-banned from playing any video lottery machine.

6.8 Commit no violations of the laws of this State concerning the sale, dispensing, and consumption on the premises of alcoholic beverages that result in suspension or revocation of an alcoholic beverage license.

6.9 Maintain at all times sufficient change and cash in denominations accepted by the video machines located in the premises.

6.10 Exercise caution and good judgment in extending credit for video lottery machine play, and comply with all applicable federal and state laws.

6.11 Exercise caution and good judgment in providing cash for checks presented for video lottery machine play. The agent shall also ensure that any contractor who performs check cashing services for the agent also exercises caution and good judgment in providing cash for checks under this regulation.

6.12 Report promptly all video lottery machine malfunctions to the appropriate technology provider and agency and notify the agency of any technology provider failure to provide service and repair of such terminals and associated equipment.

6.13 Conduct agency approved advertising and promotional activities related to video lottery operations.

6.14 Install, post and display prominently at locations within or about the premises signs, redemption information and other promotional material as may be required by the agency.

6.15 Conduct video lottery operations only during those hours established and approved by the Director or designee.

6.16 Assume responsibility for the proper and timely payment to players of credits or tokens awarded.

6.17 Prohibit the possession, use or control of gambling paraphernalia on the premises not directly related to the lottery or horse racing or harness horse racing and prohibit illegal gambling on the premises.

6.18 Reserved

6.19 Attend all meetings, seminars, and training

sessions required by the agency.

6.20 Supervise its employees and their activities to ensure compliance with these rules.

6.21 Assume responsibility for the proper and immediate redemption of all credits; however, no credits may be redeemed by a person under twenty-one (21) years of age, and no credits submitted for redemption beyond the one year time limit will be redeemed. No credits or prizes may be redeemed by any person illegally on the agent's premises or persons who have requested that they be self-banned from the agent's premises.

6.22 Provide dedicated power and a proper video lottery machine environment in accordance with the specifications of the agency. The agent shall permit no person to completely shut off power to an operational video lottery machine without the prior approval of the agency.

6.23 Furnish to the Director complete information pertaining to any change in ownership of the agent or the owner of the premises or beneficial owner (other than a change in ownership by an owner of less than twenty (20) percent of the issued and outstanding capital stock of the agent or premises owner if such stock is publicly traded).

6.24 Promptly report to the lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

6.25 Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.

6.26 Hold the Director, the State of Delaware, and employees thereof harmless from and defend and pay for the defense of any and all claims which may be asserted against the Director, the State or the employees thereof, arising from the participation in the video lottery system, except claims arising from the negligence or willful misconduct of the Director, the State or the employees thereof.

6.27 Maintain all required records.

6.28 Provide at the request of the Director or the VLEU immediate access to the premises and to all records related to any aspect of these regulations, including without limitation the duties imposed by these regulations.

6.29 Keep current on all payments, tax obligations and other obligations to the agency and other licensees with whom video lottery business is conducted. The agent shall pay the players and transfer the net proceeds to the State lottery fund in conformity with the requirements set forth in these regulations and 29 **Del. C.** chapter 48.

6.30 Ensure that there are no automated teller machines (ATMs) within twenty-five (25) feet of any video lottery machine on the premises.

6.31 Locate all video lottery machines within the viewing range of closed circuit television cameras at all

times, including both normal business hours and those periods when video lottery operations are closed. The presence of these cameras is to ensure the integrity of the lottery, the video lottery operations, and the safety of the patrons. Surveillance tapes will be maintained by the agent according to a schedule established by the Director and the VLEU. The installation of any new closed circuit television or repositioning of any CCTV cameras or new surveillance system must be reviewed and approved by the Director and the VLEU before placed in to operation.

6.32 Comply with such other requirements as shall be specified by the Director. The agent shall submit to the Director a description of its system of internal procedures and administrative and accounting controls which shall conform to the rules and regulations of the agency and be otherwise satisfactory to the Director in his or her sole discretion.

6.33 Provide, on a continuing basis, to the Director the names and addresses of all employees who are involved in the daily operation of the video lottery machines. These employees will include individuals or their supervisors involved with (1) the security of the video lottery machines, (2) the handling or transporting of proceeds from the video lottery machines, or (3) positions that provide direct access to video lottery machines. It shall be the continuing duty of the video lottery agent licensee to provide for the bonding of any of the above-mentioned employees to ensure against financial loss resulting from wrongful acts on their parts. Likewise, the agent shall post a bond or irrevocable letter of credit in a manner and in an amount established by the agency. Any such bonds shall be issued by a surety company authorized to transact business in Delaware and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.

6.34 (1) Notify the Director on a continuing basis of any change in officers, partners, directors, key employees, video lottery operations employees, and owners. The video lottery agent shall provide this information to the Lottery and the VLEU on a weekly basis. Such persons will also be subject to a background investigation. The failure of any of the above-mentioned persons to satisfy a background investigation may constitute "cause" for the suspension or revocation of the video lottery agent's license, provided that an agent is first given a reasonable opportunity to remove or replace such person if the agent was unaware of such "cause" prior to the background investigation. The agent must supply the VLEU with the completed License Application Form ("LAF") and fingerprint cards for each employee before the employee begins employment. Agent employees required to be licensed by the Delaware Lottery laws, 29 **Del.C.** chapter 48, and these Regulations must have been successfully completed and been issued a valid license under section 14.0 of these Regulations prior to commencement of employment.

(2) The agent must notify the VLEU of the transfer of any employee within the agent's organization on a weekly basis. The Lottery and the VLEU will determine if a new or updated LAF must be submitted for the transferred employee.

(3) The agent must notify the Lottery and the VLEU of the termination of any employee and the reason for the termination on a weekly basis.

(4) The agent must submit to the Lottery and the VLEU on a weekly basis the names of all new employees who will work on the video lottery premises. All employees who do not meet the definition of key employees or video lottery operations employees must file a completed LAF with the VLEU within seven (7) days of commencement of employment.

(5) The agent must obtain advance approval before any temporary employee, consultant, or contractor will be permitted access to secure locations. Any such temporary employee, consultant, or contractor must submit a Request for Temporary Work Approval Form to the VLEU at least forty-eight (48) hours prior to the date of assignment. Any such temporary employee, consultant, or contractor must also submit a license application pursuant to Regulation 14.0 and must be employed by a licensed technology provider. Any vendor who proposes to contract with a video lottery agent or the Lottery for the provision of goods or services, including management services, related to the video lottery operations, must obtain a technology provider license pursuant to Video Lottery Regulation 4.0. The Lottery will consider secure areas to include, but not be limited to, access to the inside of a video lottery machine, surveillance rooms, cash vaults, and cash booths.

6.35 As soon as it is known to the agent, file with the Director a copy of any current or proposed agreement and disclose to the Director any other relationship between the agent, its parents, subsidiaries, related entities, partners, owners, directors, officers or key employees for the sale, lease, maintenance, repair or other assignment of the agent's premises, or any other relationship of any vendor, manufacturer or other person who stands to benefit financially from the possession or use of video lottery machines by such agent. The agent shall file with the Director for approval every contract in excess of ~~\$1,000~~ \$50,000 which pertains to the agent's video lottery operations. The agent shall notify the Director of any contract with an entity that is subject to the license requirements for vendors or technology providers under 29 **Del.C.** §4805(b)(17) and Chapter 4 of these Regulations.

6.36 Comply with the applicable requirements contained in Title 3, §10048 and §10148 and Title 28, §427 of the Delaware Code. The agent shall file an annual report, due January 15th of each year, which provides sufficient information for the Director to determine whether the agent has satisfied the requirements of this provision.

6.37. Comply with the provisions of the business plans as approved and amended.

6.38. Comply on a continuing basis with the requirements for obtaining or retaining a license under the provisions of these regulations and 29 **Del.C.** Chapter 48.

2 DE Reg. 115 (7/1/98)

3 DE Reg. 1083 (2/1/00)

7 DE Reg. 206 (8/1/03)

7 DE Reg. 958 (1/1/04)

7.0 Game Requirements

7.1. The Director shall authorize such video games to be played on the agent's premises in conformity with approved business plans, as amended.

7.2. Video games shall be based on bills, coins, tokens or credits, worth between \$.01 and \$100.00 each, in conformity with approved business plans as amended.

7.3. The Director, in his or her discretion, may authorize play on a video lottery machine to which the maximum wager limit of \$100.00 shall not apply.

7.4. Each video game shall display the amount wagered and the amount awarded for each possible winning occurrence based on the number of credits wagered.

7.5 Each video game shall provide a method for players to view payout tables.

7.6 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet. In the event a person illegally on the premises or a self-barred person attempts to claim a prize, the video lottery agent will also treat the play of the game as void and the person shall not be entitled to any prize won or a refund of amounts bet. This policy prohibiting persons underage, persons illegally entering the premises, and persons self-barred from winning prizes shall be prominently displayed on the premises of the video lottery agent.

7.7 Agents shall redeem credit slips, tokens, or video lottery machine credits presented by a player in accordance with procedures proposed by the agent and approved by the Director prior to the opening of the premises for video game play. Such procedures shall be modified at the direction of the Director in his or her sole discretion at any time. Nothing in this subsection (7.7) shall prohibit the use of coin-in/coin-out machines. Players claiming prizes may be required to present sufficient identification as required by the agency.

7.8 Credit slips and prize claim forms may be redeemed by a player at the designated place on the premises where the video game issuing the credit slip or prize claim form is located during the one year redeeming period commencing on the date the credit slip or prize claim form was issued.

7.9 No credit slip shall be redeemed more than one (1)

year from the date of issuance. No jackpot from a coin-in/coin-out machine shall be redeemed more than one (1) year from the date on which the jackpot occurred. Funds reserved for the payment of a credit slip or expired unclaimed jackpot shall be treated as net proceeds if unredeemed one (1) year from the date of issuance of the credit slip or occurrence of the winning jackpot. The one year redemption policy in this regulation shall be prominently displayed on the premises of the video lottery agent.

7.10 No payment for a credit slip or a prize claim form for a prize awarded on a video lottery machine may be made unless the credit slip or prize claim form meets the following requirements:

7.10.1 It is presented on a fully legible, valid, printed credit slip on paper approved by the agency, containing the information as required;

7.10.2 It is not mutilated, altered, unreadable, or tampered with in any manner, or previously paid;

7.10.3 It is not counterfeit in whole or in part; and

7.10.4 It is presented by a person authorized to play.

7.11 Method of Payment - The management of each licensed agent shall designate employees authorized to redeem credit slips during the hours of operation. Credits shall be immediately paid in cash or by check when a player presents a credit slip for payment meeting the requirements of this section.

7.12 Restrictions on Payment - Agents may only redeem credit slips for credits awarded on video lottery machines located on its premises. The agency and the State of Delaware are not liable for the payment of any credits on any credit slips.

7.13 Redeemed Tickets Defaced - All credit slips redeemed by a licensed agent shall be marked or defaced in a manner that prevents any subsequent presentment and payment.

7.14 Liability for Malfunction - The agency and the State of Delaware are not responsible for any video lottery machine malfunction or for any error by the agent that causes credit to be wrongfully awarded or denied to players.

7.15 Video lottery machines shall not be operated or available for play on Christmas, or after 4:00 a.m. on Easter, or between the hours of 4:00 a.m. and 12:00 p.m. on Sundays, or between the hours of 4:00 a.m. and 8:00 a.m. on any day other than Sunday.

7.16 Self-Excluded Players

7.16.1 A "self-excluded person" means any person whose name is included, at his or her request, on the self-exclusion list maintained by the Lottery Director or Deputy Director.

7.16.2 "Self-exclusion list" means a list of names of persons who, pursuant to this subchapter, have voluntarily agreed to be excluded from all video lottery agent premises

and to be prohibited from collecting any winnings or recovering any losses at all licensed video lottery agents.

7.16.3 Request for Self-Exclusion

7.16.3.1 Any person may have his or her name placed on the self-exclusion list by submitting a request for self-exclusion in the form and manner required by these Video Lottery Regulations.

7.16.3.2 Any person requesting placement on the self-exclusion list shall submit in person, a completed request for self-exclusion as required in this Regulation. The request shall be delivered to the Delaware State Lottery Office, 1575 McKee Road, Dover, DE. Any person submitting a self-exclusion request shall be required to present valid identification credentials containing his or her signature and a photograph and general physical description. Any person requesting self-exclusion pursuant to these Regulations shall be required to have his or her photograph taken by the VLEU upon submission of the request.

7.16.3.3 A request for self-exclusion shall be in a form prescribed by the Lottery which form shall include:

7.16.3.3.1 The following identifying information concerning the person submitting the request for self-exclusion:

7.16.3.3.1.1 Name, including any aliases or nicknames;

7.16.3.3.1.2 Date of birth;

7.16.3.3.1.3 Address of current residence.

7.16.3.3.1.4 Telephone number of current residence;

7.16.3.3.1.5 Social security number;

7.16.3.3.1.6 A physical description of the person, including height, weight, gender, hair color, eye color, and any other physical characteristic that may assist in the identification of the person;

7.16.3.3.2 The length of minimum self-exclusion requested by the person:

7.16.3.3.2.1 One year;

7.16.3.3.2.2 Five years; or

7.16.3.3.2.3 Lifetime;

7.16.3.3.3 A waiver and release which shall release and forever discharge the State of Delaware, its employees, and agents, and all video lottery agents, and their employees and agents from any liability to the person requesting self-exclusion and his or her heirs, administrators, executors, and assigns for any harm, monetary or otherwise, which may arise out of or by reason of any act or omission relating to the request for self-exclusion or request for removal from the self-exclusion list, including:

7.16.3.3.3.1 Its processing or enforcement;

7.16.3.3.3.2 The failure of a video lottery agent to prevent video lottery play by a self-excluded

person, or the failure by the agent to restore the ability of self-excluded person to play video lottery machines.

7.16.3.3.3.3 Permitting a self-excluded person to engage in video lottery play at a video lottery agent's premises while on the list of self-excluded persons; and

7.16.3.3.3.4 Disclosure of the information contained in the self-exclusion request or list, except for a willfully unlawful disclosure of such information.

7.16.3.3.4 The signature of the person submitting the request for self-exclusion indicating acknowledgement of the following statement:

"I am voluntarily requesting exclusion from all gaming activities at all licensed Delaware video lottery agents (Delaware Park, Dover Downs, and Harrington/Midway Slots and Simulcast) because I am a problem gambler. I certify that the information provided above is true and accurate, and that I have read and understand and agree to the waiver and release included with this request for self-exclusion. I am aware that my signature below authorizes the Lottery and the VLEU to direct all licensed video lottery agents to prohibit my access to the all video lottery facilities in accordance with this request and unless I have requested to be excluded for life, until such time as the Lottery removes my name from the self-exclusion list in response to my written request to terminate my voluntary self-exclusion. I am aware and agree that during any period of self-exclusion, I shall not collect any winnings or recover any losses resulting from any gaming activity at all licensed video lottery agents premises, and that any money or thing of value obtained by me from, or owed to me by a video lottery agent as a result of video lottery play by me while on the self-exclusion list."

7.16.3.3.5 The type of identification credentials examined containing the signature of the person requesting self-exclusion, and whether said credentials included a photograph and general physical description of the person; and

7.16.3.3.6 The signature of an authorized Lottery employee accepting the request, indicating that the signature of the person on the request for self-exclusion appears to agree with that contained on his or her identification credentials and that any photograph and physical description of the person appears to agree with his or her actual appearance.

7.16.4 Self-exclusion list.

7.16.4.1 The Lottery shall maintain the official self-exclusion list and shall notify each video lottery agent of any addition to or deletion from the list by mailing a notice to each video lottery agent. The Lottery may provide copies of the official self-exclusion list to the VLEU.

7.16.4.2 Each video lottery agent shall maintain its own copy of the self-exclusion list and shall

establish procedures to ensure that its copy of the self-exclusion list is updated and that all appropriate employees and agents of the video lottery agent are notified of any addition to or deletion from the list within ~~five (5) business days~~ forty-eight (48) hours after the ~~day~~ the notice is mailed by the Lottery or VLEU. The notice mailed by the Lottery/VLEU shall include the name and date of birth of any person whose name shall be removed from self-exclusion list and the following information concerning any person whose name shall be added to the self-exclusion list:

7.16.4.2.1 Name, including any aliases or nicknames;

7.16.4.2.2 Date of birth;

7.16.4.2.3 Address of current residence;

7.16.4.2.4 Telephone number of current residence;

7.16.4.2.5 Social security number;

7.16.4.2.6 A physical description of the person, including height, weight, gender, hair color, eye color, and any other physical characteristic that may assist in the identification of the person; and

7.16.4.2.7 A copy of the photograph taken by the Lottery or VLEU.

7.16.4.3 Information furnished to or obtained by the Lottery or VLEU shall be deemed confidential and not be disclosed except in accordance with these Regulations.

7.16.4.4 No video lottery agent or employee or agent thereof shall disclose the name of, or any information about, any person who has requested self-exclusion to anyone other than employees of the agent whose duties and functions require access to such information. Notwithstanding the foregoing, a video lottery agent may disclose the name of and information about a self-excluded person to appropriate employees of another video lottery agent for the purpose of alerting other video lottery agents that a self-excluded person has tried to play a video lottery machine or obtain access to the premises of a video lottery agent.

7.16.5 Duties of Video Lottery Agent

7.16.5.1 Each video lottery agent shall establish procedures that are designed, to the greatest extent practicable, to:

7.16.5.1.1 Permit appropriate employees of the video lottery agent to identify a self-excluded person when present in a video lottery facility and, upon such identification, notify;

Those employees of the video lottery designated to monitor the presence of the self-excluded persons;

Designated representatives of the Lottery and the VLEU.

7.16.5.1.2 Refuse access to the premises for any self-excluded person;

7.16.5.1.3 Deny check cashing privileges, player club membership, complimentary goods and services, and other similar privileges and benefits to any self-excluded person;

7.16.5.1.4 Ensure that self-excluded persons do not receive, from the video lottery agent any solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to video lottery activities at the video lottery agent's premises;

7.16.5.2 Each video lottery agent shall submit to the Lottery and the VLEU, a copy of its procedures established to comply with these self-exclusion regulations within thirty (30) days of the effective date of these Regulations. The agent's procedures will be incorporated into the agent's internal control submission with the agency. Any amendments to said procedures shall be submitted to the Lottery and the VLEU at least three business days prior to the implementation. If the Lottery and the VLEU do not object to said procedures or amendments thereto, such procedures or amendments shall be deemed to be approved.

7.16.6 Removal from Self-Exclusion List

7.16.6.1 Except for those persons choosing a lifetime self-exclusion, any self-excluded person may, upon the expiration of the period of self-exclusion requested pursuant to Video Lottery Regulation 7.17, request removal of his or her name from the self-exclusion list by submitting, in person, a completed request for removal as required in subsection (2) below. The request shall be delivered to the Lottery Office, 1575 McKee Road, Dover, DE. Any person submitting a request for removal from the list shall be required to present valid identification credentials containing his or her signature and a photograph and general physical description.

7.16.6.2 A request for removal from the self-exclusion list shall be in a form prescribed by the Lottery, which form shall include:

7.16.6.2.1 The identifying information specified in Video Lottery Regulation 7.17;

7.16.6.2.2 The signature of the person requesting removal from the self-exclusion list indicating acknowledgement of the following statement: "I certify that the information that I have provided above is true and accurate. I am aware that my signature below constitutes a revocation of my previous request for self-exclusion, and I authorize the Lottery to permit all video lottery agents to reinstate my video lottery privileges at licensed video lottery premises;"

7.16.6.2.3 The type of identification credentials examined containing the signature of the person requesting removal from the self-exclusion list, and whether said credentials included a photograph and general physical description of the person; and,

7.16.6.2.4 The signature of a Lottery or

VLEU employee authorized to accept such request, indicating that the signature of the person on the request for removal from the self-exclusion list appears to agree with that contained on his or her identification credentials and that any photograph and physical description appears to agree with his or her actual appearance.

7.16.6.3 The Lottery shall delete the name of the person requesting the removal from the self-exclusion list and notify each video lottery agent of such removal by mailing a notice to each video lottery agent.

7.17 Promotional Tournaments

7.17.1 The Lottery will be solely responsible for the procurement of any modified video lottery terminals ("Promotional Tournament Terminals") to be used by a video lottery agent for promotional tournaments. A Promotional Tournament Terminal will be modified so that at a minimum, it does not contain any bill acceptor, coin acceptor, or hopper. A blank plate must replace the bill acceptor and coin acceptor on the Promotional Tournament Terminal

7.17.2 If a video lottery agent wishes to obtain Promotional Tournament Terminals, the agent must submit a written request to the Lottery. Under 29 Del.C. §4820(b), video lottery agents may have a maximum of thirty (30) video lottery machines used exclusively for promotional tournaments in which players are not required to pay any fee to participate. The request must be on a Promotional Tournament Request Form which will be available from the Lottery. The request must contain: i) the number of promotional tournament terminals requested; ii) a description of the location where the tournament terminal will be stored or installed on the agent's premises; iii) a description of the agent's security plan for the tournament terminals when in storage and when operated for promotional tournaments.

7.17.3 Promotional Tournament Terminals will be leased or purchased by the Lottery and provided to the video lottery agents for use for promotional tournament games.

7.17.4 The video lottery agent may store the Promotional Tournament Terminals in a secure, locked room when games are not being used for approved promotional tournaments. The locked storage area must be under surveillance at all times. The storage area must be approved by both the Lottery and the VLEU. The agent must control access to the locked storage area. The key to this area will be maintained and controlled by the video lottery agent's security with a sign-in and sign-out log. If a video lottery agent installs Promotional Tournament Terminals on a permanent basis on the gaming floor, the Promotional Tournament Terminals will be subject to the Lottery and VLEU minimum standards for security and the terms of these Video Lottery Regulations. Promotional Tournament Terminals will only be available during scheduled

tournaments approved by the Lottery.

7.17.5 All Promotional Tournament Terminals at an agent location shall have the same CPU lock and this lock shall be different from locks used on other VLTs in the State of Delaware. The CPU keys will be maintained by the VLEU, unless the Lottery directs otherwise.

7.17.6 All EPROM chips and programming disks, after the standard review and approval by the independent laboratory designated by the Lottery, must be sent to the VLEU to be certified for use in the promotional tournament games, unless otherwise directed by the Lottery. EPROM chips will be taped when installed in the tournament games under the supervision of the VLEU. The VLEU will be the only persons permitted to access the logic area and chips of the Promotional Tournament Terminals, unless otherwise directed by the Lottery.

7.17.7 Any video lottery agent who wishes to conduct a tournament with the Promotional Tournament Terminals must first obtain the approval of the Lottery. The agent must complete a Promotional Tournament Request Form that will be available from the Lottery. The Tournament Request Form will require, at a minimum, the following: i) the date(s) and time(s) when the tournament will be held; ii) the rules for the tournament; iii) the location of the tournament; iv) security and surveillance arrangements for the tournament. The play area for Promotional Tournament Terminals must comply with the normal game security and surveillance requirements for all other video lottery machines under these Video Lottery Regulations. Approval by the Lottery to conduct promotional tournaments shall also constitute approval for the movement of Promotional Tournament Terminals.

7.17.8 No tournament is approved until the Lottery has reviewed and approved the Promotional Tournament Request Form and distributed copies of the completed form to the appropriate parties.

2 DE Reg. 115 (7/1/98)

2 DE Reg. 779 (11/1/98)

5 DE Reg. 1286 (12/1/01)

7 DE Reg. 202 (8/1/03)

7 DE Reg. 206 (8/1/03)

7 DE Reg. 958 (1/1/04)

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Office of the State Lottery is available at: <http://lottery.state.de.us/videolottery.html>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 133 (16 Del.C. §133)

PUBLIC NOTICE

Nature of the Proceedings

Pursuant to 16 **Delaware Code**, Section 133, the Department of Health and Social Services is proposing amendments to the "Cancer Treatment Program Regulations" that will provide minors under the age of 18 years, diagnosed with Cancer, medical insurance coverage for Cancer treatment, who are otherwise eligible for benefits under the Cancer Treatment Program.

Notice of Public Hearing

The Center for Health Information Management and Disease Prevention, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed amendments to the Cancer Treatment Program Regulations. The public hearing will be held on January 5, 2005 at 10:00 a.m., in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

The Comprehensive Cancer Control Branch
Blue Hen Corporate Center
655 S. Bay Road, Suite 200
Dover, DE 19901
Telephone: (302) 739-4651

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by January 4, 2005. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 7, 2005 to:

David P. Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, Delaware 19903-0637

4203 Cancer Treatment Program

1.0 Purpose

The Cancer Treatment Program (CTP) is a program of

Delaware Health and Social Services (DHSS), Division of Public Health (DPH) intended to provide medical insurance coverage to Delawareans for the treatment of cancer. ~~The program serves Delawareans who have no health insurance.~~

2.0 Availability Of Funds

2.1 Benefits will be available to enrollees provided that funds for this program are made available to DHSS.

2.2 In the event that funds are not available, DHSS will notify enrollees and providers.

3.0 General Application Information

3.1 The application must be made in writing on the prescribed CTP form. An individual, agency, institution, guardian or other individual acting can make this request for assistance for the applicant with his knowledge and consent. The CTP will consider an application without regard to race, color, age, sex, disability, religion, national origin or political belief as per State and Federal law.

3.2 Each individual applying for the CTP is requested, but not required, to furnish his or her Social Security Number.

3.3 Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

4.0 Technical Eligibility

4.1 The following for an adult applicant are required to receive benefits under this program. The adult applicant must:

4.1.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.

4.1.2 Be a Delaware resident.

4.1.3 Have been a Delaware resident at the time cancer was diagnosed.

4.1.4 Have no health insurance.

4.1.4.1 Examples of health insurance include comprehensive, major medical and catastrophic plans, Medicare, and Medicaid.

4.1.4.2 Excepted are the following types of insurance plans, which do not exclude eligibility for the CTP: dental, vision, dismemberment, drug, mental health, nursing home, blood bank, workman's compensation, accident, family planning, the Delaware Prescription Assistance Program, the Delaware Chronic Renal Disease program, and non-citizen medical coverage.

4.1.4.3 The CTP is the payer of last resort and will only provide benefits to the extent that they are not covered by the plans listed in 4.1.4.2.

4.1.5 Be over the age of 18 years.

4.1.6 Be diagnosed with any cancer on or after

July 1, 2004, or be receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004.

4.2 The following are required for a minor (child under 18 years of age) to receive benefits under this program. The minor applicant must:

4.2.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for reoccurrence during or after remission.

4.2.2 Be a Delaware resident

4.2.3 Have been a Delaware resident at the time cancer was diagnosed.

4.2.4 Be diagnosed with any cancer on or after July 1, 2004. Coverage shall be retroactive up to 3 months prior to date of application, provided applicant meets medical requirements and applicant's parent(s) or legal guardian(s) meet financial eligibility requirements under 5.1. In no case will the minor applicant be eligible for benefits under this program before July 1, 2004.

4.2.5 The CTP is payer of last resort and will only provide benefits to the extent that they are not covered by other plans.

4.23 An inmate of a public institution shall be eligible for the CTP, provided that the benefits of the CTP are not otherwise provided in full or in part.

4.23.1 For the purposes of the CTP, the definitions of public institution and inmate shall be the same as used by the Delaware Medicaid program.

4.34 The Medical Assistance Card is the instrument used to verify an individual's eligibility for benefits. Prior to rendering services, medical providers are required to verify client eligibility using the client's identification number by accessing one of the Electronic Verification Systems (EVS) options. Instructions for accessing EVS are described in the EVS section of the billing manual.

5.0 Financial Eligibility

5.1 To be eligible for the CTP the applicant must have countable household income that is less than 650% of the Federal Poverty Level (FPL).

5.2 Income is any type of money payment that is of gain or benefit to an individual. Income is either counted or excluded for the eligibility determination.

5.3 Countable income includes but is not limited to:

5.3.1 Social Security benefits - as paid after deduction for Medicare premium

5.3.2 Pension - as paid

5.3.3 Veterans Administration Pension - as paid

5.3.4 U.S. Railroad Retirement Benefits - as paid

5.3.5 Wages net amount after deductions for taxes and FICA Senior Community Service Employment -

net amount after deductions for taxes and FICA

5.3.6 Interest/Dividends - gross amount

5.3.7 Capital Gains - gross amount from capital gains on stocks, mutual funds, bonds.

5.3.8 Credit Life or Credit Disability Insurance

Payments ñ as paid

5.3.9 Alimony - as paid

5.3.10 Rental Income from entire dwelling ñ gross rent paid minus standard deduction of 20% for expenses

5.3.11 Roomer/Boarder Income - gross room/board paid minus standard deduction of 10% for expenses

5.3.12 Self Employment - countable income as reported to Internal Revenue Service (IRS)

5.3.13 Unemployment Compensation - as paid

5.4 Excluded income includes but is not limited to:

5.4.1 Annuity payments

5.4.2 Individual Retirement Account (IRA) distributions

5.4.3 Payments from reverse mortgages

5.4.4 Capital gains from the sale of principal place of residence

5.4.5 Conversion or sale of a resource (i.e. cashing a certificate of deposit)

5.4.6 Income tax refunds

5.4.7 Earned Income Tax Credit (EITC)

5.4.8 Vendor payments (bills paid directly to a third party on behalf of the individual)

5.4.9 Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)

5.4.10 Loan payments received by individual

5.4.11 Proceeds of a loan

5.4.12 Foster care payments made on behalf of foster children living in the home

5.4.13 Retired Senior Volunteer Program (RSVP)

5.4.14 Veterans Administration Aid and

Attendance payments

5.4.15 Victim Compensation payments

5.4.16 German reparation payments

5.4.17 Agent Orange settlement payments

5.4.18 Radiation Exposure Compensation Trust

Fund payments

5.4.19 Japanese-American, Japanese-Canadian, and Aleutian restitution payments

5.4.20 Payments from long term care insurance or for inpatient care paid directly to the individual

5.5 Determination of the household income will be based on the family budget group, which is the total number of persons whose income is budgeted together. This will always include the following:

5.5.1 Married couples if they live together; and,

5.5.2 Unmarried couples who live together as husband and wife.

5.5.3 Couples will be considered as living

together as husband and wife if:

5.5.3.1 They say they are married, even if the marriage cannot be verified; or,

5.5.3.2 They are recognized as husband and wife in the community; or,

5.5.3.3 One partner uses the other's last name; or,

5.5.3.4 They state they intend to marry.

5.6 In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's income and those of his/ her children are always budgeted together. The income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

5.6.1 CTP benefits would be denied to any of the recipients by maintaining separate budget groups.

5.6.2 The caretaker chooses to have his/her income and those of his/her children considered with the income of any other people in the home.

6.0 Residency

6.1 A Delaware resident is an individual who lives in Delaware with the intention to remain permanently or for an indefinite period, or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

6.2 Factors that may be taken into account when determining residency are variables such as the applicant's age, location of dwellings and addresses, location of work, institutional status, and ability to express intent.

6.3 Eligibility:

6.3.1 Will not be denied to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.

6.3.2 Will not be denied because of a durational residence requirement.

6.3.3 Will not be denied to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.

6.3.4 Will not be terminated due to temporary absence from the State, if the person intends to return when the purpose of the absence has been accomplished.

6.4 When a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

7.0 Verification Of Eligibility Information

7.1 The CTP may verify information related to eligibility. Verification may be verbal or written and may be

obtained from an independent or collateral source.

7.2 Documentation shall be date stamped and become part of the CTP case record.

7.3 Verifications received and/or provided may reveal a new eligibility issue not previously realized. Additional verifications may be required.

7.4 Failure to provide requested documentation may result in denial or termination of eligibility.

8.0 Disposition Of Applications

8.1 The CTP will dispose of each application by a finding of eligibility or ineligibility, unless:

8.1.1 There is an entry in the case record that the applicant voluntarily withdrew the application, and that the CTP sent a notice confirming the applicant's decision;

8.1.2 There is a supporting entry in the case record that the applicant is deceased; or

8.1.3 There is a supporting entry in the case record that the applicant cannot be located.

9.0 Changes In Circumstances And Personal Information

9.1 Enrollees are responsible for notifying the CTP of all changes in his circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his/her behalf during periods of ineligibility.

9.2 Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.

10.0 Termination Of Eligibility

10.1 Eligibility terminates:

10.1.1 When the enrollee attains other medical insurance, including Medicare, Medicaid, and the Medicaid Breast and Cervical Cancer treatment program.

10.1.2 When the enrollee is no longer receiving treatment for cancer as defined in 4.1.1.

10.1.3 When the enrollee no longer meets the technical or financial eligibility requirements.

10.1.4 12 months after the date that cancer treatment is initiated.

10.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with another cancer for which coverage has not been previously provided.

11.0 Coverage And Benefits

11.1 Coverage is limited to the treatment of cancer as defined by DHSS.

11.2 There is no managed care enrollment.

11.3 Benefits will be paid at rates equivalent to Medicaid under a fee for service basis. If a Medicaid rate does not exist for the service provided, the CTP will

determine a fair rate.

11.4 Benefits will only be paid when the provider of the cancer treatment services is a Delaware Medicaid Assistance Provider.

11.5 Benefits for patients enrolled prior to September 1, 2004 (or whatever date is established by DHSS as having an operational benefits management information system), may not be paid until after that date.

11.6 The CTP is the payer of last resort and will only provide benefits to the extent that they are not otherwise covered by another insurance plan.

11.7 Eligibility may be retroactive to the day that cancer treatment was initiated provided that the application is filed within one year of that day. In such circumstances, covered services will only be provided for the time period that the applicant is determined to have been eligible for the CTP.

11.8 In no case will eligibility be retroactive to a time period prior to July 1, 2004, except if the enrollee was receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004. If this exception occurs, eligibility will be retroactive only to the date the enrollee was receiving benefits for colorectal cancer treatment through the Screening for Life program.

12.0 Cancer Treatment Services Which Are Not Covered

12.1 The cost of nursing home or long-term care institutionalization is not covered. (The cost of cancer treatment services within a nursing home or long term care institution is a covered benefit.)

12.2 Services not related to the treatment of cancer as determined by DHSS are not covered.

12.3 Cancer treatment services for which the enrollee is eligible to receive by other health plans as listed in 4.1.4.2 are not covered.

13.0 Changes In Program Services

13.1 When changes in program services require adjustments of CTP benefits, the CTP will notify enrollees who have provided an accurate and current name, and address or telephone number.

14.0 Confidentiality

14.1 The CTP will maintain the confidentiality of application, claim, and related records as required by law.

15.0 Review Of CTP Decisions

15.1 Any individual who is dissatisfied with a CTP decision may request a review of that decision.

15.2 Such request must be received by the CTP in writing within 30 days of the date of the decision in question.

15.3 The CTP will issue the results of its review in

writing. The review will be final and not subject to further appeal.

8 DE Reg. 107 (7/1/04)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Chapter 5, Section 512 (31 Del.C. Ch.5, §512)

PUBLIC NOTICE

Provider Contractual/Programmatic Responsibilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Delaware Medicaid/Medical Assistance Program Provider Manual to add language to Section 1.6 of the General Policy to promote provider accuracy in processing claims.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by December 31, 2004.

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

Summary Of Proposed Changes

Medical services are reimbursed by the Delaware Medicaid/Medical Assistance Program (DMAP) under Title XIX of the Social Security Act, as amended. Direct health care services are provided by a variety of provider groups. This amendment clarifies general provider participation requirements and provider responsibilities for claims submitted to the DMAP.

All DMAP providers are responsible for their own claims preparation and submission. The effects of this amendment are: 1) more efficient service delivery through more detailed billing requirements; and, 2) increase level of provider accountability for services rendered.

DSS PROPOSED REGULATION #40-25

1.6 Provider Contractual/Programmatic Responsibilities

1.6.1 A provider who signs a contract with the DMAP is responsible to meet certain conditions in order to remain an eligible provider and receive payment for services rendered. The provider must abide by the DMAP's policies and procedures, for example, including but not limited to:

- Directing clients to the most appropriate, medically necessary, and cost-efficient care possible.
- Acceptance of final DMAP payment disposition as payment in full for Medicaid covered services; [therefore, providers cannot charge the client for any services reimbursable by the DMAP (refer to Billing DMAP Clients section in this General Policy for exceptions)].
- Billing all other insurance resources or legally liable third parties prior to billing DMAP (unless under special arrangement as a managed care provider in which third party liability is accounted for in the capitated rate).
- Keeping records necessary to verify the services provided and permitting federal/state representatives access to the records.
- Determining that the client has valid Medical Assistance eligibility before rendering service and, if the client is enrolled in managed care, assuring that all necessary authorizations from the managed care organization are obtained prior to the delivery of services.
- Informing the client of any service that will not be covered by the DMAP prior to the delivery of the service.
- Making restitution for any overpayment promptly.
- Notifying the DMAP of any suspensions or exclusions from any program.
- Sending copies of professional license or certifications to EDS, the fiscal agent, whenever renewed or altered.
- Notifying EDS in writing of any changes related to their
- General Policy Provider Policy Manual Medicaid participation including but not limited to, changes in group affiliation.

1.6.2 Providers are responsible for the accuracy, truthfulness, and completeness of all claims submitted to DMAP. The provider is further responsible for all costs associated with the preparation for the submission of claims, whether prepared or submitted by the provider or by an

outside agency or service. State employees are prohibited from submitting claims on behalf of non-government providers.

Providers acknowledge that by submitting a claim to DMAP they certify the services were rendered prior to the submission of the claim.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Chapter 5, Section 512 (31 Del.C. Ch.5, §512)

PUBLIC NOTICE

Cash Assistance Programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Case Processing Procedures policy in the Division of Social Services Manual (DSSM) regarding redeterminations: eligibility review periods.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by December 31st, 2004.

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

Summary Of Proposed Changes

The purpose of this rule amendment is to simplify the application and eligibility review process for DSS benefits. DSS is aligning program rules of the Cash Assistance Programs with the Food Stamp Program. The Food Stamp Program has mandated regulations on case reviews. DSS plans to adopt rules to align the eligibility review processes for Temporary Assistance for Needy Families (TANF) and General Assistance (GA) so both programs have the same rules.

DSS plans to amend the rules in DSSM 2001 to update program language and reorganize and renumber program requirements for the eligibility review process for cash assistance programs. TANF and GA cases will close at the end of a certification period if the case is not reviewed. The

certification period will be adjusted to any existing open cash assistance or Food Stamps already in the case. After written notification, the recipient is responsible for making an appointment with DSS for a case review.

DSS PROPOSED REGULATION #04-19

2001 Redeterminations

~~In order for cash assistance to continue, the eligibility of all recipients must be reviewed any time a change is reported. In addition, regular periodic redeterminations of eligibility are also required.~~

~~A redetermination is a re-evaluation of a recipient's continued eligibility for assistance. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet categorical eligibility requirements.~~

~~When a redetermination is due, the recipient is required to complete a new DSS application form (Form 100) and appear for a scheduled interview. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.~~

~~The assistance case of a recipient who fails without a good reason to appear for a scheduled redetermination interview will be closed. Examples of good reason for missing a redetermination appointment are:~~

~~Illness of the payee or another family member requiring the presence of the payee;~~

~~Court required appearance;~~

~~Household emergency;~~

~~Inelement weather which prevents travel;~~

~~Appointment letter sent to the wrong address.~~

~~The recipient will be sent a notice of advance action produced by DCIS at least ten (10) days prior to the effective date of the termination. This notice cannot be mailed until the recipient has missed the appointment.~~

~~EXAMPLE: A client is scheduled for a redetermination appointment on March 22nd. The client missed the redetermination appointment. The worker closes the assistance case for failure to keep a redetermination appointment. The earliest the notice can be sent is March 23rd, so the closing is effective April 30th.~~

~~The assistance case of a recipient who fails to provide requested information necessary to establish continued eligibility will be closed. Recipients must be notified via Form 105 of all information necessary to establish continuing eligibility and allowed ten (10) days to return the information. When the client says s/he cannot get a requested document, the worker will assist the client in obtaining an acceptable verification to establish continuing eligibility.~~

~~The recipient will be sent a notice of advance action produced by DCIS at least ten (10) days prior to the effective date of the termination. This notice cannot be mailed until the recipient has missed the deadline for returning the~~

requested information.

EXAMPLE: On March 1st a client has a redetermination interview. On March 1st the worker gives the client a Form 105 requesting verification of the bank account and gives March 11th as the deadline date. The client does not return the verification by March 11th. The worker closes the case for failure to provide requested information. The earliest the notice can be sent is March 12th so the closing is effective March 31st.

EXAMPLE: On March 1st a client has a redetermination interview. On March 12th the worker realizes the client did not verify a bank account. The worker sends the client a Form 105 requesting verification of the bank account and gives March 22nd as the deadline date. The client does not return the verification by March 22nd. The worker closes the case for failure to provide requested information. The earliest the notice can be sent is March 23rd so the closing is effective April 30th.

Any recipient whose assistance benefits are reduced or terminated as a result of a redetermination will be sent written notice of the change at least ten (10) days prior to the effective date of the reduction or termination.

A redetermination is a process by which eligibility factors are periodically reviewed to determine if the assistance group remains eligible for benefits.

2001.1 Required Periodic Redeterminations

The minimum requirement for regular periodic redeterminations on all cases receiving cash assistance is as follows:

1. Every six (6) months for TANF and GA cases where eligibility is based on unemployability
2. Every three (3) months for GA families
3. For GA cases with 12th grade high school students, the redetermination date is scheduled in the month prior to the month of graduation.

2001.1 Redetermination: Eligibility Review Periods

Eligibility periods means the period of time within which a family shall be eligible to receive benefits. At the expiration of each eligibility period cash assistance benefits end. Further eligibility will be established based upon a newly completed application, an interview and verification of information. Under no circumstance will benefits continue beyond the end of an eligibility period without a new determination of eligibility. The first month of the eligibility period will be the first month for which the household is eligible to participate.

A redetermination is due when the eligibility period is expiring. The recipient is required to complete a new DSS application form and either appear for an interview in person or have a mail-in application with a telephone interview. A redetermination is complete when all eligibility factors are examined and a decision regarding eligibility is reached. At that point, a new review period is given for eligible families.

The eligibility review periods for cash assistance cases will normally be set at 6 months. But if there is also Food Stamps to review, the cash assistance eligibility period will be adjusted to come due at the same time as the Food Stamp review so that the family does not experience any undue hardship in the review process. That means, the cash assistance redetermination will be due at the same time as the open Food Stamp case because the eligibility period for the cash assistance case will be adjusted to the same date as the open Food Stamps certification period.

If there was no previously open Food Stamp case but there was an open cash assistance group, the eligibility period of the new cash assistance group would have been adjusted to come due at the same time as the existing cash assistance group.

Therefore, the eligibility review period will be at 6 months or when the Food Stamps assistance groups are due for review but no later than 11 months.

2001.1.1 Interviews.

Delaware's Temporary Assistance for Needy Families Program emphasizes work and work-related activity. Mandating face-to-face interviews might undermine that goal. Therefore, use mail-in applications, with a telephone interview, as an option to encourage recipients to continue employment and training activities or continue working. For Non-Needy Non-Parent Caretakers using mail-in applications with a telephone interview is also permitted since DSS does not count the income and resources of these caretakers. A Contract of Mutual Responsibility is still required to be reviewed and updated.

Redeterminations of eligibility are performed in the regional office.

2001.1.2 Redetermination Notices

Families that have filed an application by the fifteenth (15th) day of the last month of their eligibility period must be provided with either a notice of eligibility or a notice of denial by the end of the current eligibility period. The end of the eligibility period means that a redetermination interview is due.

A system-generated notice is issued even if the assistance group's benefit level increases or does not change.

If a family received a notice of expiration of when the eligibility period was ending indicating that a redetermination was due, and timely reapplied for cash assistance, they are to be sent another notice no later than 30 days after the review date. This second notice will indicate whether the family was eligible for benefits or denied benefits based on the information provided for the redetermination.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Chapter 5, Section 512 (31 Del.C. Ch.5, §512)

PUBLIC NOTICE**Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) for the following reasons: 1) DSS no longer assigns 3-month certification periods; 2) DSS no longer mails benefits to local food stamp offices; and, 3) the implementation of simplified reporting, six-month certification periods, and EBT have made this policy obsolete.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by December 31st, 2004.

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

Summary Of Proposed Changes

- Removes old language certifying homeless households for 3 or 6 months. Homeless households are subject to simplified reporting. DSS automatically give these households a six-month certification period.
- Removes old language about canceling benefits not picked up at the local offices. DSS does not mail benefits to the local offices.

DSS PROPOSED REGULATION #04-23**9032.6 Residency (Including Homelessness Definition)**

[273.2(f)(1)(vi)]

The residency requirements of DSSM 9008 will be verified except in unusual cases where verification of residency cannot reasonably be accomplished. "Unusual cases" would include homeless households, some migrant farmworker households, or households newly arrived in a project area, where verification of residency cannot

reasonably be accomplished. Verification of residency should be accomplished to the extent possible in conjunction with the verification of other information such as, but not limited to, rent and mortgage payments, utility expenses, and identity. If verification cannot be accomplished in conjunction with the verification of other information, then use a collateral contact or other readily available documentary evidence. Documents used to verify other factors of eligibility should normally suffice to verify residence as well.

Any documents or collateral contacts which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed. No durational residency requirement will be established. An otherwise eligible household cannot be required to reside in a permanent dwelling or to have a fixed mailing address as a condition of eligibility.

"Homeless individual" means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

- A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);
- A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized (applied to individuals released from institutions who still need supervision, not prisoners considered to be detained under a Federal or State law while in a halfway house);
- A temporary accommodation in the residence of another individual if the accommodation is for no more than 90 days.
- The 90-day period starts at application or when a change is reported.
- The 90-day period starts over when a household moves from one residence to another.
- If a homeless household leaves, for whatever reason, and returns to the same residence, the 90-day period will start over again.
- If a household has a break in receiving food stamps, the 90-day period will not start over if the household remains in the same residence. The 90-day period will start over if the household moved to another residence.
- A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

~~Use the following procedures to certify eligible homeless households:~~

~~Certify stable homeless households:~~

- Using the DSS local office address for a minimum of six (6) months;
- Using their own P. O. Box for a minimum of three (3) months.

~~Benefits not claimed by recipients will be cancelled. The case should be closed by authorization deadline for the coming month if there has been no contact from the client. (Per DSSM 9006.3, timely notice is not required when DSS has reason to believe that the household is no longer in the project area.)~~

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Sections 903(e)(2)(a)(3&5) and 930(b)
(7 Del.C. §§903(e)(2)(a)(3&5) and 930(b))

REGISTER NOTICE SAN# 2004-08

1. Title Of The Regulations:

Non-Tidal Fishing Regulation 3308 (Formerly NT-7).
Fish Stocking Practices.

Section 2. Transportation, Possession and Sale

2. Brief Synopsis Of The Subject, Substance And Issues:

To modify Non-Tidal Fishing Regulation 3308 (Formerly NT-7), Fish Stocking Practices, to add the northern snakehead fish (*Channa argus*) and the blotched snakehead fish (*Channa maculata*) to the list of species for which it shall be unlawful for any person to transport, purchase, possess or sell within Delaware. This action complements action taken recently by the Maryland Department of Natural Resources and previous action taken by the states of Pennsylvania and New Jersey. These two species of snakehead fishes have been identified as the two most likely species of potentially injurious exotic snakehead fishes to thrive and breed in our area when released to the wild. The northern snakehead species has been documented to have escaped efforts at eradication within the state of Maryland and also has been shown to have bred in the wild in southeastern Pennsylvania.

3. Possible Terms Of The Agency Action:

N/A

4. Statutory Basis Or Legal Authority To Act:

7 Del.C. §103(a)(1) and §103(b)

5. Other Regulations That May Be Affected By The Proposal:

N/A

6. Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302) 739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:00 PM on January 4, 2005. The record will remain open for written or e-mail comments to roy.miller@state.de.us until 4:30 PM January 14, 2005.

7. Prepared By: Roy W. Miller, (302)739-3441, October 27, 2004

3308 Fish Stocking Practices (Formerly NT-7) (Penalty Section 7 Del.C. §1304)

1.0 Stocking Fish Practices.

1.1 It shall be unlawful for any person to stock any species of fish into the non-tidal public waters of this State without the written permission of the Director. This regulation does not prohibit the stocking of private impoundments.

2.0 Transportation, Possession and Sale.

2.1 It shall be unlawful for any person to transport, purchase, possess, or sell walking catfish (*Clarius batrachus*) or the white amur or grass carp (*Ctenopharyngodon idella*) or live northern snakehead fish (*Channa argus*) or blotched snakehead fish (*Channa maculata*) without the written permission of the Director.

3 DE Reg. 289 (8/1/99)

REGISTER NOTICE SAN# 2004-13

1. Title Of The Regulations:

Tidal Finfish Regulation 3502. Striped Bass Season And Area Restrictions.

Tidal Finfish Regulation 3505. Striped Bass Commercial Fishing Season; Quotas; Tagging And Reporting Requirements.

2. Brief Synopsis Of The Subject, Substance And Issues:

To increase the length of the commercial gill net season

for striped bass to extend from February 15 through May 31 instead of the present March 1-April 30 open season and to require the use of drift nets for any gill nets having a mesh size of 4-inches or greater that are used to take striped bass during the February striped bass season extension;

To increase the duration of the commercial hook and line fishing season for striped bass from April 1 through and including December 31 instead of September 1 through December 31.

To require the use of non-offset "circle hooks" when fishing with natural bait in the designated striped bass spawning areas during the April 1-May 31 spawning season to reduce mortality rates from catch and release recreational fishing. The requirement for the use of circle hooks shall only apply to hooks having a gap greater than 3/8 inches as measured from the hook point to the shank of the hook.

3. Possible Terms Of The Agency Action:

N/A

4. Statutory Basis Or Legal Authority To Act:

§903(e)(2)(a)(3&5), 7 Del.C. and §930(b), 7 Del.C.

5. Other Regulations That May Be Affected By The Proposal:

N/A

6. Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:00 PM on December 30, 2004. The record will remain open for written or e-mail comments to roy.miller@state.de.us until 4:30 PM January 4, 2005.

7. Prepared By: Roy W. Miller, (302)739-3441

November 5, 2004

3502 Striped Bass Spawning Season and Area Restrictions. (Formerly Tidal Finfish Reg. 2)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 AM on April 1 and continue through midnight on May 31 of each calendar year.

2.0 It shall be unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east

beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.

3.0 It shall be unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.

4.0 It shall be unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a draft gill net of multi- or mono-filament twine larger than 0.28 millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 1/2) inches.

5.0 It shall be unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at Liston Point (River Mile 48.06) and continuing due east to the boundary with New Jersey during January, February, March, April or May.

6.0 It shall be unlawful for any person to fish during the striped bass spawning season defined in 3502 section 1.0 in the areas defined in 3502 section 2.0 with natural bait using any hook other than a non-offset circle hook when said hook measures greater than three-eighths (3/8s) inches as measured from the point of the hook to the shank of the hook.

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements. (Formerly Tidal Finfish Reg. 8)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 AM on February 15 ~~March 1~~ and ending at 4:00 P.M. on May 31 ~~April 30~~ next ensuing. It shall be unlawful to use any gill net having a stretched-mesh size greater than four (four) inches to take striped bass during the period February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 AM on November 15 and ending at 4:00 PM on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the February – May ~~March – April~~ gill net fishery. In order for a commercial food fisherman to be authorized by the

Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 15 for the ~~February 15~~ March - May 31 ~~April~~ gill net fishery and by November 1 for the December gill net fishery.

2.0 It shall be unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 AM on ~~April~~ September 1 and ending at 4:00 PM on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by ~~August~~ March 15.

3.0 It shall be unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection 2.0 herein, to take striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.

4.0 The striped bass gill net fishery in ~~February~~ March - May ~~April~~, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in ~~April~~ September - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of striped bass allotted to each fishery by the Department shall be as follows: 95% of the State's commercial quota, as determined by the ASMFC, for the ~~February 15~~ March - May 31 ~~April~~ gill net fishery, 10% of the State's commercial quota for the ~~April~~ September - December hook and line fishery and, provided that in excess of two (2) % of the ~~February 15~~ March - May 31 ~~April~~ gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

5.0 It shall be unlawful for any commercial food fisherman

to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.

6.0 It shall be unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill a tag issued to said commercial fisherman by the Department. Said tag shall be locked into place immediately after taking said striped bass.

7.0 The Department shall issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of tags that is to be determined by the Department by dividing said participants assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.

8.0 It shall be lawful for a commercial food fisherman who is authorized to be issued striped bass tags by the Department to transfer said tags to another commercial food fisherman, authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.

9.0 It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.

10.0 It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass if said tag had previously been applied to another striped bass.

11.0 It shall be unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the state unless said striped bass has been weighed and tagged by an official weigh station.

12.0 The Department shall appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall

provide official weigh stations with tags to be applied to each striped bass weighed.

13.0 Each commercial food fisherman participating in a striped bass fishery shall file an acceptable report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Failure to file an acceptable report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

1 DE Reg 270 (9/1/97)

4 DE Reg 1552 (3/1/01)

REGISTER NOTICE
SAN# 2004-11

1. Title Of The Regulations:

Tidal Finfish Regulation 3553. River Herring Creel Limit

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

This new regulation would set a daily limit on the take and possession of blueback herring and/or alewife (*Alosa aestivalis* and/or *Alosa pseudoharengus*), collectively known as river herring, of 25 per person for the two species combined, except for those possessing a valid commercial finfish license or a receipt from a person legally entitled to take or possess in excess of 25 river herring per day. The purpose of his regulation is to prevent the establishment of a bait fishery for river herring in tidal tributaries of the State. The Department has been attempting to restore river herring to their former abundance by providing passage over dams that block spawning migrations. This action would complement actions previously taken by New Jersey and Pennsylvania. Live river herring are sought after as bait for striped bass and other species and are vulnerable to overexploitation when they approach fishways, dams or other obstructions while on their spawning migrations or out-migrations. This regulation would not affect normal commercial fishing operations in tidal waters, but will impact recreational fishermen who take live river herring as bait for sale.

3. Possible Terms Of The Agency Action:

N/A

4. Statutory Basis Or Legal Authority To Act:

7 Del.C. §903(e)(2)(a)

5. Other Regulations That May Be Affected By The Proposal:

N/A

6. Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:00 PM on January 4, 2005. The record will remain open for written or e-mail comments to roy.miller@state.de.us until 4:30 PM January 14, 2005

7. Prepared By: Roy W. Miller, (302)739-3441

October 27, 2004

3553. River Herring Creel Limit

(Penalty Section 7 Del.C. 936(b)(2))

Unless otherwise authorized, it shall be unlawful for any person to have in possession, except a person with a valid Delaware commercial food fishing license, more than twenty-five (25) blueback herring and/or alewife (*Alosa aestivalis* and/or *Alosa pseudoharengus*), collectively known as river herring, at or between the place caught and his/her personal abode or temporary or transient place of lodging; or unless said person has a valid bill-of-sale or receipt for said river herring that indicates the date said river herring were received, the number of said river herring received and the name, address and signature of the commercial food fisherman who legally caught said river herring; or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said river herring for resale.

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. §6010)

REGISTER NOTICE

1. Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, Division of Water Resources, Ground Water Discharges Section, held a public hearing on September 13, 2004 to receive comments on proposed amendments to the **Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment & Disposal Systems**. The proposed amendments

and a notice of the September 13, 2004 public hearing were published in the Delaware Register of Regulations on August 1, 2004. In response to public comments, evidence and information provided to the agency regarding Section 5.11015(a) and Section 9.01015 since the public hearing, the Department is revising the number of lots which would require the utilization of a community wastewater treatment and disposal system instead of individual on-site wastewater treatment and disposal systems from 200 lots to 50 lots. therefore, these sections of the regulations are being published in their modified form and presented at a public hearing to provide the public an additional opportunity to submit comments before all of the amendments are promulgated in the manner required by law.

2. Possible Terms of the Agency Action:

N/A

3. Statutory Basis or Legal Authority to Act:

7 Del.C. Chapter 60

4. List of Other Regulations That May be Impacted or Affected by the Proposal:

Regulations Governing the Design, Installation & Operation of On-Site wastewater treatment and Disposal Systems (Amended March 11, 2002)

5. Notice Of Public Comment:

The Department Of Natural Resources And Environmental Control, Division Of Water Resources, Ground Water Discharges Section, Held A Public Hearing On September 13, 2004 To Receive Comments On Proposed Amendments To The Regulations Governing The Design, Installation And Operation Of On-site Wastewater Treatment & Disposal Systems. The Proposed Amendments And A Notice Of The Public Hearing Were Published In The Delaware Register Of Regulations On August 1, 2004. In Response To Public Comments, Evidence And Information Provided To The Agency Since The Public Hearing Regarding Section 5.11015(A) And Section 9.01015, The Department Is Revising The Number Of Lots Which Would Require The Utilization Of A Community Wastewater Treatment And Disposal System Instead Of Individual On-site Wastewater Treatment And Disposal Systems From 200 Lots To 50 Lots. The Department Will Conduct A Public Hearing On **Monday, January 10, 2004 At 6:00 P.m.** In The Dnrec Auditorium At 89 Kings Highway, Dover, De To Provide The Public An Additional Opportunity To Comment On These Revisions. Comments On The Proposed Revisions Should Be Submitted In Writing To Lisa Vest, Office Of The Secretary, Dnrec, 89 Kings Hwy., Dover, De 19901. Copies Of The Department's Proposed Revisions To Section 5. 11015 (A) And Proposed Section 9.01015 Are Available By Contacting Jack Hayes At (302) 739-4761.

***PLEASE NOTE: ONLY THE TWO SECTIONS BEING AMENDED ARE BEING PUBLISHED. PLEASE REFER TO THE AUGUST 2004 ISSUE OF THE REGISTER OF REGULATIONS BEGINNING AT PAGE 283 TO VIEW THE ENTIRE PROPOSED REGULATION.**

HTTP://WWW.STATE.DE.US/RESEARCH/REGISTER/AUGUST2004/PROPOSED/8%20DE%20REG%20283%2008-01-04.HTM

5.11000 Community Systems

5.11010 Without first applying for and obtaining a construction permit, no person shall install a community on-site wastewater treatment and disposal system.

5.11015 A community on-site wastewater treatment and disposal system shall be required when any of the following conditions exist:

(a) ~~Lot size is less than two (2) acres and more than 55% of the subdivision or planned unit development contains soil interpretative units identified as being suitable for on-site wastewater treatment and disposal systems that require pressurization~~ Proposed number of dwelling units is > fifty (50); or

(b) Where overall density of the subdivision or planned unit development is more than one dwelling unit per ½ acre.

SECTION 9.00000 -- PRELIMINARY WASTEWATER TREATMENT & DISPOSAL REVIEW

9.01000 It is the policy of the Department to facilitate compliance with these Regulations through review of proposed development projects as early as possible in the development process to avoid unnecessary conflicts and expense. Any development project, which may or may not constitute a major subdivision, can submit a feasibility study to satisfy other local government approval processes. Any project that proposes to use individual on-site and/or community/large wastewater treatment and disposal systems must submit a letter of intent prior to initiating any preliminary soil investigations.

9.01010 The letter of intent must contain the following details:

- (a) The name of the Developer and landowner
- (b) The size of parcel and ~~number of proposed lots or projected flow rates~~ tax parcel number(s)
- (c) ~~Indication of type of system(s) — individual versus large/community~~
- (d) ~~c~~ Projected start date of site/soil investigative work

9.01015 If the proposed number of dwelling units is > fifty (50) or a large on-site wastewater treatment and disposal system(s) (LOWTDS) is proposed, proceed to the requirements of Section 5.12000, if not, proceed to Section

9.01020 . If a preliminary review is desired prior to the submission of a SIR, the site evaluator may submit a feasibility study in accordance with Section 9.01017.

9.01017 A feasibility study for a LOWTDS shall contain the following information:

(a) Site plan drawn to scale not to exceed one (1) inch equals two hundred (200) feet

(b) Illustrate topography on two (2) foot contour intervals unless the Department approves the use of an alternate scale due to extreme variations in the elevation on the site

(c) Conduct a soil suitability evaluation of the project site following the procedures prescribed in section 5.01000. The area of investigation should be concentrated within the proposed LOWTDS. The Site Evaluator must demonstrate the area proposed for the LOWTDS represents the best soils on the project site. The extent and nature of the soil evaluation shall be determined by the Class D site evaluator.

(d) Based on preliminary design criteria established by the Class D site evaluator, as a result of the soils evaluation, a preliminary engineering study prepared by a Class C engineer must be included which demonstrates the suitability of the evaluated area for the proposed number of lots. The engineering study must include, at a minimum, the proposed method of disposal, proposed treatment levels, and proposed design flow rates, along with preliminary calculations/layout to demonstrate there is sufficient area for both the initial and replacement system.

(e) The Department may ask for any additional information deemed necessary on a case-by-case basis to make a statement of feasibility.

9.01020 A feasibility study shall be filed with the Department setting forth the proposed manner of compliance with these Regulations. The feasibility study shall contain the following information:

(a) Site plan must be drawn to scale not to exceed one (1) inch equals two hundred (200) feet

(b) Illustrate topography by two (2) foot contour intervals unless the Department approves the use of an alternate scale due to extreme variations in elevation on the site

(c) Illustrate the approximate location of all wells, watercourses, roads and on-site wastewater treatment and disposal systems within one hundred fifty (150) feet of the perimeter of the property

(d) Conduct a soil suitability evaluation of the project site following procedures prescribed in Section 5.01000. The extent and nature of the soil evaluation shall be determined by a Class D site evaluator. The site evaluator shall coordinate the planning of the soils evaluation with the Department prior to initiating work

(e) Indicate the type of limiting zone, its depth, and list the results of the site and soils analysis on the

appropriate forms

(f) Each soil interpretative unit identified for potential on-site wastewater treatment and disposal shall have at least one (1) percolation test conducted within it to establish representative percolation rates for each interpretative unit

(g) Lot numbers and approximate lot areas shall be provided

(h) A general site location map shall be included on the preliminary plan for reference identification of the area

(i) Proposed stormwater management areas

(j) Location of any jurisdictional wetlands, if delineated

(k) Any other information required by the Department on a case by case basis.

9.02000 The Department shall conduct a general review of the preliminary plan and give the owner/developer a ~~soil investigation report~~ statement of preliminary subdivision feasibility which shall contain a statement of on-site wastewater treatment and disposal feasibility. This Section shall not be construed to relieve the applicant of the responsibility of obtaining individual site evaluations and permits from the Department for each lot prior to commencement of construction of any on-site wastewater treatment and disposal system.

9.03000 If, in the estimation of the Department, more than fifty five (55) percent of the proposed absorption facilities for the subdivision will require pressurized systems, due to limiting conditions, a community wastewater treatment and disposal system shall be utilized unless average lot density is greater than two (2) acres.

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF ADMINISTRATIVE
SERVICES**
**DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**
24 DE Admin. Code 1900

 Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 **Del.C.** §1906(1))

ORDER

Pursuant to due notice of the time and place of hearing published in the *News Journal* and in the *Delaware State News* and in compliance with the requirements of 29 **Del.C.** §10115, the Delaware Board of Nursing ("Board") under its authority to enact rules and regulations specified in 24 **Del.C.** §1906(1), conducted a public hearing concerning proposed modifications to the Rules and Regulations of the Board. The proposed modifications and additions were published in the **Delaware Register of Regulations** Volume 8, Issue 3, Wednesday, September 1, 2004 beginning at Page 377. Notice of the hearing was also published in two newspapers of general circulation and on page 499 of Volume 8, Issue 3 of the **Delaware Register of Regulations** (Hearing Exhibit No. 1). The public hearing was held on October 13, 2004 as scheduled in Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Kent County, Delaware. A quorum of the Board was present for the hearing.

Summary Of The Evidence

Pursuant to 29 **Del.C.** §10118, the following is a summary of the evidence and information provided at the hearing.

David Klopfenstein, CRNA, MSN, President, Delaware Association of Nurse Anesthetists presented oral and written comments (Hearing Exhibit No. 2) expressing the opposition of the Delaware Association of Nurse Anesthetists to the proposed Regulation provision which would provide that Advanced Practice Nurses (APN's), properly trained, could insert and remove epidural catheters. Mr. Klopfenstein noted that objections were based upon a threat to patient safety and that the change did not address an access to care issue and did not advance the profession of nursing.

Delphose E. Price, Jr., CRNA, MSN, stated to the Board that he was knowledgeable concerning the insertion and removal of epidural catheters and that there were patient safety issues with both the insertion and removal of such catheters and that only nurses who were Certified Registered Nurse Anesthetists were properly trained to insert and remove these catheters.

Iva J. Boardman, R.N., M.S.N., Executive Director of the Board of Nursing, was sworn and testified concerning the development of the proposed modification to the Rules and Regulations of the Board. Ms. Boardman noted that the proposed Regulation began in 1989 as a Board position paper and had experienced seven revisions in the intervening years. In February of 2004 in reviewing the use of anesthetic agents by registered nurses prior to intravascular therapy,

the Board, upon the advice of legal counsel determined to move the position paper statements into the form of Rules and Regulations of the Board.

Written comments were received by the Board of Nursing. David Klopfenstein, CRNA, MSN, on behalf of the Delaware Association of Nurse Anesthetists wrote to express concern regarding the proposed change relating to the insertion and removal of epidural catheters by APN's after special training. The letter noted, among other things, that there are already many health care providers in Delaware that are trained and permitted to insert epidurals and that adequate access was available through physicians and nurse anesthetists (Hearing Exhibit No. 2).

Lenhart Fagraeus, MD, PH. D., provided written comments expressing concern with the same propose provision because of safety and education issues and noted that there are enough Anesthesia personnel in the State of Delaware to meet the needs for pain management. Dr. Fagraeus opined that CRNA's should be the only nurses working with epidural catheters (Hearing Exhibit No. 3).

Sandra P. Como-Fluehr, MSN, RN, APN, BC of the Pain Management Service, Alfred I. DuPont Hospital for Children also provided written comments. She noted that there are many states which allow removal of epidural catheters by properly trained registered nurses. Ms. Como-Fluehr also noted that the insertion of epidural catheters and their removal were separate issues. She supported their removal by trained APNs (Hearing Exhibit No. 4).

Peter B. Panzer, MD, provided written comments proposing further modification to the Rules and Regulations of the Board of Nursing to provide that intradermal or topical anesthetics may be used by the RN or LPN in various situations or settings provided there is an authorized prescribers' order. Dr. Panzer's comments recognized that his proposal was not addressed by the section relating to intravascular therapy which was the subject of the present proceeding but sought to have the Board give consideration to his proposal as either a stand-alone section or as part of another section of the Nursing Regulations (Hearing Exhibit No. 5).

Leslie Verucci, RN,MSN, CNS,APRN-BC, CNRP, Chair of the Advanced Practice Council of Delaware Nurses Association provided written comments observing that there are no nurse practitioners who have come forward with a request to insert epidural catheters. Ms. Verucci noted that her Association supported the use of CRNA's to perform the task of inserting epidural catheters but believed that RN's with specialized training may remove epidurals safely (Hearing Exhibit No. 6).

Findings Of Fact And Conclusions

The Board finds that the procedures required for the modification of Rules and Regulations have been

accomplished as required and that the proposed change furthers the public purposes of the Board of Nursing.

The only area where the proposed Rules and Regulations relating to the provision of intravascular therapy met with any controversy surrounded the proposed provisions relating to the insertion and removal of epidural catheters.

The currently proposed provision 7.8.4.3.1.6 sets forth the existing practice in this state and provides that the Registered Nurse may not insert or remove epidural catheters. The Board finds that it is not appropriate at this time to change this limitation. The proposed section 8.7.16 proposed that it was to be considered to be within the scope of practice of APNs with specialized training to insert and remove epidural catheters. The Board finds that it is not appropriate at this time to adopt this provision because of the information provided by and on behalf of CRNAs raises questions which need to be addressed further concerning patient safety relating to the removal as well as the insertion of epidural catheters. The Board's Regulations are now silent on who can insert and remove such catheters. CRNAs have historically been engaging in both the removal and insertion of epidural catheters and so the status quo relating to the insertion and removal of epidural catheters will be maintained by the Board's determination to enact section 7.8.4.3.1.6 and to abstain from enacting section 8.7.16.

The Nursing Practice Committee of the Board will review the question of authorization to insert and remove epidural catheters and will make a recommendation to the Board concerning these matters after further study.

DECISION AND ORDER

Based upon the findings and conclusions set forth above, the undersigned, constituting a quorum of the Delaware Board of Nursing, adopt the proposed modification to the Rules and Regulations published in the *Register of Regulations* in Volume 8, Issue 3, Wednesday, September 1, 2004, beginning at page 377 as a modification to the Rules and Regulations of the Board, effective December 13, 2004 with the exception of Proposed Section 8.7.16 regarding the insertion and removal of epidural catheters which is not adopted. (See Attached EXHIBIT A). The written comments of Dr. Peter B. Panzer (Hearing Exhibit No. 5) are referred to the Nursing Practice Committee for consideration and action as appropriate.

The Rules and Regulation Committee of the Board of Nursing shall review the circumstances and situations surrounding the insertion and removal of epidural catheters and make recommendations to the Board as to appropriate additions to the Board's Rules and Regulations concerning the insertion and removal of such catheters.

SO ORDERED this 20th Day of October, 2004.

BY ORDER OF THE BOARD OF NURSING

7.0 Standards of Nursing Practice

7.1 Authority

“Standards of nursing practice” means those standards of practice adopted by the Board that interpret the legal definitions of nursing, as well as provide criteria against which violations of the law can be determined. Such standards of nursing practice shall not be used to directly or indirectly affect the employment practices and deployment of personnel by duly licensed or accredited hospitals and other duly licensed or accredited health care facilities and organizations. In addition, such standards shall not be assumed the only evidence in civil malpractice litigation, nor shall they be given a different weight than any other evidence.

7.2 Purpose

The purpose of standards is to establish minimal acceptable levels of safe practice for the Registered and Licensed Practical Nurse, and to serve as a guide for the Board to evaluate safe and effective nursing care.

7.3 Standards of Practice for the Registered and Licensed Practical Nurse

7.3.1 Standards related to the Registered Nurse.

7.3.1.1 The Registered Nurse shall conduct and document nursing assessments of the health status of individuals and groups by:

7.3.1.1.1 Collecting objective and subjective data from observations, examinations, interviews and written records in an accurate and timely manner. The data include but are not limited to:

7.3.1.1.1.1 Biophysical and emotional status and observed changes;

7.3.1.1.1.2 Growth and development;

7.3.1.1.1.3 Ethno-cultural, spiritual, socio-economic and ecological background;

7.3.1.1.1.4 Family health history;

7.3.1.1.1.5 Information collected by other health team members;

7.3.1.1.1.6 Ability to perform activities of daily living;

7.3.1.1.1.7 Consideration of client’s health goals;

7.3.1.1.1.8 Client knowledge and perception about health status and potential, or maintaining health status;

7.3.1.1.1.9 Available and accessible human and material resources;

7.3.1.1.1.10 Patterns of coping and interaction.

7.3.1.1.2 Sorting, selecting, reporting, and recording the data.

7.3.1.1.3 Analyzing data.

7.3.1.1.4 Validating, refining and modifying the data by using available resources including interactions with the client, family, significant others, and health team members.

7.3.1.1.5 Evaluating data.

7.3.1.2 Registered Nurses shall establish and document nursing diagnoses that serve as the basis for the strategy of care.

7.3.1.3 Registered Nurses shall develop strategies of care based on assessment and nursing diagnoses. This includes, but is not limited to:

7.3.1.3.1 Prescribing nursing intervention(s) based on the nursing diagnosis.

7.3.1.3.2 Initiating nursing interventions through

7.3.1.3.2.1 Giving care.

7.3.1.3.2.2 Assisting with care.

7.3.1.3.2.3 Delegating care.

7.3.1.3.3 Identifying to the identification of priorities in the strategies of care.

7.3.1.3.4 Setting realistic and measurable goals for implementation.

7.3.1.3.5 Identifying measures to maintain comfort, to support human functions and responses, to maintain an environment conducive to well being, and to provide health teaching and counseling.

7.3.1.3.6 Supervising the caregiver to whom care is delegated.

7.3.1.4 Registered Nurses shall participate in the implementation of the strategy of care by:

7.3.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.3.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the direction and supervision of a recognized authority.

7.3.1.4.3 Providing an environment conducive to safety and health.

7.3.1.4.4 Documenting nursing interventions and client outcomes.

7.3.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.3.1.5 Registered Nurses shall evaluate outcomes, which shall include the client, family, significant others and health team members.

7.3.1.5.1 Evaluation data shall be appropriately documented; and

7.3.1.5.1.1 Be communicated to the client, family, significant others and appropriate members of the health care team; and

7.3.1.5.1.2 Used as a basis for modifying outcomes by reassessing client health status,

modifying nursing diagnoses, revising strategies of care or prescribing changes in nursing interventions.

7.4 Standards of Practice for the Licensed Practical Nurse

7.4.1 Standards related to the Licensed Practical Nurse's contributions to the nursing process.

7.4.1.1 The Licensed Practical Nurse shall contribute to and document nursing assessments of the health status of individuals and groups by:

7.4.1.1.1 Sorting, selecting, reporting, and recording the data.

7.4.1.1.2 Collecting objective and subjective data from observations, examinations, interview and written records in an accurate and timely manner. The data include but are not limited to:

7.4.1.1.2.1 Biophysical and emotional status and observed changes;

7.4.1.1.2.2 Growth and development;

7.4.1.1.2.3 Ethno-cultural, spiritual, socio-economic, and ecological background;

7.4.1.1.2.4 Family health history;

7.4.1.1.2.5 Information collected by other health team members;

7.4.1.1.2.6 Ability to perform activities of daily living;

7.4.1.1.2.7 Consideration of client's health goals;

7.4.1.2 Licensed Practical Nurses shall participate in establishing and documenting nursing diagnoses that serve as the basis for the strategy of care.

7.4.1.3 Licensed Practical Nurses shall participate in developing strategies of care based on assessment and nursing diagnoses.

7.4.1.3.1 Contributing to setting realistic and measurable goals for implementation.

7.4.1.3.2 Participating in identifying measures to maintain comfort, to support human functions and responses to maintain an environment conducive to well-being, and to provide health teaching and counseling.

7.4.1.3.3 Contributing to setting client priorities.

7.4.1.4 Licensed Practical Nurses shall participate in the implementation of the strategy of care by:

7.4.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.4.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the directions and supervision of a recognized licensed authority.

7.4.1.4.3 Providing an environment conducive to safety and health.

7.4.1.4.4 Documenting nursing interventions and client outcomes.

7.4.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.4.1.5 Licensed Practical Nurses shall contribute to evaluating outcomes by appropriately documenting and communicating to the client, family, significant others and the health care team members.

7.5 Standards Related to the Registered and Licensed Practical Nurse's Competencies and Responsibilities.

7.5.1 Registered and Licensed Practical Nurses shall:

7.5.1.1 Have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of professional and practical nursing practice.

7.5.1.2 Accept responsibility for competent nursing practice.

7.5.1.3 Function as a member of the health team:

7.5.1.3.1 By collaborating with other members of the health team to provide optimum care, or

7.5.1.3.2 As an LPN under the direction and supervision of a recognized licensed authority.

7.5.1.4 Consult with nurses, other health team members and community agencies for continuity of care and seek guidance as necessary.

7.5.1.5 Obtain instruction and supervision as necessary when implementing nursing techniques.

7.5.1.6 Contribute to the formulation, interpreting, implementing and evaluating of the objectives and policies related to professional and practical nursing practice within the employment setting.

7.5.1.7 Participate in evaluating nurses through peer review.

7.5.1.8 Report unsafe nursing practice to the Board and unsafe practice conditions to recognized legal authorities.

7.5.1.9 Practice without discrimination as to age, race, religion, sex, sexual orientation, national origin, or disability.

7.5.1.10 Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.

7.5.1.11 Respect the client's right to privacy by protecting confidentiality unless obligated by law to disclose the information.

7.5.1.12 Respect the property of clients, their families and significant others. In addition to the proceeding, the Registered Nurse shall:

7.5.1.13 Delegate to others only those nursing interventions that those persons are prepared or qualified to perform.

7.5.1.14 Supervise others to whom nursing interventions are delegated.

7.5.1.15 Retain professional accountability for care when delegating.

7.5.1.16 Teach safe practice to other health care workers as appropriate.

7.6 Dispensing

7.6.1 Definitions

7.6.1.1 **“Dispensing”** means providing medication according to an order of a practitioner duly licensed to prescribe medication. The term shall include both the repackaging and labeling of medication from bulk to individual doses.

7.6.1.2 **“Prescription label”** - a label affixed to every prescription or drug order which contains the following information at a minimum.

7.6.1.2.1 A unique number for that specific drug order.

7.6.1.2.2 The date the drug was dispensed.

7.6.1.2.3 The patient’s full name.

7.6.1.2.4 The brand or established name and manufacturer and the strength of the drug to the extent it can be measured.

7.6.1.2.5 The practitioner’s directions as found on the prescription order.

7.6.1.2.6 The practitioner’s name.

7.6.1.2.7 The initials of the dispensing nurse.

7.6.1.2.8 The name and address of the facility or practitioner from which the drug is dispensed.

7.6.1.2.9 Expiration date.

7.6.1.3 **“Standing order”** - An order written by the practitioner which authorizes a designated registered nurse or nurses to dispense prescription drugs to his/her patients(s) according to the standards listed below.

7.6.2 Authority to Dispense

7.6.2.1 Registered Nurses may assume the responsibility of dispensing as defined in the Nurse Practice Act.

7.6.2.2 Licensed Practice Nurses may assume the responsibility of dispensing as authorized by the Nurse Practice Act and defined in these Regulations, Section 7.6.2.2.1., 7.6.2.2.2., and 7.6.2.2.3

7.6.2.2.1 Licensed Practical Nurses may provide to a patient pre-packaged medications in accordance with the order of a practitioner duly licensed to prescribe medication where such medications have been pre-packaged by a person with lawful authority to dispense drugs.

7.6.2.2.2 Licensed Practical Nurses, per written order of a physician, dentist, podiatrist, advanced practice nurse, or other practitioner duly licensed to prescribe medication, may add the name of the client to a preprinted label on a pre-packaged medication.

7.6.2.2.3 Licensed Practical Nurses in a licensed methadone clinic may apply a preprinted label to a pre-packaged medication.

7.6.3 Standards for Dispensing

7.6.3.1 All licensed nurses engaged in

dispensing shall adhere to these standards.

7.6.3.1.1 The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.

7.6.3.1.2 The nurse shall be responsible for proper drug storage of the medication prior to dispensing.

7.6.3.1.3 The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.

7.6.3.1.4 Once a drug has been dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.

7.6.3.1.5 The nurse may not delegate any part of the dispensing function to any other individual who is not licensed to dispense.

7.6.3.1.6 The dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed.

7.6.3.1.7 The nurse-dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.

7.6.3.1.8 A usage review process must be established for the medicines dispensed to assure proper patient usage.

7.6.3.1.9 All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United States Pharmacopoeia for stability.

7.6.3.1.10 Record keeping must include the maintenance of the original written prescription of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.

7.6.3.1.11 The dispensing nurse shall assume the responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.

7.6.3.1.12 Conformance to paragraphs 6 through 11 are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.

7.7 Delegation

7.7.1 Definitions

7.7.1.1 **“Accountability”** - The state of being accountable, answerable, or legally liable for actions and decisions, including supervision.

7.7.1.2 **“Delegation”** - Entrusting the performance of selected nursing duties to individuals qualified, competent and legally able to perform such duties

while retaining the accountability for such act.

7.7.1.3 **“Supervision”** - The guidance by a registered nurse (RN) for the accomplishment of a function or activity. The guidance consists of the activities included in monitoring as well as establishing the initial direction, delegating, setting expectations, directing activities and courses of action, critical watching, overseeing, evaluating, and changing a course of action.

7.7.1.4 **“Unlicensed Assistive Personnel”** - Individuals not licensed to perform nursing tasks that are employed to assist in the delivery of client care. The term “unlicensed assistive personnel” does not include members of the client’s immediate family, guardians, or friends; these individuals may perform incidental care of the sick in private homes without specific authority from a licensed nurse (as established in 24 **Del.C.** §1921(a)(4) of the Nurse Practice Act).

7.7.2 Conditions

7.7.2.1 The following conditions are relevant to delegation:

7.7.2.1.1 Only RNs may delegate.

7.7.2.1.2 The RN must be knowledgeable regarding the unlicensed assistive personnel’s education and training and have opportunity to periodically verify the individual’s ability to perform the specific tasks.

7.7.2.1.3 The RN maintains accountability for determining the appropriateness of all delegated nursing duties and responsibility for the delivery of safe and competent care. Unlicensed assistive personnel may not reassign a delegated act.

7.7.3 Criteria

7.7.3.1 The RN may delegate only tasks that are within the scope of sound professional nursing judgment to delegate.

7.7.3.2 Determination of appropriate factors include, but are not limited to:

7.7.3.2.1 stability of the client’s condition

7.7.3.2.2 educational background, skill level, or preparation of the individual

7.7.3.2.3 nature of the nursing act that meets the following:

7.7.3.2.3.1 task is performed frequently in the daily care of a client

7.7.3.2.3.2 task is performed according to an established sequence of steps

7.7.3.2.3.3 task may be performed with a predictable outcome

7.7.3.2.3.4 task does not involve ongoing assessment, interpretation or decision making that cannot be logically separated from the task itself.

7.7.3.3 The RN must be readily available in person or by telecommunication.

7.7.4 Exclusions

7.7.4.1 The following activities require nursing knowledge, judgment, and skill and may not be delegated by the RN to an unlicensed assistive person. These exclusions do not apply to Advanced Practice Nurses.

7.7.4.2 Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

7.7.4.3 Development of nursing diagnosis and care goals;

7.7.4.4 Formulation of the plan of nursing care and evaluation of the effectiveness of the nursing care provided;

7.7.4.5 Specific tasks involved in the implementation of the plan of care which require nursing judgment, skill, or intervention, that include, but are not limited to: performance of sterile invasive procedures involving a wound or anatomical site; nasogastric, newly established gastrostomy and jejunostomy tube feeding; nasogastric, jejunostomy and gastrostomy tube insertion or removal; suprapubic catheter insertion and removal; (phlebotomy is not considered a sterile, invasive procedure);

7.7.4.6 Administration of medications, including prescription topical medications; and

7.7.4.7 Receiving or transmitting verbal orders.

1 DE Reg. 1888 (6/1/98)

6 DE Reg. 1195 (3/1/03)

7.8 Intravascular Therapy By Licensed Nurses

Intravascular therapy encompasses several components, some of which require primarily skill proficiency with a minimum of critical judgement. Other aspects of intravascular therapy require skill proficiency and more importantly a high degree of knowledge, critical judgement and decision making to perform the function safely.

7.8.1 Definition Of Terms

7.8.1.1 Vascular system - is composed of all peripheral and central veins and arteries.

7.8.1.2 Intravascular therapy (IV) - is the broad term including the administration of fluids and medications, blood and blood derivatives into an individual's vascular system.

7.8.1.3 Intravenous fluids - include solutions, vitamins, nutrient preparations, and commercial blood fractions designed to be administered into an individual's vascular system. Whole blood and blood components, which are administered in the same manner, are considered intravenous fluids in this definition.

7.8.1.4 Intravenous and intra-arterial medications - are drugs administered into an individual's vascular system by any one of the following methods:

7.8.1.4.1 By way of infusion diluted in solution or suspended in fluid and administered over a

specified time at a specified rate.

7.8.1.4.2 Through an established intravascular needle or catheter (referred to as "IV push").

7.8.1.4.3 By venipuncture carried out for the sole purpose of administering the medication. This method is referred to as direct medication injection (direct IV push).

7.8.1.5 Vascular access - Utilization of an established device or the introduction of a needle or catheter into an individual's vascular system.

7.8.1.6 Venipuncture - Introduction of a needle or catheter into an individual's peripheral vein for the purpose(s) of withdrawing blood or establishing an infusion or administering medications.

7.8.1.7 Intravascular therapy maintenance - Monitoring of the therapy for changes in patient's condition, appropriate flow rate, equipment function, the hanging of additional fluid containers and the implementation of site care.

7.8.1.8 Termination of intravascular therapy - Cessation of the therapy either by withdrawing a needle or catheter from an individual's vascular system or by discontinuing the infusion and maintaining the device as a reservoir.

7.8.1.9 Supervision - a registered nurse, licensed physician or dentist is physically present in the unit where the patient is being provided care, or within immediate electronic/telephone contact.

7.8.2 Conditions Of Performing Intravascular Therapy Procedures By Licensed Nurses

7.8.2.1 Intravascular therapy must be authorized by a written order from a state licensed and authorized prescriber.

7.8.2.2 The performance of any procedures of intravascular therapy by a licensed practical nurse will be done under the supervision of a registered nurse, APN, or person licensed to practice medicine, surgery, or podiatry.

7.8.2.3 Admixed intravascular solutions documented and instituted by one licensed nurse and subsequently interrupted may be re-instituted by another licensed nurse after confirmation with the state licensed and authorized prescriber's order.

7.8.2.4 Admixed intravascular solutions documented and prepared by one licensed nurse may be initiated or continued by another licensed nurse after confirmation with the state licensed and authorized prescriber's order.

7.8.2.5 Intradermal or topical anesthetics may be used by the RN or LPN when initiating vascular access therapy in various situations or settings, provided there is an authorized prescriber's order and organizational policy/procedure to support use of these medications. All RNs and LPNs must have documented educational preparation according to the employing agency's policies and

procedures. Documented evidence must include both theoretical instruction including anatomy and physiology, pharmacology, nursing management and education of patients and demonstration of clinical proficiency in performance of the task.

7.8.3 Functional Scope Of Responsibility For Intravascular Therapy Procedures

7.8.3.1 Registered Nurses bear the responsibility and accountability for their nursing practice under the license granted by the Board of Nursing and are permitted to perform the following:

7.8.3.1.1 Assessment of the patient and the prescribed intravascular therapy before, during and after the therapy is carried out.

7.8.3.1.2 Acceptance and confirmation of intravascular therapy order(s).

7.8.3.1.3 Calculation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.1.4 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.1.5 Addition of prescribed medications in intravascular solution, labeling and documenting appropriately.

7.8.3.1.6 Start initial solution or add replacement fluids to an existing infusion as prescribed.

7.8.3.1.7 Vascular access for establishing an infusion or administering medications.

7.8.3.1.8 Administration of medications by "IV push".

7.8.3.1.9 Intravascular therapy maintenance.

7.8.3.1.10 Termination of intravascular therapy, including the removal of subclavian and PICC lines.

7.8.3.1.11 Access the vascular system for the purpose of the withdrawal of blood and to monitor the patient's condition before, during, and after the withdrawal of blood.

7.8.3.2 Licensed Practical Nurses bear the responsibility and accountability for their nursing practice under the license granted by the Board of Nursing and are permitted to perform the following for peripheral lines:

7.8.3.2.1 Acceptance of intravascular therapy order(s).

7.8.3.2.2 Calculation of medication dosage and infusion rate of intravascular medications prescribed. This does not include titration.

7.8.3.2.3 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.2.4 Addition of medications in intravascular solutions, label and document appropriately.

7.8.3.2.5 Venipuncture with needle

device to establish access to the peripheral vascular system.

7.8.3.2.6 Start initial solution or add replacement fluids to an existing infusion as prescribed.

7.8.3.2.7 Intravascular therapy maintenance including the flushing of peripheral lines with Heparin and/or saline solution.

7.8.3.2.8 Termination of peripheral intravascular therapy.

7.8.3.2.9 Performance of venipuncture for the purpose of the withdrawal of blood and to monitor the patient's condition before, during and after the withdrawal of blood.

7.8.3.3 The Licensed Practical Nurse is permitted to perform the following procedures for central lines:

7.8.3.3.1 Acceptance of intravascular therapy order(s).

7.8.3.3.2 Calculation of medication dosage and infusion rate of intravascular medications prescribed. This does not include titration.

7.8.3.3.3 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.3.4 Addition of medications in intravascular solutions, label and document appropriately.

7.8.3.3.5 Intravascular therapy maintenance, including the flushing of central lines with Heparin and/or saline solution.

7.8.3.3.6 Dressing and tubing changes, including PICC lines.

7.8.3.3.7 Addition of replacement fluids to an existing infusion as prescribed.

7.8.4. Special Intravascular Procedures By Registered Nurses

7.8.4.1 Chemotherapy - Only intravascular routes are addressed in these rules. Review of the Oncology Nursing Society's current guidelines is recommended before the administration of anti-neoplastic agents.

7.8.4.1.1 Definition of Terms

7.8.4.1.1.1 Cancer Chemotherapy - is the broad term including the administration of anti-neoplastic agents into an individual's vascular system.

7.8.4.1.1.2 Anti-neoplastic agents - are those drugs which are administered with the intent to control neoplastic cell growth.

7.8.4.1.2 The Registered Nurse who administers cancer chemotherapy by the intravascular route must have documented educational preparation according to the employing agency's policies and procedures.

7.8.4.1.3 The Registered Nurse must have documented evidence of knowledge and skill in the following:

- Pharmacology of anti-neoplastic agents

• Principles of drug handling and preparation

- Principles of administration
- Vascular access
- Side effects of chemotherapy

on the nurse, patient, and family

7.8.4.2 Central Venous Access Via Peripheral

Veins

7.8.4.2.1 Definition of Terms

7.8.4.2.1.1 Central venous access - is that entry into an individual's vascular system via the insertion of a catheter into a peripheral vein threaded through to the superior vena cava with placement confirmed by x-ray.

7.8.4.2.2 The Registered Nurse who performs central venous access via peripheral veins must have documented educational preparation according to the employing agency's policies and procedures.

7.8.4.2.3 Documented evidence must include, but is not limited to, evidence of both theoretical instruction and clinical proficiency in performance of the task.

7.8.4.2.3.1 Theoretical instruction must include, but is not limited to, anatomy and physiology, pharmacology, nursing management, and education of patients as they relate to central venous access via peripheral veins.

7.8.4.2.3.2 A preceptor must supervise the learning experience and must document the Registered Nurse's competency in the performance of the procedure.

7.8.4.3 Pain Management Via Epidural Catheter

7.8.4.3.1 It is within the scope of practice of a Registered Nurse to instill analgesics (opiates)/low dose anesthetics at analgesic levels into an existing catheter under the following conditions/exceptions:

7.8.4.3.1.1 The epidural catheter is in place.

7.8.4.3.1.2 The position of the epidural catheter was verified as correct by a physician at the time of insertion.

7.8.4.3.1.3 Bolus doses and/or continuous infusions, as pre-mixed by anesthesiologists, C.R.N.A.s, or pharmacists, of epidural analgesics/low dose anesthetics at analgesic levels can be administered by the Registered Nurse only after the initial dose has been administered. Changes in medication and/or dosage of the same medication are not defined as the initial dose.

7.8.4.3.1.4 Only analgesics (opiates)/low dose anesthetics at analgesic levels will be administered via this route for acute and chronic pain management.

7.8.4.3.1.5 The Registered Nurse

must complete a course that includes, but is not limited to, a) anatomy, physiology, pharmacology, nursing management, assessment, and education of patients as they relate to epidural administration of opiates/low dose anesthetics at analgesic levels; b) a credentialed preceptor must supervise the learning experience and must document the Registered Nurse's clinical competency in the performance of the procedure.

7.8.4.3.1.6 The Registered Nurse may not insert or remove epidural catheters

8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of Delaware

8.1 Authority

These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 Del.C. §§1902(d), 1906(1), 1906(7).

8.2 Purpose

8.2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the public by regulating the practice of the Advanced Practice Nurse.

8.3 Scope

8.3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20). The Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/or professional nursing in a specialty area.

8.4 Definitions

“Advanced Practice Nurse” as defined in 24 Del.C. §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

“Audit” The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

“Board” The Delaware Board of Nursing

“Certified Nurse Midwife (C.N.M.)” A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification

Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

“Certified Registered Nurse Anesthetist (C.R.N.A.)” A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists’ Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists’ Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

“Clinical Nurse Specialist (C.N.S.)” A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master’s degree program in a clinical nurse specialty or post Master’s certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in 8.9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

“Clinical Nursing Specialty” a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

3 DE Reg. 1373 (4/1/00)

“Collaborative Agreement” Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

“Guidelines/ Protocols” Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

“National Certification” That credential earned by a nurse who has met requirements of a Board approved certifying agency.

The agencies so approved include but are not limited to:

- American Academy of Nurse Practitioners
- American Nurses Credentialing Center
- American Association of Nurse Anesthetists Council on Certification of Nurse

Anesthetists

- American Association of Nurse Anesthetists Council on Recertification of Nurse Anesthetists
- National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties
- National Certification Board of Pediatric Nurse Practitioners and Nurses.
- ACNM Certification Council, Inc.

“Nurse Practitioner (N.P.)” A Registered Nurse with advanced nursing educational preparation who is a provider of primary health care in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master’s program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women’s health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

“Post Basic Program”

A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

The program must be one offered and administered by an approved health agency and/or institution of higher learning,

Post basic means a program taken after licensure is achieved.

“Scope of Specialized Practice” That area of practice in which an Advanced Practice Nurse has a Master’s degree or a post-basic program certificate in a clinical nursing specialty with national certification.

“Supervision” Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

8.5 Grandfathering Period

8.5.1 Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of licensure.

8.6 Standards for the Advanced Practice Nurse

8.6.1 Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

8.6.2 Standards provide the practitioner with a framework within which to operate and with the means to

evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in 8.6.2 of these Rules and Regulations:

8.6.2.1 Performs comprehensive assessments using appropriate physical and psychosocial parameters;

8.6.2.2 Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

8.6.2.3 Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy, administration of anesthesia, and vaginal deliveries;

8.6.2.4 Functions under established guidelines/protocols and/or accepted standards of care;

8.6.2.5 Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;

8.6.2.6 Uses appropriate teaching/learning strategies to diagnose learning impediments;

8.6.2.7 Evaluates the quality of individual client care in accordance with quality assurance and other standards;

8.6.2.8 Reviews and revises guidelines/protocols, as necessary;

8.6.2.9 Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

8.6.2.10 Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;

8.6.2.11 Pursues strategies to enhance access to and use of adequate health care services;

8.6.2.12 Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

8.6.2.13 Performs consultative services for clients referred by other members of the multi-disciplinary team; and

8.6.2.14 Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

8.6.3 In addition to these standards, each nurse certified in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

8.7 Generic Functions of the Advanced Practice Nurse

Within the Specialized Scope of Practice include but are not limited to:

- 8.7.1 Eliciting detailed health history(s)
- 8.7.2 Defining nursing problem(s)
- 8.7.3 Performing physical examination(s)
- 8.7.4 Collecting and performing laboratory tests
- 8.7.5 Interpreting laboratory data
- 8.7.6 Initiating requests for essential laboratory procedures
- 8.7.7 Initiating requests for essential x-rays
- 8.7.8 Screening patients to identify abnormal problems
- 8.7.9 Initiating referrals to appropriate resources and services as necessary
- 8.7.10 Initiating or modifying treatment and medications within established guidelines
- 8.7.11 Assessing and reporting changes in the health of individuals, families and communities
- 8.7.12 Providing health education through teaching and counseling
- 8.7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public
- 8.7.14 Delegating tasks appropriately
- 8.7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20).

~~**8.7.16 Inserting and removing epidural catheters after specialized training.**~~

8.8 Criteria for Approval of Certification Agencies

8.8.1 A national certifying body which meets the following criteria shall be recognized by the Board to satisfy 24 Del.C. §1902(d)(1).

8.8.2 The national certifying body:

8.8.2.1 Is national in the scope of its credentialing.

8.8.2.2 Has no requirement for an applicant to be a member of any organization.

8.8.2.3 Has educational requirements which are consistent with the requirements of these rules.

8.8.2.4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.8.2.5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.8.2.5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.8.2.5.2 The examination represents the knowledge, skills and abilities essential for the delivery

of safe and effective advanced nursing care to the clients;

8.8.2.5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.8.2.5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.8.2.5.5 Examinations are evaluated for psychometric performance;

8.8.2.5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.8.2.5.7 Examination security is maintained through established procedures

8.8.2.6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.8.2.7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.8.2.8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.8.2.9 Has an evaluation process to provide quality assurance in its certification program.

8.9 Application for Licensure to Practice as an Advanced Practice Nurse

8.9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

8.9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

8.9.2.1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.9.2.2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

8.9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

8.9.4 A Registered Nurse meeting the practice requirement as listed in 8.11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

8.9.4.1 Clinical nurse specialists, whose

subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

8.9.4.2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 8.11.2.1.

8.9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

8.9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 **Del.C.** Ch. 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 **Del.C.** §1906(20) - (22).

8.10 Temporary Permit for Advanced Practice Nurse Licensure

8.10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

8.10.1.1 The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

8.10.1.2 The individual applying holds a current license in Delaware, and

8.10.1.3 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

8.10.1.4 The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of at least 1000 hours of clinical nursing practice within the past 24 months.

8.10.1.5 Application(s) and fee(s) are on file in the Board office.

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.5 and;

8.10.2.2 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

8.10.2.3 The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 8.10.2.4; or,

8.10.2.4 The individual meets 8.10.2.1 and 8.10.2.2 hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

8.10.3 If the certifying examination has been passed, the appropriate form must accompany the application.

8.10.4 A temporary permit may be issued:

8.10.4.1 For up to two years in three month periods.

8.10.4.2 At the discretion of the Executive Director.

8.10.5 A temporary permit will be withdrawn:

8.10.5.1 Upon failure to pass the first certifying examination

8.10.5.1.1 The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

8.10.5.1.1.1 current employer reference,

8.10.5.1.1.2 supervision available,

8.10.5.1.1.3 job description,

8.10.5.1.1.4 letter outlining any extenuating circumstances,

8.10.5.1.1.5 any other information the Board of Nursing deems necessary.

8.10.5.2 For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

3 DE Reg. 1373 (4/1/00)

8.10.6 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

8.10.7 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

8.10.8 Any person practicing or holding oneself out as an Advanced Practice Nurse in any category without a

Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (24 Del.C. Ch. 19).

8.10.9 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

8.11 Maintenance of Licensure Status: Reinstatement

8.11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for recertification as established by the certifying agency.

8.11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

8.11.2.1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

8.11.2.2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

8.11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.11.4 Advanced Practice Nurses who fail to renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

8.11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 8.11.4 followed.

8.11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

8.12 Audit of Licensees

8.12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

8.12.1.1 Upon receipt of such notice, the licensee must submit a copy of a current collaborative

agreement(s) within three weeks of receipt of the notice.

8.12.1.2 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

8.12.1.3 An unsatisfactory audit shall result in Board action.

8.12.1.4 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

8.12.2 The Board may select licensees for audit throughout the biennium.

8.13 Exceptions to the Requirements to Practice

8.13.1 The requirements set forth in 8.9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

8.14 Definitions

8.14.1 Collaborative Agreement - Includes

8.14.1.1 A true collegial agreement between two parties where mutual goal setting, access, authority, and responsibility for actions belong to individual parties and there is a conviction to the belief that this collaborative agreement will continue to enhance patient outcomes and

8.14.1.2 a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a duly licensed Delaware physician, dentist, podiatrist or licensed Delaware health care delivery system. This document can include, but not be limited to, written verification of health care facility approved clinical privileges or a health care facility approved job description of the A.P.N. If the agreement is with a licensed Delaware health care delivery system, the individual will have to show that the system will supply appropriate medical back-up for purposes of consultation and referral.

8.14.2 National Certification - That credential earned by an Advanced Practice Nurse who has met requirements of a Board of Nursing approved certifying agency.

8.14.3 Pharmacology/Pharmacotherapeutics - refers to any course, program, or offering that would include, but not be limited to, the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their dosages, their side-effects and their interactions. It also encompasses clinical judgement skills and decision making. These skills may be based on thorough interviewing, history taking, physical assessment, test selection and interpretation, patho-physiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non-pharmacologic interventions.

8.14.4 Prescription Order - includes the prescription date, the name of the patient, the name, address,

area of specialization and business telephone number of the advanced practice nurse prescriber, the name, strength, quantity, directions for use, and number of refills of the drug product or device prescribed, and must bear the name and prescriber ID number of the advanced practice nurse prescriber, and when applicable, prescriber's D.E.A. number and signature. There must be lines provided to show whether the prescription must be dispensed as written or substitution is permitted.

8.15 Requirements for Initial Independent Practice/prescriptive Authority

An APN who has not had independent prescriptive authority within the past two years in Delaware or any other jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.15.1 Be an Advanced Practice Nurse (APN) holding a current permanent license issued by the Board of Nursing (BON). If the individual does not hold national certification, eligibility will be determined on a case by case basis.

8.15.2 Have completed a post basic advanced practice nursing program that meets the criteria as established in Section 4.7 of Article 7 of the Rules and Regulations of the Delaware Board of Nursing with documentation of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty, advanced patho-physiology and advanced pharmacology/pharmacotherapeutics. In the absence of transcript verification of the aforementioned courses, applicants shall show evidence of content integration through course descriptions, course syllabi, or correspondence from school officials. If the applicant cannot produce the required documentation, such applicant may petition the Joint Practice Committee for consideration of documented equivalent independent prescriptive authority experience.

8.15.3 Submit a copy of the current collaborative agreement to the Joint Practice Committee (JPC). The collaborative agreement(s) shall include arrangements for consultation, referral and/or hospitalization complementary to the area of the nurse's independent practice.

8.15.4 Show evidence of the equivalent of at least thirty hours of advanced pharmacology and pharmacotherapeutics related continuing education within the two years prior to application for independent practice and/or independent prescriptive authority. This may be continuing education programs or a three credit, semester long graduate level course. The thirty hours may also occur during the generic APN program as integrated content as long as this can be documented to the JPC. All offerings will be reviewed and approved by the JPC.

8.15.5 Demonstrate how submitted continuing education offerings relate to pharmacology and therapeutics within their area of specialty. This can be done by

submitting the program titles to show content and dates attended. If the JPC questions the relevance of the offerings, the applicant must have available program descriptions, and/or learner objectives, and/or program outlines for submission to the JPC for their review and approval.

8.16 Requirements for Independent Practice/prescriptive Authority by Endorsement

An APN who has had prescriptive authority in another jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.16.1 Show evidence of meeting 8.15.1 and 8.15.3.

8.16.2 Show evidence of having current prescriptive authority in another jurisdiction.

8.16.3 Have no encumbered APN designation(s) in any jurisdiction.

8.16.4 Show evidence of completion of a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure within the past two years.

8.17 Application

8.17.1 Names and credentials of qualified applicants will be forwarded to the Joint Practice Committee for approval and then forwarded to the Board of Medical Practice for review and final approval.

8.18 Prescriptive Authority

8.18.1 APNs may prescribe, administer, and dispense legend medications including Schedule II - V controlled substances, (as defined in the Controlled Substance Act and labeled in compliance with 24 **Del.C.** §2536(C), parenteral medications, medical therapeutics, devices and diagnostics.

8.18.2 APNs will be assigned a provider identifier number as outlined by the Division of Professional Regulation.

8.18.3 Controlled Substances registration will be as follows:

8.18.3.1 APNs must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

8.18.3.2 APNs must register biennially with the Office of Narcotics and Dangerous Drugs in accordance with 16 **Del.C.** §4732(a).

8.18.4 APNs may request and issue professional samples of legend, including schedule II-V controlled substances, and over-the-counter medications that must be labeled in compliance with 24 **Del.C.** §2536(C).

8.18.5 APNs may give verbal prescription orders.

8.19 Prescriptive Writing

8.19.1 All prescription orders will be written as defined by the Delaware Board of Pharmacy as defined in 8.14.4.

8.20 Renewal

8.20.1 Maintain current APN licensure.

8.20.2 Maintain competency through a minimum of ten hours of JPC approved pharmacology/ pharmacotherapeutics related continuing education within the area of specialization and licensure per biennium. The pharmacology/ pharmacotherapeutics content may be a separate course or integrated within other offerings.

8.21 Disciplinary Proceedings

8.21.1 Pursuant to 24 **Del.C.** §1906(19)(c), the Joint Practice Committee is statutorily empowered, with the approval of the Board of Medical Practice, to grant independent practice and/or prescriptive authority to nurses who qualify for such authority. The Joint Practice Committee is also empowered to restrict, suspend or revoke such authority also with the approval of the Board of Medical Practice.

8.21.2 Independent practice or prescriptive authority may be restricted, suspended or revoked where the nurse has been found to have committed unprofessional conduct in his or her independent practice or prescriptive authority or if his or her mental or physical faculties have changed or deteriorated in such a manner as to create an inability to practice or prescribe with reasonable skill or safety to patients.

8.21.3 Unprofessional conduct, for purposes of restriction, suspension or revocation of independent practice or prescriptive authority shall include but not be limited to:

8.21.3.1 The use or attempted use of any false, fraudulent or forged statement or document or use of any fraudulent, deceitful, dishonest or immoral practice in connection with any acquisition or use of independent practice or prescriptive authority;

8.21.3.2 Conviction of a felony;

8.21.3.3 Any dishonorable or unethical conduct likely to deceive, defraud or harm the public;

8.21.3.4 Use, distribution or prescription of any drugs or medical devices other than for therapeutic or diagnostic purposes;

8.21.3.5 Misconduct, incompetence, or gross negligence in connection with independent or prescriptive practice;

8.21.3.6 Unjustified failure upon request to divulge information relevant to authorization or competence to independently practice or exercise prescriptive authority to the Executive Director of the Board of Nursing or to anyone designated by him or her to request such information.

8.21.3.7 The violation of the Nurse Practice Act or of an Order or Regulation of the Board of Nursing or the Board of Medical Practice related to independent practice or prescriptive authority.

8.21.3.8 Restriction, suspension, or revocation of independent practice or prescriptive authority granted by another licensing authority in any state, territory

or federal agency.

8.21.4 Complaints concerning the use or misuse of independent practice or prescriptive authority received by the Division of Professional Regulation or the Board of Nursing shall be investigated in accordance with the provisions of Title 29, Section 8807 governing investigations by the Division of Professional Regulation. As soon as convenience permits, the Board of Nursing shall assign an Investigating Board Member to assist with the investigation of the complaint. The Investigating Board Member shall, whenever practical, be a member of the Joint Practice Committee.

8.21.5 Upon receipt of a formal complaint from the Office of the Attorney General seeking the revocation, suspension or restriction of independent practice or prescriptive authority, the Committee Chairperson shall promptly arrange for not less than a quorum of the Committee to convene for an evidentiary hearing concerning such complaint upon due notice to the licensee against whom the complaint has been filed. Such notice shall comply with the provisions of the Administrative Procedures Act (29 **Del.C.** Ch. 101).

8.21.6 The hearing shall be conducted in accordance with the Administrative Procedures Act (29 **Del.C.** §101), and after the conclusion thereof, the Joint Practice Committee will promptly issue a written Decision and Order which shall be based upon the affirmative vote of a majority of the quorum hearing the case.

8.21.7 Any written Decision and Order of the Joint Practice Committee which imposes a restriction, suspension or revocation of independent practice or prescriptive authority shall not be effective prior to the approval of the Board of Medical Practice.

4 DE Reg. 296 (8/1/00)

5 DE Reg. 1606 (2/1/02)

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF NURSING RULES AND REGULATIONS ARE AVAILABLE AT:**

<http://www.state.de.us/research/AdminCode/title24/1900%20Board%20of%20Nursing.shtml#TopOfPage>

DIVISION OF PROFESSIONAL REGULATION**BOARD OF PHARMACY**

24 DE Admin. Code 2500

Statutory Authority: 24 Delaware Code,
Section 2509 (24 Del.C. §2509)**ORDER**

After due notice in the **Register of Regulations** and two Delaware newspapers, a public hearing was held on November 10, 2004 at a scheduled meeting of the State Board of Pharmacy to receive comments regarding proposed Regulation 16.0. The proposed regulation identifies crimes substantially related to the practice of pharmacy as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in the **Register of Regulations**, Vol. 8, Issue 4, October 1, 2004.

Background

Under 24 Del.C. §2518 as amended by SB 229, the Board of Pharmacy “may refuse to issue or renew or may suspend, revoke or restrict the license of any person after due notice and hearing...” who is “(a)(4)convicted of a crime that is substantially related to the practice of pharmacy...” or fails to “(a)(8)...notify the Board that ... the registrant has been convicted of a crime that is substantially related to the practice of pharmacy.” SB 229 has defined “substantially related” as “the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the practice of pharmacy.” The “practice of pharmacy” is defined in 24 Del. C. §2502.

Summary Of The Evidence And Information Submitted

There was no verbal comment. Written comment is summarized below.

1. John A. Werner, Chairperson, Governor’s Advisory Council for Exception Citizens, submitted a letter dated October 26, 2004 with two comments. First, he notes that in 16.1 the phrase “without regard to the place of conviction” could be considered to include foreign jurisdictions that may not have the due process protection we enjoy in this country. Secondly, he questions the choice of crimes and suggests including 16 Del.C. §§4751 & 4752 (manufacture, deliver, or possession with intent to deliver...drugs). In his view, the inclusions selected by the Board may be too restrictive.

2. Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities, submitted a memorandum dated November 8, 2003 with the same comments and concerns expressed by the Governor’s

Council for Exceptional Citizens.

Findings Of Fact With Respect To The Evidence And Information Submitted

1. There is no indication that the legislature intended for criminal conduct in a foreign jurisdiction to be treated more favorably than the same conduct in this country. It is noteworthy that the prior statutory felony language was silent with respect to place of conviction. It is outside the scope of the enabling legislation for the Board to impose jurisdictional limitations that were not included by the General Assembly.

2. The Board did not include the crimes suggested by the commenter because the inclusion of the term ‘possession’ in these criminal statutes identifies conduct that is not substantially related to the practice of pharmacy. It is the trafficking in large quantities of drugs that the Board finds related since the practice of pharmacy includes safely storing, compounding, and dispensing drugs. A pharmacist has access to large quantities of drugs and the abuse of the responsibility to dispense lawfully could be harmful to the public. The conduct that could give rise to a conviction for ‘possession’ does not necessarily have a “direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the practice of pharmacy.”

The Board is charged with the responsibility to “promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy...” 24 Del.C. §2501. Applicants for licensure under §2515(4) must “be of good moral character” and a person who has demonstrated conduct detrimental to public safety can be found unqualified even though the conduct may not be substantially related to the practice of pharmacy. Similarly, the Board can discipline a licensee or refuse to issue a license when the individual is “guilty of any act involving moral turpitude or gross immorality.” 24 Del.C. §2518(3). This language survived the amendment to §2518 by SB 229. These provisions provide the Board with the tools to protect the public health, welfare, and safety when criminal conduct does not necessarily have a direct bearing on fitness or ability related to the practice of pharmacy as defined under the statute.

Any Board determination under §§2515(4) and 2518(3) that could impact an applicant or licensee is made after a hearing and subject to appellate review. The Board can review the merits of each case when a crime is presented to include consideration of age of the offender, time lapse following the crime, evidence of rehabilitation and other mitigating circumstances in determining whether the conviction of a crime demonstrates moral turpitude, gross immorality, or lack of good moral character that is harmful to the public.

Decision And Effective Date

The Board hereby adopts the changes to Regulation 16.0 to be effective 10 days following publication of this order in the Register of Regulations.

Text And Citation

The text of the revised rules remains as published in the Register of Regulations, Vol. 8, Issue 4, October 1, 2004.

SO ORDERED this 10th day of November, 2004.

STATE BOARD OF PHARMACY

John E. Murphy, R.Ph., President
Nancy Weldin
Yvonne Brown, R.Ph., Vice President
Carolyn Calio
Daniel Hauser, Pharm. D.
Karen J. Dey, R.Ph.
Angelo Chiari, R.Ph.

16.0 Crimes substantially related to the practice of pharmacy.

16.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal the following crimes, is deemed to be a crime substantially related to the practice of pharmacy in the State of Delaware without regard to the place of conviction:

16.1.1 Unlawfully administering a controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.

16.1.2 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 Del.C. §4753A.

16.2 Crimes substantially related to the practice of pharmacy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED, THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE RULES AND REGULATIONS FOR THE BOARD OF PHARMACY IS AVAILABLE AT:
<http://www.state.de.us/research/AdminCode/title24/2500%20Board%20of%20Pharmacy.shtml#TopOfPage>**

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF CLINICAL SOCIAL WORK
EXAMINERS**

24 DE Admin. Code 3900

Statutory Authority: 24 Delaware Code,
Section 3906(1) (24 Del.C. §3906(1))

ORDER

The Board of Clinical Social Work Examiners (“the Board”) held a properly noticed, public hearing on September 20, 2004 to receive comment on proposed additions, revisions, deletions and modifications to the Board Regulations 7.1 through 7.4 regarding the Definition and Scope of Continuing Education, Continuing Education Hourly Requirements and Continuing Education Reporting and Documentation. No members of the public attended. The written comments received by the Board included an August 27, 2004 memorandum from Daniese McMullin-Powell on behalf of the State Council for Persons with Disabilities and a letter from Anthony L. Horstman on behalf of the Delaware Developmental Disabilities Council dated August 30, 2004. The Board deliberated publicly on the proposed amendments on October 18, 2004.

Summary Of The Evidence And Information Submitted

The written comments submitted by Daniese McMullin-Powell on behalf of the State Council for Persons with Disabilities and from Anthony L. Horstman on behalf of the Delaware Developmental Disabilities Council (“the writers”) are substantively the same each raising four basic points. For purposes of summarizing the points the Board will follow the order of the points set forth in the memorandum submitted by Ms. McMullin-Powell:

1. The writers question the Board’s rationale for what the writers interpret to be a 50 percent increase in continuing education hours.

2. The writers note that there is a typographical error in Section 7.2.1.2 wherein a reference to Section 5.2.1.1 should refer to 7.2.1.1.

3. The third comment suggests that since the Board is proposing to discontinue the practice of pre-approving continuing education courses, the Board should consider allowing the submission of applications for credit for continuing education more frequently than at renewal.

4. Finally, the writers submit that requiring a “presenter” to sign a training event attendance form may be unmanageable and suggest substituting “presenter, course sponsor, or sponsor’s designee” for “presenter” in Section 7.4.3.

**Findings Of Fact With Respect To The Evidence
And Information Submitted**

Based upon the evidence received, the Board finds the following facts to be supported by the evidence:

1. There was no public comment received at the hearing concerning the proposed amendments to the Regulations.

2. In response to the concern that the continuing education has been increased by 50 percent, the Board finds that no increase has been proposed by the amendments to the regulations. The Board has always required 45 credit hours. Previously licensees were required to have 30 credit hours in Category I and 15 credit hours in Category II. The proposed amendments remove the categories but do not increase the hours. The Board further finds that the number of hours is consistent with what other States require.

3. The Board find that there is a typographical error in section 7.2.1.2 and that the correct reference should be to 7.2.1.1 not to 5.2.1.1. The Board will make this non-substantive correction.

4. The Board declines to accept the recommendation that the Board consider allowing the submission of applications for credit for continuing education more frequently than at renewal. The Board recognizes that the burden is on the licensee and that the licensee may not know until the end of the renewal cycle if the continuing education courses will be accepted. However, the Board finds that there has been no comment written or verbal from the licensees it regulates in opposition to the proposed amendments. Moreover, the Board finds that the elimination of the two category classifications as discussed above really broadens what the Board will accept and specifically states what will not be accepted. The Board is persuaded that amendments as proposed give the licensees sufficient guidance to comply at the time of renewal with the requirements.

5. The Board does find that the draft of the regulation is improved by substituting "presenter, course sponsor, or sponsor's designee" for "presenter" in Section 7.4.3. The Board finds that the change is not a substantive change.

The Law

The Board's rulemaking authority is provided by 24 Del.C. §3906(1).

§3906 Same - Powers and Duties

The Board shall have the authority to:

(1) Formulate rules and regulations with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedure specified in the Administrative Procedures Act of this State. Each rule or regulation shall implement or clarify a specific section of this chapter.

Decision And Effective Date

The Board hereby adopts the changes to Regulations 7.1 through 7.4 regarding the Definition and Scope of Continuing Education, Continuing Education Hourly Requirements and Continuing Education Reporting and Documentation to be effective 10 days following publication of this order in the **Register of Regulations**. The Board adopts the Regulations as published on August 1, 2004 in 8 DE Reg 218 with the alterations noted in this Order, and a copy of the Regulations as adopted is attached to this Order as Exhibit 1.

IT IS SO ORDERED this 15th day of November 2004.

Dr. Maria Carroll, Professional Member, President
Gloria Ho-Ruggiero, Professional Member, Vice Pres.
Winnie Lewis, Public Member
Traci McDowell, Public Member
Timothy J. Toole, Professional Member

EXHIBIT 1**7.0 Continuing Education****7.1 Required Continuing Education Hours:**

7.1.1 Hours Required. All licensees must complete forty-five (45) hours of continuing education during each biennial license period. For license periods beginning January 1, ~~1999~~ 2005 and thereafter, documentation, as required by Rule ~~5-4~~ 7.4 of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.

7.1.2 Proration. At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be prorated as follows:

License Granted During First Credit Hours
Year Of Licensing Period Required

January 1 - June 30 35 hours

July 1 - December 31 25 hours

License Granted During Second Credit Hours

Year Of Licensing Period Required

January 1 - June 30 15 hours

July 1 - December 31 5 hours

7.1.3 Hardship. A candidate for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good Cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior

to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception.

2 DE Reg 775 (11/1/98)

7.2 Definition and Scope of Continuing Education:

7.2.1 Continuing Education is defined to mean ~~approved~~ acceptable courses offered by colleges and universities, televised and ~~extension~~ internet courses, independent study courses which have a final exam or paper, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, including self-directed activities ~~ies~~ and ~~preparation of a first-time clinical course~~ as described herein. The following types of courses are NOT acceptable for credit: business, computer, financial, administrative or practice development courses or portions of courses.

~~7.2.1.1 Approved Courses shall be those courses which: increase the clinical social worker (CSW)'s knowledge about, skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional disorders, developmental disabilities and substance abuse; AND are instructed or presented by persons who have received specialized graduate level training in the subject, or who have no less than two (2) years of practical application or research experience pertaining to the subject.~~

~~7.2.1.2 Mental and Emotional Disorders, Developmental Disabilities and Substance Abuse are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.~~

7.2.1.1 The Board will accept for continuing education credit all courses designated for clinical social workers which are offered by the Association of Social Work Boards (ASWB), the National Association of Social Work (NASW) and the American Psychological Association (APA) approved providers. Other courses will be evaluated for acceptability at the time they are submitted for license renewal. The Board will no longer "pre-approve" continuing education courses.

7.2.1.2 Acceptable Courses, other than those approved pursuant to Rule [57].2.1.1, shall be courses which: increase the licensed clinical social worker's knowledge about skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional disorders, developmental disabilities and substance abuse; AND are instructed or presented by persons who have received specialized graduate-level training in the subject, or

who have no less than two (2) years of practical application or research experience pertaining to the subject.

7.2.1.2.1 Mental and Emotional Disorders, Developmental Disabilities and Substance Abuse are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.

~~7.2.2 7.2.4~~ The Board may, upon request, review and approve credit for self-directed activities, to a maximum of ~~15~~ 10 hours per biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

~~7.2.2.1 7.2.4.3~~ Self-Directed Activity shall include teaching, research, preparation and/or presentation of professional papers and articles, and other activities specifically approved by the Board, which may include one or more of the following. The Board shall require documentation of each activity as noted below:

7.2.2.1.1 Publication of a professional clinical social work-related book, or initial preparation/presentation of a clinical social work-related college or university course (maximum of 10 hours);

7.2.2.1.1.1 Required documentation shall be proof of publication, or syllabus of course and verification that the course was presented.

7.2.2.1.2 Publication of a professional clinical social work-related article or chapter of a book (maximum of 5 hours);

7.2.2.1.2.1 Required documentation shall be reprint of publication(s).

7.2.2.1.3 Initial preparation/presentation of a professional clinical social work-related continuing education course/program (maximum of 2 hours, in addition to number of hours actually attended at the course/program) (Will only be accepted one time for any specific program);

7.2.2.1.3.1 Required documentation shall be outline, syllabus agenda and objectives for course and verification that the course was presented.

7.2.2.1.4 One year of Field instruction of graduate students in a Council on Social Work Education-accredited school program, in a clinical setting (maximum of 2 hours);

7.2.2.1.4.1 Required documentation shall be a letter of verification from school of social work.

7.2.2.1.5 Participation in formal clinical staffings at federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals (maximum of 5 hours);

7.2.2.1.5.1 Required documentation shall be a signed statement from the agency, school system, facility or hospital, from a supervisor other than the licensee, including date and length of staffing.

~~7.2.2~~ 7.2.3 Any program submitted for continuing education hours must have been attended during the biennial licensing period for which it is submitted. Excess credits may not be carried over to the next licensing period.

~~7.2.3~~ 7.2.4 An "hour" for purposes of continuing education credit shall mean ~~60~~ 50 (fifty) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

~~7.2.5 The Board may award a maximum of 5 continuing education hours for the first time preparation and presentation of a clinical social work course, in service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.~~

7.3 Continuing Education Content Hourly Requirements:

During each biennial licensing period, licensees shall complete a minimum of ~~thirty (30)~~ forty-five (45) hours of continuing education. ~~in Category I courses. The remaining fifteen (15) continuing education hours may be taken in Category II courses.~~ At least three (3) of the ~~30~~ Category I 45 hours shall consist of courses acceptable to the Board in the area of ethics for mental health professionals.

~~Category I: Courses which have as their primary focus and content the assessment, diagnosis, and biopsychosocial (biological, psychological and social) treatment of mental and emotional disorders, developmental disabilities, and/or substance abuse; courses which have as their primary focus and content the ethical practice of social work.~~

~~Category II: Courses in any of the following areas which are related to and increase the CSW's knowledge of mental and emotional disorders, developmental disabilities, and/or substance abuse~~

- ~~research methods and findings;~~
- ~~psychology and sociology;~~
- ~~human growth and development;~~
- ~~child and family constructs;~~
- ~~physical illness and health;~~
- ~~social action;~~
- ~~advocacy;~~
- ~~human creativity;~~
- ~~spirituality~~
- ~~HIV~~

7.4 Continuing Education Reporting and Documentation

7.4.1 Continuing Education Reporting Periods.

Licenses are valid for 2 year periods, renewing on January 31 of odd numbered years (e.g. January 31, 2004~~5~~, 2003~~7~~). Continuing education (CE) reporting periods run from ~~October 31~~ November 1 to October 31 of the preceding two even-numbered years. ~~(e.g. credits for the January 2001 license renewal may be obtained between October 31, 1998 and October 31, 2000). The Board will allow credits obtained between October 31 and January 31 to apply to either (but not both) of the biennial licensing periods, at the licensee's discretion.~~ Beginning with the January 2003~~5~~ license renewal, all required continuing education ~~shall~~ should be completed within the previous two year ~~October~~ November to October period (e.g. between ~~October 31~~ November 1, 2000~~2~~ and October 31, 2002~~4~~ for January 2003~~5~~ renewal). The Board shall continue to have the discretion, however, to grant extensions of time in which to complete continuing education in cases of hardship, pursuant to 24 Del.C. §3912 and Rule 7.1.3.

7.4.2 In order to assure receipt of continuing education credits, a licensee must complete and submit the appropriate continuing education form provided by the Division of Professional Regulation no later than October 31st preceding the start of the next biennial licensing period.

7.4.3 In addition to the form, each licensee must submit the following documentation as to each course attended: a certificate of attendance or completion signed by the presenter and attesting to the number of hours the licensee attended and documentation identifying the date and location of the course. ~~the total number of CE hours attended and the agenda, outline or brochure describing the course. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation, such as copies of program materials, to verify CE compliance. Statutory Authority: 24 Del.C. §§3906(7), 3912.~~

7.4.4 Prior to the end of each renewal period, the Board shall conduct a random audit of licensees to verify compliance with continuing education for that renewal period. Upon request from the Board, an audited licensee will be required to submit, in addition to the documents noted above, copies of agenda, outline and brochure, for each course submitted for credit. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation to verify CE compliance.

7.4.5 In addition to licensees selected for random audit, the Board also may request additional supporting documentation from any licensee whose renewal materials, as required by Rules 7.4.2 and 7.4.3, raise questions as to the completion or acceptable content of the course(s).

2 DE Reg 1680 (6/1/00)

4 DE Reg 1815 (5/1/01)

7 DE Reg 1667 (6/1/04)

* PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE RULES AND REGULATIONS FOR THE BOARD OF CLINICAL SOCIAL WORK EXAMINERS IS AVAILABLE AT: <http://www.state.de.us/research/AdminCode/title24/3900%20Board%20of%20Clinical%20Social%20Work%20Examiners.shtml#TopOfPage>

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 742

REGULATORY IMPLEMENTATION ORDER

742 Compensation of District Personnel Under Specific Project Proposals

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 742 Compensation of District Personnel Under Specific Project Proposals in order to add a reference to charter schools and change the title and the regulation so the regulation refers only to federal projects.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 23, 2004, in the form hereto attached as *Exhibit "A"*. Comments were received from The Governor's Advisory Council for Exceptional Citizens. The following are the Department's responses to the Advisory Council's concerns.

The Advisory Council was concerned that the rationale for deleting the authorization for "locally supported projects" was not provided. The Department's response is that the existing regulation is redundant because local school districts have the discretion to use their local funds to hire additional personnel or supplement existing salaries and to develop their own local compensation plans.

The Council also commented that although the proposed regulations apply only to districts and charter schools, section 3.1 anomalously refers to "a nonpublic school institution". The Department's response is that the requirement for "equitable compensation" is applicable to individuals compensated through federal funds. It applies to charters as well as districts and non-public school institutions. It also applies to the Department of Education.

Lastly, the Council suggested that section 3.2 literally

disallows an employee whose compensation is derived 1% from federal funds to enjoy the due process protections in Title 14.

The Department's response is that federally supported positions are excluded from the provisions of Chapter 14 because employment is also conditioned on the receipt of federal funds. Local districts have additional provisions contained in their collective bargaining agreements related to termination, seniority, etc.

The Department upon review of the concerns will retain the wording as amended.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code in order to add a reference to charter schools and change the title and the regulation so the regulation refers only to federal projects.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 742. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 742 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 742 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 742 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 742 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on November 17, 2004. 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 November 2004.

DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

742 Compensation of School District and Charter School Personnel Under Specific Project Proposals Federal Projects**1.0 A school district or charter school may use ~~Federal or local~~ federal funds to:**

1.1 Employ additional administrative, supervisory and teaching personnel, or other necessary personnel beyond those allocated in **Delaware Code**, Title 14, in order to implement a federally ~~or locally~~ supported project.

1.2 Extend the employment of a ten or eleven month employee through the eleventh and twelfth month for purposes of conducting a federally ~~or locally~~ supported program. Part-time assignments shall be paid a pro-rata share.

1.3 Employ teachers of the school district or charter school during the school year for additional hours each week to support such ~~activities as extra time instruction~~ federally supported programs.

1.4 Employ full-time instructional personnel who are qualified for administrative or supervisory positions to carry on administrative or supervisory activities of a federally supported program beyond the regular school day or school week.

1.5 Pay a salary equal to the combined ~~S~~state and local salary of other persons in similar assignments at the same rank.

1.6 Pay an hourly rate for a part-time assignment as an amount pro-rated against the annual salary for the same rank and assignment and in accordance with the qualifications of the individual so assigned and in accordance with previous sections of this statement.

~~2.0 A district shall:~~

~~2.1 Where applicable include a description of the position in the project proposal as presented to the Department of Education for approval.~~

~~2.2 In describing any new or additional position, align it with a recognized rank as described in **Delaware Code**, Title 14; or in the case of a nonpublic school institution describe the position in terms of a rank already existing in the institution and assigned to comparable work.~~

~~2.3 Include in the benefits of the employee all of those benefits that accrue to an employee of the State or the local school district except that the benefit of the provisions of 14 **Del.C.** Ch. 14 shall not apply to any person whose salary is paid from Federal funds in whole or in part.~~

~~2.4 Seek and obtain approval of a Federally-funded project through the office of the appropriate coordinator in the Department of Education prior to the assignment of personnel for the assumption of duties and payment of wages or salary.~~

~~2.5 Comply with the maximum hourly compensation rates as published by the Department of Education unless~~

there is authorization to pay at a per diem rate.

See 3 DE Reg. 755 (12/1/99)

~~2.0 A school district or charter school shall not:~~

~~2.1 Supplant funds for a local or state position by substituting federal funds for payment of that position.~~

~~2.2 Pay a salary to cover paid vacation days during intended federal employment when that federal employment is an extension of a ten or eleven-month school year as assigned and paid by the state.~~

~~3 DE Reg. 755 (12/1/99)~~

~~3.0 A district shall not:~~

~~3.1 Supplant funds for a local or State position by substituting Federal funds for payment of that position.~~

~~3.2 Pay a salary to cover paid vacation days during intended Federal employment when that Federal employment is an extension of a ten or eleven-month school year as assigned and paid by the State.~~

~~3.0 For federal project proposals that require the approval of the Department of Education, the applicant shall:~~

~~3.1 Describe any new or additional position, align it with a recognized rank as described in **Delaware Code** Title 14 or in the case of a nonpublic school institution describe the position in terms of a rank already existing in the institution and assigned to comparable work.~~

~~3.2 Include in the benefits of the employee all of those benefits that accrue to an employee of the state or the local school district or charter school except that the benefit of the provisions of 14 **Del.C.** Ch. 14 shall not apply to any person whose salary is paid from federal funds in whole or in part.~~

~~3.3 Seek and obtain approval of the project through the Department of Education prior to the assignment of personnel for the assumption of duties and payment of wages or salary.~~

~~4.0 Local school districts shall comply with the maximum hourly compensation rates as published by the Department of Education.~~

DEPARTMENT OF EDUCATION
14 DE Admin. Code 925

III. Decision to Amend the Regulation

REGULATORY IMPLEMENTATION ORDER

925 Compensation of District Personnel Under Specific
Project Proposals

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities. Section 4.3 is amended to change the eligibility criteria for Autism, Section 4.4 for Developmental Delay, Section 4.9 for Mental Disability, Section 4.10 for Orthopedic Impairment and Section 4.11 for other Health Impairment. Section 21.0 Reserved, is amended to replace it with a new section 21.2 the Statewide Monitoring Review Board (SMRB) for Children with Autism. These changes were published in the August 1, 2004 *Register of Regulations* Volume 8 Issue 2.

Section 5.0, Individualized Education Program (IEP), is amended to add new Sections 5.3.2, 5.4.1 and 5.4.2. The change in 5.3.2 requires including the Career Technical Teacher Coordinator in the IEP meeting when the student is in a Cooperative Education Program or a Diversified Occupations Program. The changes in 5.4.1 and 5.4.2 address the use of the IEP forms. These changes were published in the September 1, 2004 *Register of Regulations* Volume 8 Issue 3.

Notice of the changes to the proposed regulation were published in the *News Journal* and the *Delaware State News* on July 26, 2004 for amendments to sections 4.0 and 21.0 and on August 17, 2004 for amendments to sections 5.0 in the form hereto attached as *Exhibit "A"*. Comments were received from the Governors Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities, the Autism Society of Delaware and the duPont Hospital for Children, the Division of Behavioral Health. There were no concerns expressed about the amendments to 5.0. The concerns expressed were for the amendments to sections 4.0 and 21.0. In sections 4.3.1.1, 4.3.1.1.3, 4.10.2.2, 21.2.4.1.2 and 21.2.4.5 the suggested changes were made. In some cases the comments made would require changes to the **Delaware Code** and in other cases the Department reviewed the comments and decided to retain the language as proposed. The Department has sent letters to each organization with detailed responses to their comments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 925 in order to bring the regulation in line with the federal statute.

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 925. Therefore, pursuant to 14 Del.C. Ch. 31, 14 DE Admin. Code 925 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 925 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 925 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 925 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. Ch.31 on November 18, 2004. 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 18th day of November 2004.

DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

Approved this 18th day of November 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

925 Children with Disabilities

4.0 Eligibility for Services

4.1 Age of Eligibility: Programs shall be provided for children with disabilities in age ranges as set out in accordance with 14 Del.C. Ch.7 and 14 Del.C. Ch.31 and other age ranges as provided for by State and/or federal legislation.

4.1.1 The age of eligibility for special education

and related services for children identified as having a hearing impairment, visual impairment, deaf-blindness, or autism, shall be from birth through 20 years, inclusive.

4.1.2 The age of eligibility for children identified as having preschool speech delay shall be from the third birthday up to, but not including, the fifth birthday.

4.1.3 The age of eligibility for children identified as having speech and/or language impairment shall be from the fifth birthday through twenty years, inclusive; provided, however, that children attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as preschool speech delayed upon reaching their third birthday.

4.1.4 The age of eligibility for children identified as having a developmental delay shall be from the third birthday up to, but not including, the fourth birthday.

4.1.5 The age of eligibility for children identified as having a physical impairment, trainable mental disability, traumatic brain injury, or severe mental disability shall be from the third birthday through 20 years inclusive; provided, however, that students in these categories attaining the minimum age by August 31 of the school year shall also be eligible.

4.1.6 The age of eligibility for children identified as having emotional disturbance, educable mental disability, or learning disability shall be from the fourth birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as developmentally delayed upon reaching their third birthday.

4.1.7 Children in special education who attain age 21 after August 31 may continue their placement until the end of the school year including appropriate summer services through August 31.

4.2 Definitions and General Eligibility/Exit Criteria

4.2.1 Eligibility Criteria - General: A child shall be considered eligible to receive special education and related services, and to be counted in the appropriate section of the unit funding system noted in 14 Del.C. §1703, when such eligibility and the nature of the disabling condition are determined by an IEP team. Eligibility and the nature of the condition shall be based upon consideration of the results of individual child evaluation data obtained from reports and observations and the definitions and criteria delineated in these regulations. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the disability. Documentation of eligibility shall include an evaluation report from a qualified evaluation specialist. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each disability.

4.2.2 Exit Criteria - General: A child ceases to be eligible for special education and related services when the IEP team determines that special education is no longer needed for the child to benefit from his or her educational program or the child graduates with a high school diploma. In making the determination, the team shall consider:

4.2.2.1 Eligibility criteria;

4.2.2.2 Data-based and/or documented measures of educational progress; and

4.2.2.3 Other relevant information

~~4.3 Eligibility Criteria for Autism: An IEP team shall review evidence for the following behavioral manifestations:~~

~~4.3.1 The presence of an impairment of verbal and nonverbal communication skills including the absence of speech or the presence of unusual speech features, and a combination of the following:~~

~~4.3.1.1 Impairment in reciprocal social orientation/interaction;~~

~~4.3.1.2 Extreme resistance to change and/or control;~~

~~4.3.1.3 Preoccupation with objects and/or inappropriate use of objects; and/or~~

~~4.3.1.4 Unusual motor patterns, including, but not limited to, self-stimulation and self-injurious behavior.~~

~~4.3.2 Identification of autism shall be documented through an evaluation by either a licensed psychologist, a certified school psychologist, a qualified physician, or a qualified psychiatrist. Determination of the condition of autism and eligibility for special education shall be made by an IEP team.~~

~~4.3.3 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.~~

~~4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child, who exhibits a significant delay in one or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross motor and/or fine motor), social/emotional functioning, and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.~~

~~4.4.1 In order for an IEP team to determine eligibility for special education services, under the Developmental Delay category, the following is required:~~

~~4.4.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross and/or fine), social/emotional functioning or adaptive behavior; or~~

~~4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or~~

~~4.4.1.3 Professional judgment of the IEP team that is based on the multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report.~~

~~4.4.2 Age of Eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the fourth birth date.~~

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

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

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

4.3.1.1.1 Use of multiple nonverbal behaviors to regulate social interactions;

4.3.1.1.2 Development of peer relationships;

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

4.3.1.1.4 Social or emotional reciprocity.

4.3.1.2 All students with an educational classification of autism also demonstrate at least one feature from either 4.3.1.2.1. or 4.3.1.2.2. below:

4.3.1.2.1 A qualitative impairment in communication, as manifested by:

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

4.3.1.2.1.2 Relative failure to initiate or sustain a conversation with others;

4.3.1.2.1.3 Stereotyped, idiosyncratic, and/or repetitive speech; or

4.3.1.2.1.4 A lack of varied, spontaneous make-believe play or social imitative play.

4.3.1.2.2 Restricted, repetitive, and stereotyped patterns of behavior, as manifested by:

4.3.1.2.2.1 Encompassing preoccupation or circumscribed and restricted patterns of interest;

4.3.1.2.2.2 Apparently compulsive adherence to specific, nonfunctional routines/rituals;

4.3.1.2.2.3 Stereotyped and repetitive motor mannerisms; or

4.3.1.2.2.4 Persistent preoccupation with parts/sensory qualities of objects.

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

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

4.3.1.3.2 Result in an educationally significant impairment in important areas of functioning; and

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

4.3.1.3.4 Are not primarily accounted for by an emotional disorder.

4.3.2 An educational classification of autism is established:

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

4.3.2.2 By individuals who have specific training in the assessment of students with ASD in general, and in the use of the assessment procedures referred to in 4.3.2.1.; and

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

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

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

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

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

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the

developmental domains listed above; or

4.4.1.3 Professional judgment of the IEP team that is based on multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report of a significant difference between the child's chronological age and his/her current level of functioning. A significant difference is defined as a minimum of a 25% delay in comparison to same-aged peers.

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

4.4.2.1 Developmental and medical history;

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

4.4.2.3 Behavioral observations;

4.4.2.4 Standardized norm-referenced instruments; and

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

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

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

Non-regulatory note: Under the Delaware Code, funding for the Developmental Delay category is only available through the Preschool Children with Disabilities block grant, except as authorized through the Special Education Funding Pilot.

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

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

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

4.5.3 Classification as a child who is deaf-blind shall be made by the IEP team after consideration of the

above eligibility criteria.

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

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

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

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

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

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

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

4.7 Eligibility Criteria for Hearing Impairment

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

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

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

4.8 Eligibility Criteria for Learning Disability: In order for an IEP team to determine eligibility for special education

services under the learning disability category, the following is required:

4.8.1 Written document for the formative intervention process used with the student. (See section 2.3, "Referral to Instruction Support Team" above). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.8.2 A comprehensive psychological assessment to evaluate the student's reasoning and cognitive processes in order to rule out mental retardation and emotional disturbance, and

4.8.3 A severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation or mathematics reasoning, based on correlation tables approved by the Department of Education.

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

4.9 Mental Disability: The degree of mental disability is defined as follows: Educable Mental Disability (EMD) — I.Q. 50-70, +5 points; Trainable Mental Disability (TMD) — I.Q. 35-50, +5 points; Severe Mental Disability (SMD) — I.Q. below 35.

4.9.1 Eligibility Criteria for Mental Disability: The IEP team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior, as measured by a licensed or certified school psychologist, in determining that a child has a mental disability and the degree of mental disability.

4.9.2 The age of eligibility for children identified under the TMD, and SMD definition shall be from the third birthday through 20 years, inclusive. Children identified under the EMD definition shall be from the fourth birthday through 20 years inclusive. These children may be served at age 3 as having a developmental delay.

4.10 Eligibility Criteria for Physical Impairments: Eligibility criteria for physical impairments include examples of orthopedic disabilities, but are not limited to: traumatic brain injury, cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogyposis, or contractures caused by fractures or burns. Examples of health impairments include, but are not limited to: cancer, burns, asthma, heart conditions, sickle cell anemia, hemophilia, epilepsy, HIV/AIDS or medical fragility.

4.10.1 A qualified physician shall document that a child has a physical impairment in order to be considered for special education and related services under the above

definition:

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

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

4.10.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture and/or body use necessary for performing school work; or

4.10.2.3 Similar disabilities which result in reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness.

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

4.10.3.1 Medical records documenting the physical impairment are required, and current medical prescriptions such as O.T./P.T., medication, catheterization, tube feeding shall be included if available;

4.10.3.2 Results from specialist team screening using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary. The team shall include, but not necessarily be limited to, an educator and physical or occupational therapist; and

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

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

4.9 Eligibility Criteria for Mental Disability

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

4.9.1.1 A level of intellectual functioning, as indicated below:

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

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

4.9.1.1.3 Severe Mental Disability: IQ
below 35; and

4.9.1.2 Significant limitations in two or more areas of adaptive behavior, including communication, self-care, home/school living, social/interpersonal, community use, self-direction/coping, health and safety, functional academics, leisure/play, and work.

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

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

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

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

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

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

4.10.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture, and/or body use necessary for performing [school work educational activities].

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

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

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

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

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

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

Non-regulatory Note: For purposes of funding, children classified under the Orthopedic Impairment category will be

counted as Physically Impaired in the Unit Count.

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

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

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

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

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

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

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

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

4.11.2.1.5 Often has difficulty organizing tasks and activities;

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

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

4.11.2.1.8 Is often easily distracted by extraneous stimuli;

4.11.2.1.9 Is often forgetful in daily activities; Or

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

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

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

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

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

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

4.11.2.2.6 Often talks excessively;

4.11.2.2.7 Often blurts out answers before questions have been completed;

4.11.2.2.8 Often has difficulty waiting turn;

4.11.2.2.9 Often interrupts or intrudes into conversations or games; and

4.11.2.3 Some hyperactive-impulsive or inattentive symptoms that caused impairment were present before seven years of age;

4.11.2.4 A clear pattern that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time;

4.11.2.5 Clear evidence of clinically significant impairment in social, academic or occupational functioning; and

4.11.2.6 The symptoms do not occur exclusively during the course of a pervasive developmental disorder, schizophrenia, or other psychotic disorder, and are not better accounted for by another mental disorder (e.g. mood disorder, anxiety disorder, dissociative disorder, or personality disorder).

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

4.11.3.1 Written documentation from the formative intervention process used with the student (see section 2.3, p.11 "Referral to Instructional Support Team" above). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected, and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.11.3.2 Medical records documenting the health impairment or, in the case of students with ADD/ADHD, medical records documenting that a child has such health impairment and determination by a school team of qualified evaluators, or, in the case of re-evaluation, the IEP team, including the school psychologist, that the child exhibits the criteria listed in number 4.11.2 above.

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

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

Non-regulatory Note: For purposes of funding, children classified under the Other Health Impaired category will be counted as Physically Impaired in the Unit Count.

~~4.14~~ 4.12 Eligibility Criteria for Speech and/or Language Impairment Eligibility Criteria: In determining eligibility under the Speech and/or Language classification, the IEP team shall consider the results of an evaluation

conducted by a licensed Speech-Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; and/or a voice disorder.

~~4.11.4~~ 4.12.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and/or language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.

~~4.12~~ 4.13 Eligibility Criteria for Traumatic Brain Injury: A qualified physician must document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

~~4.12.4~~ 4.13.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

~~4.12.2~~ 4.13.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

~~4.13~~ 4.14 Eligibility Criteria for Visual Impairment Eligibility Criteria

~~4.13.4~~ 4.14.1 Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

~~4.13.2~~ 4.14.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual-perceptual or visual-motor dysfunction resulting solely from a learning disability.

~~4.13.3~~ 4.14.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, partially sighted.

~~4.13.4~~ 4.14.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

~~4.13.5~~ 4.14.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

~~4.14~~ 4.15 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only)

~~4.14.4~~ 4.15.1 A speech disability is defined as a communication disorder/delay involving articulation, voice quality, and/or speech fluency to such a degree that it

interferes with a child's overall communicative performance.

~~4.14.2~~ 4.15.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

~~4.14.2.1~~ 4.15.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized/norm-based instrument. It is strongly recommended that the evaluation include clinical observations and/or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

~~4.14.2.1.1~~ 4.15.2.1.1 Articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,

~~4.14.2.1.2~~ 4.15.2.1.2 Conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,

~~4.14.2.1.3~~ 4.15.2.1.3 Oral motor involvement which may affect the development of normal articulation,

~~4.14.2.1.4~~ 4.15.2.1.4 Speech Fluency, or

~~4.14.2.1.5~~ 4.15.2.1.5 Voice Quality

~~4.14.3~~ 4.15.3 Results of the evaluation may indicate a significant delay in receptive and/or expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

~~4.14.4~~ 4.15.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

3 DE Reg. 1551 (5/1/00)

4 DE Reg. 470 (9/1/00)

5.0 Individualized Education Program (IEP)

An IEP shall be developed prior to delivery of services and within thirty (30) calendar days following the determination that a child is eligible for special education and related services.

5.1 Transition Between Grades or Levels: During the annual review, the IEP team shall consider the needs of the child with a disability who is scheduled for a move. Communication with the staff of the receiving program shall occur to ensure that a child's transition between grades or levels does not endanger his/her receipt of a free appropriate public education.

5.2 IEP of Transferring Students with Disabilities

5.2.1 A child with a disability who transfers from one school district or other public agency educational program to another must be temporarily placed in an

educational setting which appears to be most suited to the child's needs based on a decision mutually agreed upon by the parents and representative of the receiving school district or other public agency.

5.2.2 The request for, and the forwarding of, records shall be in accordance with 29 **Del. C.** Ch. 5.

5.2.3 A child's IEP from the sending school district or other public agency may be acceptable for temporary provision of special education services. The agreement shall be documented by the signatures of a parent and the receiving principal on a temporary placement form or the cover page of the IEP.

5.2.4 A review of the IEP shall be instituted and completed within thirty (30) calendar days from the date of initial attendance of the child in the receiving agency, and sixty (60) calendar days for students transferring from out-of-state schools. The receiving school is responsible for ensuring that all requirements concerning evaluation, IEP development, placement, and procedural safeguards shall be applied in determining the provision of special education and related services for transferring children.

5.3 IEP Team: Participants at an IEP meeting shall be collectively identified as the IEP Team.

5.3.1 The agency representative must have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

5.3.2 When possible participation in a Cooperative Education Program or a Diversified Occupations Program is to be discussed, the Career Technical Teacher Coordinator shall attend the IEP meeting as per 14 DE Admin. Code 525.

~~5.3.2~~ 5.3.3 The district shall notify parents of the IEP meeting no less than ten (10) business days prior to the meeting (unless mutually agreed otherwise) to ensure that they have the opportunity to attend, and no less than three (3) business days for removal due to disciplinary action. See 12.0 Disciplinary Procedures.

5.4 Content of the Individualized Education Program: Each child who is determined to be eligible for special education and related services shall have a single IEP.

5.4.1 The Primary IEP form found in *The Administrative Manual for Special Education Services (AMSES)* (Appendix A) shall be used for students beginning with preschool (age 3), until use of the Secondary IEP form. The Secondary IEP form found in *The Administrative Manual for Special Education Services (AMSES)* (Appendix A) shall be used beginning in the eighth grade, or earlier, if the IEP team agrees.

5.4.2 The requirement that the local education agencies and other agencies use the forms found in *The Administrative Manual for Special Education Services (AMSES)* (Appendix A) does not prohibit or prevent an IEP team from including on an IEP any information, service or

other notation the team determines necessary to provide Free Appropriate Public Education (FAPE) to any individual child with a disability.

~~5.4.1~~ 5.4.3 The IEP shall designate whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent or other authorized responsible person.

~~5.4.2~~ 5.4.4 By the middle of the eighth grade, the IEP shall include plans to determine the child's interests/preferences, and to make application to high school and vocational education programs. Full transition services planning will apply by the end of the ninth grade or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP team.

5.5 Monitoring IEPs: As part of the on-going responsibility for the monitoring and evaluation of programs to determine compliance with state and federal requirements, the school district and/or other public agency shall review the IEPs of children with disabilities to determine that their content is consistent with requirements of these regulations. Documentation of monitoring efforts shall be maintained by the school district and/or other public agencies.

5.6 Need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a Free Appropriate Public Education (FAPE) during the regular school year.

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

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

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

5.6.4 Vocational: For children ages 16-20 whose IEPs contain vocational/employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized

if training and job coaching are not provided during the summer break.

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

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

5.6.7 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs provided by local school districts. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, per his/her IEP.

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

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

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

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

3 DE Reg. 1551 (5/1/00)

21.0 Special Programs for Children with Autism:

21.1 Definitions of terms applicable only to special programs for children with autism.

~~21.1.1~~ "Behavior Management Procedure" means any procedure used to modify the rate or form of a target behavior.

~~21.1.2~~ "Behavior Management Target" means any child's behavior that either causes or is likely to cause (a) injury to the child (e.g., self-abuse), (b) injury to another

person (e.g., aggression), (c) damage to property, (d) a significant reduction in the child’s actual or anticipated rate of learning (e.g., self-stimulation, non-compliance, etc.) or (e) a significant reduction in the societal acceptability of a child (e.g., public masturbation, public disrobing, etc.).

[21.1.3] “Emergency Intervention Procedure” means any procedure used to modify episodic dangerous behavior (e.g., self-injurious behaviors, physical aggression property destruction) identified in a behavioral intervention plan.

[21.1.4] “Ethical Use” means the application of a procedure in a manner that is consistent with current community values and protects all of a child’s rights.

[21.1.5] “Informed Consent” means knowing and voluntary consent by the parent(s), based upon a thorough explanation by the program staff member supervising the individualized Behavior Management procedure, of the nature of the procedure, the possible alternative procedures, the expected behavior outcomes, the possible side effects (positive and negative), the risks and discomforts that may be involved, and the right to revoke the Procedure at any time.

[21.1.6] “Least Restrictive Procedure” means that behavior management procedure which is the least intrusive into, and least disruptive of, the child’s life, and that represents the least departure from normal patterns of living that can be effective in meeting the child’s educational needs.

[21.1.7] “School” means any public school or program (special education or otherwise), which has enrolled a child classified with autism.

[21.1.8] “Accepted Clinical Practice” means any behavior management procedure or treatment, the effectiveness of which has received clear empirical support as documented by publication in peer-reviewed journals or similar professional literature.

~~21.2 Reserved.~~ The Statewide Monitoring Review Board (SMRB) shall be generally administered by the Director for State Services for Children with Autism and the Director of the Exceptional Children and Early Childhood Education Group, Department of Education.

21.2.1 The purpose of the SMRB is to define research-based best educational practices for students with autism served in approved programs in Delaware. This includes reviewing and making recommendations to the Secretary of Education regarding the special education and related services for children with autism in approved programs, including programs for students with autism whose placement in private facilities has been authorized by the Department of Education.

21.2.2 The SMRB shall consist of the following members:

21.2.2.1 Director for State Services for Children with Autism.

21.2.2.2 Director of the Exceptional Children and Early Childhood Education Group, or designee.

21.2.2.3 One administrator from each LEA/charter school with an approved program for students with autism, or their designee. The administrator or designee must have experience in, and responsibility for, the program for students with autism.

21.2.2.4 One non-administrative experienced professional from each approved program for students with autism. These individuals are nominated by the administrator responsible for the approved program and are subject to the approval of the Director for State Services for Children with Autism.

21.2.2.5 Two non-voting public representatives nominated annually by the Statewide Parent Advisory Committee. These individuals must not have a child currently served in an approved program.

21.2.3 The SMRB shall operate under the following procedures:

21.2.3.1 The Director of State Services for Children with Autism shall serve as the Chairperson of the Board.

21.2.3.2 A majority of the voting members of the board shall constitute a quorum.

21.2.3.3 Decisions of the Board shall be determined by a majority vote of the quorum.

21.2.3.4 The chairperson shall set mutually agreeable times and places for meetings, which shall be scheduled at least five times per year, contingent upon agenda items.

21.2.3.5 The SMRB shall discharge its responsibilities in accordance with the IDEA and the Administrative Manual for Special Education Services (AMSES).

21.2.3.6 The SMRB shall function in an advisory capacity and the procedural safeguards guaranteed to students with autism, their parents (as defined under IDEA), and local school districts, charter schools, or agencies, shall not be diminished by the activities of the SMRB.

21.2.4 The SMRB has the following responsibilities:

21.2.4.1 To determine which educational methods and curricula are consistent with research-based best practices for students with autism. This includes reviewing and making recommendations regarding proposed new practices.

21.2.4.1.1 Requests for review of practices may be submitted to the SMRB by SMRB members, the Secretary of Education, the State Parent Advisory Committee, Superintendents of LEAs, or Chief Administrators of Charter Schools.

21.2.4.1.2 If the party making the request for review disagrees with the recommendation of the

SMRB regarding best educational practices, they may request the Secretary of Education appoint an independent expert to review the practice. [The procedural safeguards guaranteed to students with autism, their parents (as defined under IDEA) and local school districts, charter schools or agencies, shall not be diminished by any recommendations of an independent expert appointed by the Secretary.]

21.2.4.2 To review, at least annually, educational programming and aggregated performance data for students with autism in approved programs in Delaware.

21.2.4.3 To make recommendations based on this review regarding appropriate strategies, supports, services, and professional development necessary to ensure the implementation of research-based best educational practices with respect to the evaluation and educational programming for students with autism.

21.2.4.4 To assist LEAs /charter schools with approved programs in developing and implementing plans to address the recommendations of the SMRB.

21.2.4.5 To submit an Annual Report by September 1 of each year to the Secretary, Department of Education, ~~and the President of~~ the State Board of Education. [and The Governor's Advisory Council for Exceptional Citizens as the IDEA authorized advisory panel.]

21.3 A Parent Advisory Committee (PAC) shall be established by each local education agency operating a center for the Delaware Autistic Program.

21.3.1 The function of the PAC shall be to advise the local education agency on matters pertaining to the local center.

21.3.2 Each PAC shall meet no less than four times each year and must be representative of the age groups of children with autism served by the local center.

21.3.3 When a local education agency operates a residential program, at least one member of the PAC shall be a parent of a child with autism served in the residential program associated with that center.

21.4 A Statewide Parent Advisory Committee (SPAC) shall be established whose membership shall consist of one representative elected annually from each local education agency PAC.

21.4.1 The SPAC shall meet no less than four times each year with the Director of DAP advising on matters pertaining to the program.

21.4.2 The establishment of bylaws for the SPAC shall be by vote of all of its eligible members.

21.4.3 A current statewide membership list shall be provided to all parents.

21.4.4 Reimbursement for travel expenses shall be available to members of the Statewide Parent Advisory Committee (SPAC).

21.5 A Peer Review Committee (PRC) shall be

established by the Director of the Delaware Autism Program (DAP) and the Department of Education in consultation with the Statewide Monitoring Review Board (SMRB).

21.5.1 Purpose: The purpose of the PRC shall be to review, in light of accepted clinical practice, the professional and clinical issues involved in the use of behavior management procedures to ensure their appropriate use by the staff of a school district serving children with autism.

21.5.2 Composition: The PRC shall consist of three to five members who shall be competent, knowledgeable professionals with at least three years of post-doctoral experience in the theory and ethical application of behavior management procedures. Membership shall be external to the Delaware Autism Program (DAP), the Department of Education, any Delaware school district, and any other State agency or department, excluding State institutions of higher education. Members shall not belong to any in-State committee, council, board or program that deals directly with children with autism.

21.5.3 Operation: The PRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.5.4 Peer Review Committee (PRC) Responsibilities

21.5.4.1 The PRC shall meet at least every three months to review those behavior management procedures requiring after-the-fact examination. (See Section 21.7.1)

21.5.4.1.1 A quorum shall consist of a majority of the Committee.

21.5.4.1.2 The PRC chairperson shall announce the dates of review at least one month prior to the review date.

21.5.4.2 The PRC shall meet at least six (6) times per year to review procedures requiring prior, case-by-case review that have been granted interim or on-going approval. The monthly review shall continue until said procedure has been discontinued or the PRC votes otherwise. This review may be held jointly with HRC.

21.5.4.3 The PRC chairperson shall invite staff members of DAP responsible for implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., a consultant to ensure expertise in a specific behavior management procedure under review) to participate as needed in a non-voting capacity.

21.5.4.4 The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for children engaged in behaviors that pose a significant health risk to the child or others, a significant risk of damage to property, and/or a significant reduction of learning.

21.5.4.5 The PRC shall review and evaluate

the training and supervision for the staff that will carry out all behavior management procedures requiring prior, individual review and may evaluate the training of staff carrying out procedures requiring after-the- fact review.

21.5.4.5.1 The PRC shall provide the Program Director with written comments and recommendations concerning the findings of this review.

21.5.4.6 The PRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Department of Education and the HRC chairperson.

21.5.4.6.1 These minutes shall be submitted within two weeks of each meeting.

21.5.4.6.2 An oral summary of the PRC recommendations shall be made within twenty-four hours following the PRC meeting to the Director of DAP and the HRC chairperson.

21.6 A Human Rights Committee (HRC) shall be established by the Director of the DAP and the Department of Education in consultation with the Statewide Autistic Program Monitoring Review Board.

21.6.1 Purpose: The purpose of the HRC shall be to review the ethical and children rights issues involved in the use of behavior management procedures to ensure their humane and proper application.

21.6.2 Composition: The HRC shall consist of five to ten members representing various occupations, who are not employees or relatives of children enrolled in the DAP, who are not employees of the Department of Education, and who are not members of any in-State organization, agency, or program that deals directly with children with autism. No member of the HRC shall be a member of the PRC.

21.6.3 Operation: The HRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.6.4 Human Rights Committee Responsibilities

21.6.4.1 Whenever a school proposed to use a behavior management procedure requiring review prior to implementation, the HRC shall meet and review the proposed use of the behavior management procedure. This review shall occur within seven days after the PRC chairperson informs the HRC chairperson of PRC's recommendations.

21.6.4.1.1 A quorum shall consist of a majority of the Committee.

21.6.4.1.2 This review, however, may be held jointly with the PRC.

21.6.4.2 The HRC chairperson shall invite staff members who are responsible for the implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., consultant, parent) to participate as needed in a non-voting capacity.

21.6.4.3 The HRC shall develop a written form to be used to ensure that informed parental consent is obtained before implementation of specified behavior management procedures.

21.6.4.4 The HRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Director, Exceptional Children Group, and the PRC chairperson.

21.6.4.4.1 These minutes shall be submitted within two weeks of each meeting.

21.6.4.4.2 An oral summary of the HRC recommendations shall be made within twenty-four hours following the HRC meeting to the Director of DAP and the PRC chairperson.

21.7 Joint responsibilities of the Peer Review and Human Rights Committees are as follows:

21.7.1 Issue a written statement indicating which behavior management procedure(s) shall be recommended for use:

21.7.1.1 Without further PRC/HRC review during the year approved;

21.7.1.2 Without a case-by-case PRC/HRC review but with after-the- fact review (timelines to be established by the PRC); or

21.7.1.3 Only with prior case-by-case PRC and HRC (before-the-fact) review;

21.7.2 Recommend written modifications, if necessary, of behavior management procedures along with accompanying rationale;

21.7.3 Review a school's proposed Emergency Intervention Procedures for children with autism and issue a written statement indicating which Emergency Intervention Procedures shall be recommended:

21.7.3.1 For use without after-the-fact reporting to the PRC/HRC; or

21.7.3.2 For use with after-the-fact reporting to the PRC/HRC;

21.7.4 Issue an advisory, not mandatory, statement presenting a recommended hierarchy of reviewed behavior management procedures according to the Least Restrictive Procedure principle.

21.7.4.1 Notice shall be given to parents of children with autism in the program of the availability upon request, and at no cost to parents, of copies of the reviewed behavior management procedures.

21.7.4.2 A copy shall also be forwarded to the Governor's Advisory Council for Exceptional Citizens.

21.7.5 The PRC chairperson, in cooperation with the HRC chairperson, shall announce the joint PRC/ HRC annual review at least one month prior to the review date.

21.7.5.1 At the discretion of either chairperson, Committees may meet jointly or separately to conduct before-the-fact and after-the-fact reviews.

21.7.6 Approve, before-the-fact, the housing of

children under age twelve with a child over age sixteen in a community-based residential program for children with autism operated by a school district designated and approved by the Secretary of Education as the administering agency for the DAP.

21.7.7 Review, within 30 days of the granting of interim approval, any request by a school for the immediate implementation of a behavior management procedure requiring prior, case-by-case review.

21.7.7.1 Immediate implementation of a proposed procedure may occur after the Program Director has obtained unanimous interim approval from one PRC member and two HRC members.

21.7.7.2 Proposed prior review procedures not requiring immediate implementation shall be submitted by a school directly to PRC and HRC chairperson to be reviewed within two weeks of submission of the proposal.

21.7.8 Have access to the educational records of any child with autism for purposes of 21.5.1 and 21.6.1 of this section.

21.7.8.1 A quorum of a joint meeting shall consist of a majority of combined membership.

21.7.9 Submit written Procedural Descriptions for Behavior Management and Emergency Interventions

21.7.9.1 Prior to utilizing a behavior management procedure or an emergency intervention procedure for a particular child with autism, a school shall submit written procedural descriptions for at least annual joint review by the PRC and HRC.

21.7.9.1.1 The annual date of review shall be announced by the HRC chairperson at least one month prior to the review date.

21.7.9.1.2 The school shall submit written procedural descriptions at least two weeks prior to the joint annual review date to the PRC and HRC chairpersons.

21.7.9.1.3 The written descriptions shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.1.4 PRC and HRC may request pertinent information needed for the completion of reviews.

21.7.9.2 After reviewing each behavior management and emergency procedure, the PRC and HRC shall indicate what kind of review each procedure requires (annual, after-the-fact, or prior case-by-case review). A school serving children with autism shall then submit proposals in accordance with PRC/HRC recommendations.

21.7.9.3 Behavior management and emergency intervention procedures that require annual review only may then be implemented by a school without further PRC/HRC review until the next annual joint review. A school shall require that the use of these procedures be indicated in a child's IEP.

21.7.9.4 Behavior management and emergency

intervention procedures that require after-the-fact review only shall be used by a school without case-by-case review, but shall be reported after the fact to the PRC by dates specified by the Committee chairperson.

21.7.9.4.1 The school shall submit written records as set forth in PRC and HRC operating rules, or any other relevant information requested by either Committee, to the PRC chairperson at least one week prior to the review date.

21.7.9.5 Behavior management procedures that require prior case-by-case review shall be submitted to the PRC and HRC for joint review prior to implementation.

21.7.9.5.1 If the PRC and HRC decide not to review the case jointly, the PRC shall first review the proposal.

21.7.9.5.2 The proposal shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.5.3 Recommendations and rationale for the decision shall be provided whenever the PRC fails to recommend use of a proposed procedure.

21.7.9.6 Following the PRC recommendation (or following joint PRC/HRC approval), written informed parental consent shall be obtained by the school.

21.7.9.6.1 If an interim consent is obtained by telephone, then two witnesses to the content of the conversation shall sign a form certifying that the parent(s) gave informed consent. The school must then obtain written verification of this consent from the parent(s).

21.7.9.6.2 Parents may withdraw consent at any time; if said withdrawal is done verbally in person or by telephone, the parent shall provide written verification of withdrawal within 10 days of the initial notice.

21.7.9.7 Whenever the PRC and HRC choose not to meet jointly, the information provided by a school shall be submitted to the HRC along with the PRC's recommendations.

21.7.9.7.1 Recommendations and rationale for the decision shall be provided whenever the HRC fails to recommend the use of a proposed procedure.

21.7.9.7.2 Whenever a proposal is recommended for implementation, an IEP objective shall be developed relating to the behavior management target and the proposed procedure.

21.7.9.8 Whenever the PRC or HRC fail to recommend or modify the proposed procedure, the parent(s) shall be notified by the school.

21.7.9.8.1 If the procedure is to be modified, informed written consent shall be obtained from the parents.

21.7.9.9 The school staff responsible for implementing the behavior management procedure shall provide written reports to the PRC and HRC, summarizing

the records (which shall be kept on a daily basis) on the use and results obtained by implementing the procedure.

21.7.9.9.1 Records shall be kept in an objective, quantitative form, permitting easy evaluation of child data.

21.7.9.9.2 The PRC and HRC shall have unrestricted access to all data, records, and reports relating to the behavior management procedures used.

21.7.9.10 Any behavior management or emergency intervention procedure that is developed by a school after the joint annual review date for a particular school year shall be submitted to the PRC and HRC chairpersons for joint review prior to any implementation of the new procedure, unless interim approval has been recommended as described in 21.7.7.

21.8 Private facilities serving autistic children shall have Peer Review and Human Rights Committee policies as follows:

21.8.1 Private facilities serving children with autism located in Delaware shall have Peer Review Committee and Human Rights Committee policies that comply with DELACARE standards (requirements for Residential Child Care Facilities, Department of Services for Children, Youth and their Families).

21.8.2 Private facilities serving Delaware children with autism located in other states shall comply with the Peer Review Committee and Human Rights Committee policies used by the state in which the facility is located.

21.8.2.1 Said policies shall be reviewed by Delaware's Department of Education to determine that they grant protection substantially equivalent to that provided by Delaware for children prior to any recommendation of approval for private placement by the State Board of Education.

21.8.3 Private facilities serving Delaware children with autism located in states which have no Peer Review Committee and Human Rights Committee policies shall have written Peer Review and Human Rights Committee policies that shall be reviewed by Delaware's Department of Education in consultation with Delaware's PRC, to determine that they grant protection substantially equivalent to that provided by Delaware for children, prior to any recommendation of approval for private placement by the Secretary of Education.

21.8.4 Private facilities serving Delaware children with autism located in states which require substituted judgment or other court order for the use of aversive or related restrictive procedures, and which have obtained such an order for each Delaware child, shall be deemed to have met the peer review and human rights requirements of this section.

21.9 Whenever psychotropic medication has been prescribed by a physician and appears to affect adversely the

educational program of a child with autism, the administrator of the center shall contact the parent and request a medication review with the parent and physician.

21.10 Appropriate liaison with the Department of Health and Social Services and other agencies shall be established by the Director of DAP and the Department of Education.

3 DE Reg. 1709 (6/1/00)

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. THE COMPLETE REGULATION CAN BE FOUND AT: <http://www.state.de.us/research/AdminCode/title14>**

PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 1554

REGULATORY IMPLEMENTING ORDER

1554 Standard Certificate Reading Specialist

I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1554 Standard Certificate Reading Specialist. This regulation applies to the certification of educational personnel pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to clarify to which educators this regulation applies.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on August 25, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the State Council for Persons with Disabilities concerning access to this certificate by all educators, which the language addresses. Verbal comments resulted in some clarification of sections and reformatting and renumbering of items.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute regarding the licensure and certification of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code 1554 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date Of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4TH DAY OF NOVEMBER, 2004

Harold Roberts, Chair
Sharon Brittingham
Norman Brown
Heath Chasanov
Edward Czerwinski
Angela Dunmore
Karen Gordon
Barbara Grogg

Bruce Harter
Valerie Hoffmann
Leslie Holden
Carla Lawson
Mary Mirabeau
Gretchen Pikus
Karen Schilling Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 18th Day Of November, 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

1.0 Content:

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Reading Specialist. _

2.0 Definitions:

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

"Department" means the Delaware Department of Education.

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

"Reading Specialist" means an educator who provides one-on-one or small group, diagnostic, prescriptive teaching of reading, and includes, [but is not limited to,] Title I reading teachers, reading resource teachers, [Reading First teachers reading teachers as specified in SB 320, Epilogue 358, and educators who work with teachers in reading and communication skills, includeing, but not limited to literacy coaches] and coordinators, and individuals employed as building or district coordinators [or reading or in Reading] Cadre [positions. of reading who work with teachers in reading and communication skills.]

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

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Reading Specialist to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 ~~[Degree Educational requirements.]~~

3.1.1 ~~[Graduating A master's degree] from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, [with a major] in [a program for] Reading [Specialists]; or~~

3.1.2 ~~[Graduating A master's degree] from a state approved educator preparation program [for Reading Specialists] offered by a regionally accredited college or university, [with a major in Reading] where the state approval body employed the appropriate [NASDTEC or] NCATE specialty organization standards; or~~

~~3.1.3 [A] Master's degree [in any area (or a Bachelor's degree plus 30 graduate credits)] from a regionally accredited college or university and, [completion of the course work set forth in 3.1.4.1 and 3.1.4.2; or]~~

~~[3.1.4 A Bachelors's degree plus 30 graduate credits; and]~~

3.3 Specialized Professional Preparation

~~3.1.[34].1 3.3.1~~ Minimum of 24 semester hour credits in graduate level reading courses covering the following content areas as specified below unless otherwise specified:

~~3.1.[34].1.1 3.3.1.1~~ Language Development, , 3 semester hours;

~~3.1.[34].1.2 3.3.1.2~~ Methods in Process Writing/Language Arts, 3 semester hours;

~~3.1.[34].1.3 3.3.1.3~~ Assessment and Correction of Reading Difficulties, 6 semester hours;

~~3.1.[34].1.4 3.3.1.4~~ Practicum in Reading to include application of assessment and correction strategies, parent involvement strategies, and experience in working as a reading resource person with staff, 6 semester hours;

~~3.1.[34].1.5 3.3.1.5~~ Reading in the Content Areas, 3 semester hours;

~~3.1.[34].1.6 3.3.1.6~~ Children's or Adolescent Literature Across the Curriculum, 3 semester hours; and

~~3.1.[34.2.1.7] 3.3.2~~ Minimum of three graduate semester hours from among the following: Seminar in Reading Research, Emergent Literacy, Teaching English as a Second Language or Children's or Adolescent Literature.

3.2 Experience

3.2.1 Minimum of three years of successful teaching experience with at least two years in the K-12 classroom and,

3.3 Specialized Professional Preparation

~~3.3.1~~ Minimum of 21 semester hour credits in graduate level reading courses unless otherwise specified:

~~3.3.1.1~~ Language Development, graduate or undergraduate, 3 semester hours

~~3.3.1.2~~ Methods in Process Writing/Language Arts, 3 semester hours

~~3.3.1.3~~ Assessment and Correction of Reading Difficulties, 6 semester hours.

~~3.3.1.4~~ Practicum in Reading to include application of assessment and correction strategies, parent involvement strategies, and experience in working as a reading resource person with staff, 3 semester hours.

~~3.3.1.5~~ Reading in the Content Areas, graduate or undergraduate, 3 semester hours.

~~3.3.1.6~~ Children's or Adolescent Literature Across the Curriculum, 3 semester hours.

~~3.3.2~~ Minimum of three graduate semester hours from among the following: Seminar in Reading Research, Emergent Literacy, Teaching English as a Second Language or Children's or Adolescent Literature.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Reading Specialist after that date must comply with the

requirements set forth in 14 ~~DE Admin. Code~~ 1516. This regulation shall be effective immediately. Notwithstanding this provision, Reading Specialists [as defined in 2.0,] hired prior to July 1, 2006, who do not currently meet the requirements set forth herein, but who hold an Initial, Continuing or Advanced License; or a [Standard or] Professional Status Certificate issued prior to August 31, 2003, may be issued a Standard Certificate as a Reading Specialist contingent on their completion of the requirements set forth herein within three (3) years of the effective date of this regulation or their date of employment in the position of Reading Specialist, whichever is later.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Chapter 5, Section 512 (31 Del.C. §512)

ORDER

Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) as it relates to the Food Stamp Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the October 2004 **Delaware Register of Regulations**, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary Of Proposed Changes

Previous regulations required States to impose voluntary quit sanctions only on active individuals. When an individual was not getting benefits, States had to wait until the individual reapplied for benefits to impose the sanction. The regulations were changed to allow States to impose voluntary quit sanctions even if the household's certification had ended and the household did not reapply for benefits. This means the sanctions can be applied while the case is closed.

Citation 7 CFR 273.7(j): Certification of Eligible

Households – Work Provisions – Voluntary Quit and Reduction of Work Effort

Summary Of Comments Received With Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) endorse the proposed regulation based upon the following observations summarized below.

As background, Federal regulations require states to disqualify Food Stamp applicants and beneficiaries who voluntarily quit employment (or reduce employment) without good cause. We understand that each state may adopt a period of ineligibility between 30 and 60 days.

Under the repealed regulation, beneficiaries who withdrew from the program prior to imposition of the sanction would have the sanction applied upon reapplication. Under the new regulation, a "voluntary quit" during the last month of certification results in application of the 60-day disqualification period effective with the end of the last certification period. This is actually a more favorable result for consumers. The sanction period will often run out prior to application rather than "waiting" for the consumer to reapply.

Agency Response: Thank you for the endorsement.

Findings Of Fact

The Department finds that the proposed changes as set forth in the October 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Stamp Program is adopted and shall be final effective December 10, 2004.

Vincent P. Meconi, Secretary, DHSS, 11/15/2004

REVISIONS:

**9026 Voluntary Quit
[273.7(n)]**

No individual who voluntarily quit his/her most recent job or reduced work hours to less than 30 hours per week, without good cause will be eligible to participate in the Food Stamp Program as specified below.

At the time of application, explain to the applicant the consequences of the individual quitting his or her job without good cause.

9026.1 Application Processing

1) When a household files an application for participation or when a participating household reports the

loss of a source of income, determine whether any household member voluntarily quit a job. Benefits will not be delayed beyond the normal processing times specified in DSSM 9028 pending the outcome of this determination. This provision applies only if the employment involved 30 hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours; the quit occurred within 60 days prior to the date of application or anytime thereafter; and the quit was without good cause. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self employment enterprise or resigning from a job at the demand of the employer will not be considered as a voluntary quit for the purpose of this subsection.

An employee of the Federal Government or of a state or local government, who participates in a strike against such government and is dismissed from his or her job because of participation in the strike, will be considered to have voluntarily quit a job without good cause.

2) In the case of an applicant household, determine whether any currently unemployed (i.e., employed less than 30 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 30 hours) household member who is required to register for work has voluntarily quit his or her most recent job within the last 60 days. If DSS learns that a household has lost a source of income after the date of application but before the household is certified, determine whether a voluntary quit occurred.

3) In the case of a participating household, determine whether any household member voluntarily quit his or her job or reduced work his or her hours, while participating in the Program.

4) If the determination of voluntary quit is established, determine if that member is the head of the household per DSSM 9014 or another household member.

5) Upon a determination that the head of household/individual voluntarily quit employment, determine if the voluntary quit was with good cause as defined in DSSM 9026.3. In the case of an applicant household, if the voluntary quit was without good cause, the household's application for participation will be denied and the appropriate period of ineligibility imposed per DSSM 9021.2.

Provide the applicant household with a notice of denial informing the household of the following items:

- The proposed disqualification period,
- Its right to reapply at the end of the period of ineligibility,
- Its right to a fair hearing.

If DSS determines that the head of a participating household/individual voluntarily quit his/her job or reduced his/her work hours while participating in the

program or discovers a quit or reduction of work hours which occurred within sixty (60) days prior to application or between application and certification, provide a notice of adverse action within ten (10) days after the determination of a voluntary quit is made. The notification must contain the proposed period of ineligibility and must specify that the household may reapply at the end of the sanction. The periods of ineligibility are imposed according to DSSM 9021.2, and is effective upon the issuance of the notice of denial.

~~For those households which leave the program before the sanction can be levied, do not impose the sanction until the household returns to the program.~~

If a voluntary quit or reduction in work effort occurs in the last month of a certification period, or it is determined in the last 30 days of the certification period, the individual must be denied recertification for a period equal to the appropriate mandatory disqualification period. The beginning of the disqualification starts with the first day after the last certification period ends and continues for the length of the disqualification period, regardless of whether the individual reapplies for food stamps.

Example:

It is determined that a participating individual quit his job without good cause in the last month of the certification period. The individual does not reapply for benefits. The individual is disqualified for three months starting with the first day after the certification period ended.

- If the individual reapplies before the three month period has ended, the individual is denied benefits due to the voluntary quit sanction.
- If the individual reapplies after the three month period has ended, the disqualification period has been served and eligibility can be determined.

Each household has a right to a fair hearing to appeal a reduction or termination of benefits due to a determination that the household's head voluntarily quit his/her job without good cause. If the participating household requests a fair hearing and the Division's determination is upheld, the disqualification period begins with the first month after the hearing decision is rendered.

Household heads who have been disqualified for quitting a job will carry their sanction with them if they join a new household as its head. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it per DSSM 9021.4.

6) If an application for participation is filed in the third month of disqualification, use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent

month(s) if all other eligibility criteria are met.

9026.2 Exemptions From Voluntary Quit Provisions

Persons exempt from the full-time work registration provisions are also exempt from voluntary quit provisions (See DSSM 9018.3).

9026.3 Good Cause

Good cause for leaving employment includes the good cause provisions found in DSSM 9025 and resigning from a job that does not meet the suitability criteria specified at DSSM 9022. Good cause for leaving employment also includes:

1) Discrimination by an employer based on age, race, sex, color, disability, religious beliefs, national origin, or political beliefs;

2) Work demands or conditions that under continued employment would be unreasonable, such as working without being paid on schedule;

3) Acceptance by the head of household of employment, or enrollment at least halftime in any recognized school, training program or institution of higher education, that requires the head of household to leave employment;

4) Acceptance by another household member of employment or enrollment at least half time in any recognized school, training program, or institution of higher education in another county which requires the household to move and thereby requires the head of household to leave employment;

5) Resignations by persons under the age of 60 which are recognized by the employer as retirement;

6) Employment which becomes unsuitable by not meeting the criteria specified in DSSM 9022 after the acceptances of such employment;

7) Acceptance of a bona fide offer of employment of more than 30 hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by 30 hours which, because of circumstances beyond the control of the head of household, subsequently either does not materialize or results in employment of less than 30 hours a week or weekly earnings of less than the federal minimum wage multiplied by 30 hours; and

8) Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs, particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of previous employment will be considered as with good cause if it is part of the pattern of that type of employment.

9026.4 Voluntary Quit Verification

To the extent that the information given by the household is questionable as defined in DSSM 9033, request verification of the household's statements. The primary responsibility for providing verification as provided in DSSM 9035 rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, assistance will be offered to the household to obtain the needed verification. Acceptable sources of verification include but are not limited to the previous employer, employee associations, union representatives, and grievance committees or organizations. Whenever documentary evidence cannot be obtained, substitute a collateral contact.

The Division is responsible for obtaining verification from acceptable collateral contacts provided by the household. If the household and the Division are unable to obtain requested verification from these or other sources because the cause for the quit resulted from circumstances that for good reason cannot be verified, such as a resignation from employment due to discrimination practices or unreasonable demands by an employer or because the employer cannot be located, the household will not be denied access to the Food Stamp Program.

9026.5 Ending a Voluntary Quit Or A Reduction In Work Hours Disqualification

Following the end of the disqualification period, as defined in DSSM 9021.2, a household may begin participation in the program if it applies again and is determined eligible.

Eligibility may be reestablished during a disqualification period and the household will, if otherwise eligible, be permitted to resume participation if the violator becomes exempt from the work registration requirements through DSSM 9018.3, other than through exemptions based on items (3) and (5) of that sections. Should a household which has been determined to be non-compliant without good cause split into more than one household, the sanction will follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household is ineligible for the balance of the period of ineligibility.

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER SIXTY-ONE**

RE: Green Infrastructure

WHEREAS, I established the Livable Delaware Agenda in 2001 to preserve the high quality of life for current and future generations of Delawareans; and

WHEREAS, as part of Livable Delaware, the Advisory Council on Planning Coordination was created to advise me on implementing Livable Delaware and convened a Green Infrastructure Subcommittee; and

WHEREAS, green infrastructure is defined as Delaware's natural life support system of parks and preserves, woodlands and wildlife areas, wetlands and waterways, productive agricultural and forest land, greenways, cultural, historic and recreational sites and other natural areas all with conservation value; and

WHEREAS, preserving Delaware's Green Infrastructure network will support and enhance biodiversity and functional ecosystems, protect native plant and animal species, improve air and water quality, prevent flooding, lessen the disruption to natural landscapes, provide opportunities for profitable farming and forestry enterprises, limit invasive species, and foster ecotourism; and

WHEREAS, the Advisory Council on Planning Coordination has adopted guiding principles, long term conservation acreage targets and focus areas based on a statewide assessment and courses of action for the conservation and management of Delaware's Green Infrastructure that will conserve an interconnected network of green spaces that benefit people and wildlife; and

WHEREAS, voluntary stewardship by private landowners is essential to green infrastructure conservation in Delaware, since approximately 80 percent of the State's land base is in private hands; and

WHEREAS, it is essential that the conservation of the green infrastructure of the State be accomplished in a workable and practicable manner.

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The Livable Delaware Green Infrastructure maps, as incorporated into the *Strategies for State Policies and Spending*, shall be used as a guideline for the determinations made pursuant to this order.

2. The Department of Natural Resources and Environmental Control ("DNREC") is directed to establish an inventory of all State-owned green infrastructure and the

environmental values and functions associated with each parcel.

3. The Secretary of DNREC in conjunction with the Department of Agriculture, shall:

a. Develop a statewide green infrastructure conservation and management strategy based on science-based assessments and a long-term vision of the State's conservation needs.

b. Identify key habitats and natural community types that are of particular ecosystem-wide importance including areas essential to particular species at critical stages of the life cycle (e.g., spawning or nursery areas).

c. Develop a green infrastructure public education and outreach program designed and implemented for all ages and walks of life, including policy makers, K-12 public school children, university students and the general public.

d. Provide assistance to local governments in conserving green infrastructure.

e. Improve the effectiveness of the State's stewardship of plants, animals and their habitats on public lands.

f. Improve coordination among State agencies and other conservation partners in collecting and managing green infrastructure information.

g. Continue and expand ongoing ecoregional conservation assessments by public and private conservation partners that identify the full range of green infrastructure in a given region as well as priorities to conserve.

h. Advance the use of and access to non-regulatory stewardship incentives by private landowners.

4. Each State department and agency shall minimize the adverse effects to green infrastructure identified in paragraph 1 and conserve and enhance the environmental values and functions of that green infrastructure in carrying out the agency's responsibilities.

5. Each State agency, to the extent permitted by law, shall avoid undertaking or providing financial assistance for construction located in green infrastructure identified in paragraph 1 which will substantially degrade or destroy the use and function of that area as green infrastructure, unless the head of the agency, through consultation with DNREC, files written findings with DNREC that (a) there is no reasonable alternative to such construction, and that the proposed action includes all practicable measures to minimize undesirable impacts to green infrastructure which may result from such use, or (b) that the request is consistent with the procedures and policies established under the provisions of paragraph 6 herein. In making this finding the head of the agency and DNREC may take into account social, economic, environmental and other pertinent factors.

6. The Secretary of DNREC, in conjunction with the Department of Agriculture, the Delaware Economic Development Office and the Department of Transportation,

shall establish policy and procedures including a mechanism for consultation and interagency discussions that will ensure the consideration of the public health, safety and welfare, the active management of green infrastructure systems, and the uses of green infrastructure including ecological enhancement, recreation, economic, scientific and cultural uses. DNREC may approve standard conservation plans and procedures for use by any State agency or local unit of government that has similar type of activities that may affect a parcel more than one time and/or affect more than one site.

7. Any requests for new authorizations, appropriations, or grants of State operating or capital funds, or for State loan assistance or guarantees shall indicate, based on best available information, if an action to be proposed will be located in or will adversely affect green infrastructure identified in paragraph 1 and whether the proposed action is in accord with this order.

8. When State-owned green infrastructure identified in paragraph 1 is proposed for lease, easement, right-of-way or disposal to public or private parties, the State agency shall (a) attach restrictions appropriate to this order to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law or (b) withhold such properties from disposal.

9. The Secretary of DNREC shall appoint a Green Infrastructure Conservation Coordinator and such additional staff as may be necessary to support implementation of this order and to provide operational support and expertise in resolving conservation management needs not addressed elsewhere in this order for the Secretaries of Natural Resources and Environmental Control, Agriculture and Transportation. The Conservation Coordinator shall consult regularly with representatives of the environmental community, agricultural community, business community, civic groups, academic community and State and local government including their various advisory bodies for open space, forest stewardship, farmland preservation, recreational sites and other elements of green infrastructure that have conservation value. The Conservation Coordinator shall prepare an annual report that describes the progress that has been achieved in implementation of the provisions of this order and the attainment of the conservation acreage targets adopted by the Advisory Council on Planning Coordination.

APPROVED THIS 28TH DAY OF OCTOBER, 2004.

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

GOVERNOR'S APPOINTMENTS

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| BOARD/COMMISSION OFFICE | APPOINTEE | TERM OF OFFICE |
|--|---|--|
| Abraham Lincoln Bicentennial Commission | The Honorable Harriet Smith Windsor | Pleasure of the Governor |
| Advisory Council on Planning Coordination | The Honorable John C. Carney, Jr. Mr. Paul H. Morrill, Jr. Mr. Marty Ross | 10/13/2007 10/13/2007 10/13/2007 |
| Advisory Council to the Division of Developmental Disabilities Services | Ms. Zakiya Y. Bakari | 10/20/2006 |
| Architectural Accessibility Board | Mr. Goodwin K. Cobb, III | 1/14/2006 |
| Authority on Radiation Protection | Robert N. Arm, D.M.D. Mr. Michael L. Clerkin Ms. Robin L. Elliott Mr. Norman W. Henry, III Mr. David H. Irwin Mr. Costas S. Krikelis Mr. Sunjay A. Shah | 10/13/2007 10/13/2007 10/13/2007 10/13/2007 10/13/2007 10/13/2007 10/13/2007 |
| Board of Clinical Social Work Examiners | Mr. Robb Carter Ms. Gloria L. Ho-Ruggiero Ms. Winnie J. Lewis Ms. Traci A. McDowell Mr. Timothy J. Toole | 10/13/2007 10/25/2007 10/13/2007 10/13/2007 10/13/2007 |
| Board of Cosmetology and Barbering | Mr. Richard Shultie, Jr. | 10/13/2007 |
| Board of Dental Examiners | Ms. Kimberly A. Hickman-Bowen Robert P. Marier, D.D.S. | 10/18/2007 10/18/2007 |
| Board of Examiners in Optometry | Ms. Nichole E. Anderson | 10/13/2007 |
| Board of Examiners of Private Investigators & Security Agencies | Mr. Edward V. Hill, Jr. | 10/13/2007 |
| Board of Plumbing Examiners | Mr. Robert J. Briccotto, Jr. | 10/13/2007 |
| Board of Podiatry | Jonathan P. Contompasis, DPM Ms. Sheri J. Morris | 10/18/2007 10/18/2007 |
| Board of Speech/Language Pathologists | Ms. Carol A. Guilbert | 10/18/2007 |

GOVERNOR'S APPOINTMENTS

| BOARD/COMMISSION OFFICE | APPOINTEE | TERM OF OFFICE |
|--|--|--|
| Child Placement Review Board-Kent | Ms. Alice R. Rasmussen | 10/13/2007 |
| Child Placement Review Board-New Castle | Ms. Eva Abbott Ms. Diane Bourne Ms. Barbara Freedman Ms. Laura Katz Ms. Iris McCarthy Ms. Frances M. Pullella | 10/13/2007 10/13/2007 10/13/2007 10/13/2007 10/13/2007 10/13/2007 |
| Child Placement Review Board-Sussex | Ms. Stacia Girley Ms. Patricia Mullin | 10/13/2007 10/13/2007 |
| Commission of the Purchase of Products & Service of the Blind & Other Severely Handicapped Individuals | Ms. Michele A. Mirabella | 10/13/2008 |
| Committee on Employment of People with Disabilities | Ms. Lois A. Dawson | 10/13/2007 |
| Council on the Blind | Mr. Charles Yelle | 10/13/2007 |
| Council on Transportation | Ms. Mary W. Davis | 10/18/2007 |
| Deferred Compensation Council | Mr. Oliver J. Gumbs | 10/13/2007 |
| Delaware Bicycle Council | Mr. Thomas Hartley Ms. Amy B. Wilburn Mr. Robert V. Witsil, Jr. | 10/13/2007 10/13/2007 2/25/2005 |
| Delaware Commission for Women | Ms. Sherese B. Carr Theresa Del Tufo, Ph.D. Ms. Robin M. Fisher Ms. Amanda Leaming Ms. Sandra J. Peterson Ms. Ilene M. Slatko Ms. Rosemarie S. Vanderhoogt | 10/13/2007 10/13/2007 10/23/2005 10/13/2007 10/13/2007 10/10/2005 10/13/2007 |
| Delaware Compensation Commission | Mr. Peter M. Ross | 10/20/2010 |
| Delaware Health Fund Advisory Committee | Gregory Bahtiarian, D.O. | Pleasure of the Governor |

GOVERNOR'S APPOINTMENTS

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| BOARD/COMMISSION OFFICE | APPOINTEE | TERM OF OFFICE |
|---|--|--|
| Delaware Health Resources Board | Ms. Katherine R. Deitcher Jaime H. Rivera, M.D. | 4/22/2005 4/22/2005 |
| Delaware Health Resources Board, Vice Chair | Mr. Robert F. Miller | Pleasure of the Governor |
| Delaware Nursing Home Residents Quality Assurance Commission | Mr. Thomas P. McGonigle | 10/13/2007 |
| Delaware State Arts Council | Ms. Rhonda B. Graham Ms. Lise M. Leary Ms. Julia M. McCabe Ms. Ann G. Schenck Allen Sessoms, Ph.D. Ms. Deborah Wicks | 8/5/2006 10/4/2007 10/4/2007 10/4/2007 10/4/2007 10/4/2007 |
| Dental Hygiene Advisory Committee | Ms. Debora L. Mause | 10/18/2007 |
| Family Court in and for New Castle County, Associate Judge | Mr. Michael K. Newell | 10/26/2016 |
| Farmland Evaluation Advisory Committee | Mr. James H. Baxter, Jr. | 7/1/2007 |
| Governor's Commission on Community and Volunteer Service | Ms. Bernice M. Edwards | 10/14/2007 |
| Governor's Council on Hispanic Affairs | Ms. Rena E. Cutlip Mr. Milton Delgado Mr. Joseph DiSalvo Mr. Jaime Figueras The Honorable Joseph E. Miro Ms. Carmen M. Rivera | 10/13/2007 10/13/2007 10/13/2007 10/13/2007 10/13/2007 10/13/2007 |
| Interagency Coordinating Council | Ms. Susan E. Jackson | 4/11/2005 |
| Infant Mortality Task Force | The Honorable Jack A. Markell | Pleasure of the Governor |
| Juvenile Justice Advisory Group | Lt. Colonel Thomas F. MacLeish Colonel David F. McAllister | Pleasure of the Governor Pleasure of the Governor |

GOVERNOR'S APPOINTMENTS

| BOARD/COMMISSION OFFICE | APPOINTEE | TERM OF OFFICE |
|---|------------------------------------|-----------------------------|
| Juvenile Justice Advisory Group | Mr. Kenneth McLaughlin | Pleasure of the Governor |
| | Mr. Michael J. Szczerba | Pleasure of the Governor |
| New Castle Vo-Tech Board of Education | Mr. Ray W. Christian | 10/13/2011 |
| | Mr. John F. Lynch, Jr. | 10/13/2011 |
| Organ and Tissue Donor Awareness Board | Ms. Darlene E. Cox | 10/13/2007 |
| Parks and Recreation Council | Mr. Ronald A. Breeding | 10/13/2007 |
| | Mr. Ronald D. Mears | 10/13/2007 |
| State Employees Benefits Advisory Council | Mr. Glenn C. Allen | 10/13/2007 |
| Superior Court of the State of Delaware, President Judge | The Honorable James T. Vaughn, Jr. | 10/12/2016 |
| Sussex County, Justice of the Peace | Mr. James G. Horn | 10/8/2008 |
| | Mr. Larry R. Sipple | 10/10/2008 |
| Sussex County Vocational-Technical School Board of Education | Ms. Judy L. Emory | 10/13/2011 |
| | Mr. Richard Ira Lewis | 10/13/2011 |
| Unemployment Compensation Advisory Council | Mr. Samuel E. Lathem | 10/13/2007 |

DEPARTMENT OF EDUCATION**IMPLEMENTING ORDER****STATE BOARD OF EDUCATION PROCEDURES
MANUAL****Background and Context of Regulation**

The State Board of Education's *Procedures Manual* includes descriptions of the Board's organization and operations, its meeting procedures and its rules of hearing practice, among other items.

The State Board concludes it is necessary to amend the *Procedures Manual* to: (1) include licensing of substitute teachers, include National Board Teachers and remove the Delaware Performance Appraisal references from the Approval of Rules and Regulations of the Professional Standards Board in Appendix A; (2) remove the reference to licensing institutions of higher education not incorporated in Delaware, remove the reference to vocational educators, change "handicapped students" to "children with disabilities", and incorporate truancy and excused absences into school attendance from the list of approvals in conjunction with the Department of Education in Appendix A; (3) remove the reference to food service manager in Appendix A; (4) move the reference to school profiles to the rule and regulation approval section in Appendix A; and (5) revise Appendix B to reflect legislative changes including removing the requirement to submit requests for appeals by certified or registered mail, include some charter school board actions as appealable to the State Board of Education and to add sample forms.

These changes are exempted from the procedural requirements of the *Administrative Procedures Act* pursuant to 29 **Del.C.** 10113(b)(1), (2), (4) and (5). As a result, the State Board may adopt these changes informally.

ORDER ADOPTING REGULATIONS

The State Board of Education concludes that it is appropriate to amend the *Procedures Manual* as described above. The amended regulations are attached as Exhibit "A" and are hereby adopted by the State Board of Education as its *Procedures Manual*, effective immediately.

Approved this 18th day of November 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire

Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

State Board of Education Procedures Manual
September 1998
(Revised: 2001, 2002 and 2004)

Legal Basis and Related Issues**Statutory Basis**

The State Board exists pursuant to 14 **Del.C.** §104(a), which states the following:

- (a) The State Board of Education shall be composed of 7 members who shall be citizens of the State and shall be appointed by the Governor and confirmed by the Senate. The Governor shall name the President of the Board who shall serve at the Governor's pleasure. Each of the remaining members of the Board shall be appointed to serve for 6 years and until his or her successor qualifies.

Board Structure**Membership**

In accordance with 14 **Del.C.** §104(a), the State Board is composed of 7 members.

Appointment

In accordance with 14 **Del.C.** §104(a), the State Board members are appointed by the Governor and confirmed by the Senate.

Qualifications

The qualifications for membership on the State Board of Education are specified in 14 **Del. C.** §104(d), which states the following:

- (d) The members of the Board shall be appointed solely because of their character and fitness subject to the following qualifications: At least 2 members of the Board shall have had prior experience on a local board of education; no more than 4 members of the Board shall belong to the same political party; no person shall be eligible to appointment who has not been for at least 5 years immediately preceding appointment a resident of this state; and no person shall be appointed to the Board who is in any way subject to its authority.

Any member of the Board shall be eligible for reappointment unless otherwise disqualified by this title. In constituting the

Board, the President shall be appointed from the State at large, but the appointments of the remaining 6 members shall be made so that there shall be on the Board at least 1 resident of the City of Wilmington, 3 residents from New Castle County outside the City of Wilmington, 1 from Kent County and 1 from Sussex County.

Terms

The President of the Board serves at the pleasure of the Governor 14 **Del.C.** §104(a). The terms for the remaining 6 members are “6 years and until his or her successor qualifies” 14 **Del.C.** §104(a). However, §104(f) provides that the “Governor may appoint members for confirmation by the Senate for terms shorter than 6 years where that is necessary to ensure that Board members’ terms expire on a rotating annual basis”.

Compensation

The compensation of State Board members is specified in 14 **Del. C.** §104(h), which states the following:

(h) The members of the Board shall receive \$100 for each day’s attendance at the meetings of the Board not to exceed 24 days’ attendance in any 1 calendar year; and they shall be reimbursed for the actual travel and other necessary expenses incurred in attending meetings and transacting the business of the Board.

Vacancies

“Vacancies on the Board for any cause shall be filled by the Governor for the unexpired term and until a successor shall qualify” 14 **Del.C.** §104(e).

Powers, Duties and Responsibilities

The powers, duties, and responsibilities of the State Board of Education are delineated primarily in **Delaware Code**, Title 14. The general powers are specified in 14 **Del.C.** §104(b), which follows. However, the specific powers, duties, and responsibilities, as cited in the **Code**, are detailed more fully in Appendix A, where the specific citations and a brief paraphrase of the statutes are given.

(b) The State Board of Education shall have powers, duties, and responsibilities as specified in this title. Included among the powers, duties and responsibilities are those specified in this subsection. The State Board of Education shall:

(1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the

Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens’ board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

(2) Provide the Secretary of Education with advice and guidance on the Department’s annual operating budget and capital budget requests;

(3) Provide the Secretary of Education with guidance in the preparation of the annual report specified in §124 of this title, including recommendations for additional legislation and for changes to existing legislation;

(4) Provide the Secretary of Education with guidance concerning the implementation of the student achievement and statewide assessment program specified in §122(b)(4) of this title;

(5) Decide, without expense to the parties concerned, certain types of controversies and disputes involving the administration of the public school system. The specific types of controversies and disputes appropriate for State Board resolution and the procedures for conducting hearings shall be established by rules and regulations pursuant to §121 (12) of this title;

(6) Fix and establish the boundaries of school districts, which may be doubtful or in dispute, or change district boundaries as provided in §§1025, 1026, and 1027 of this title;

(7) Decide on all controversies involving rules and regulations of local boards of education pursuant to §1058 of this title;

(8) Subpoena witnesses and documents, administer and examine persons under oath, and appoint hearing officers as the State Board finds appropriate to conduct investigations and hearings pursuant to paragraphs (5), (6), and (7) of this subsection;

(9) Review decisions of the Secretary of

Education, upon application for review, where specific provisions of this title provide for such review. The State Board may reverse the decision of the Secretary only if it decides, after consulting with legal counsel to the Department, that the Secretary's decision was contrary to a specific state or federal law or regulation, was not supported by substantial evidence, or was arbitrary and capricious. In such cases, the State Board shall set forth in writing the legal basis for its conclusion;

(10) Approve such Department rules and regulations as require State Board approval, pursuant to specific provisions of this title, before such regulations are implemented;

(11) Approve rules and regulations governing institutions of postsecondary education that offer courses, programs of courses, or degrees within the State or by correspondence to residents of the State pursuant to §§121(16) and/or 122(b)(7).

Conduct of Members

Delaware Code, Title 29, Chapter 58 provides the laws regulating the conduct of officers and employees of the State of Delaware. Members of the State Board of Education are subject to certain of the provisions of that statute in that they are included in the definition of "state agency" 29 **Del.C.** §5804(10) and the definition of "honorary state official" 29 **Del.C.** §5804(13). For that reason, members of the Board are encouraged to become familiar with the provisions of that chapter. The following issues are of particular concern.

Conflicts of Interest

Section 5805 details the State's conflict of interest provisions, which apply to members of the State Board of Education. As applied to State Board that means that a member may not participate on behalf of the State in the review or dispositions of any matter pending before the State in which he or she has a personal or private interest 29 **Del.C.** §5805(a). There are also restrictions on representing another's interest §5805(b); against contracting with the State for goods or services §5805(c); or for representing or assisting private enterprise within two years after appointed service §5805(d). The code of conduct is further detailed in 29 **Del.C.** §5806.

Financial Disclosure

Subchapter II, Chapter 58, 29 **Del.C.**, contains the requirements for financial disclosure of public officers. Because State Board of Education members are not included in the definition of "public officer" contained in §5812, it would appear that members are not required to file the annual disclosure reports mandated by this statute.

However, nothing would prohibit a member who chose to do so from voluntarily completing such a report.

Dual Compensation

"There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State" 29 **Del.C.** §5821(a). The statute prohibits such individuals from receiving dual compensation for their time. Thus, State Board members, who are employed by the agencies and organizations specified, are encouraged to acquaint themselves with the specific provisions of this statute.

Organization

Officers

President

The Governor shall name the President of the Board who shall serve at his/her pleasure 14 **Del.C.** §104(a). The President is responsible for the integrity of the Board process. Integrity includes the efficient, orderly deliberation of Board issues and conduct of Board affairs.

The President has no authority over Department of Education activities. However, the President does have authority, subject to any applicable Board policy, to (1) call special meetings of the Board; (2) represent, in person or through a designee, Board positions and symbolize the Board image in public and at ceremonial events; and (3) decide mechanics of Board procedures. Subject to Board approval, the President (1) determines Board agendas and committee charges, and (2) makes Board appointments to committees. The President shall be an ex officio member of all committees, and shall have all privileges of membership but shall not be counted in the committee quorum.

The President shall have the same right to make or second motions and to vote on pending questions as any other member of the Board.

The President shall determine the appropriate action to take in reference to any uncertainty regarding any expense statement submitted by a member of the State Board.

The President shall be responsible for initiating the annual evaluation of the Board's progress toward achieving the goals delineated in the five-year plan (See Vision, Mission, and Goals).

Vice President

The Vice President shall be elected at the annual meeting and shall serve until the next annual meeting or until a successor has been named 14 **Del. C.** §105(a). The Vice President shall assist the President in the duties of the President's office, as the President may direct, and shall preside at meetings and appoint members of committees during the President's absence. In the event of the

President's death, resignation, incapacity, or disqualification, the Vice President shall act in place of the President in all respects until the vacancy shall be filled or the incapacity removed.

Executive Secretary

Pursuant to 14 **Del.C.** §104(c), the Secretary of Education, in addition to his or her other duties of office, shall serve as Executive Secretary of the State Board.

The Executive Secretary is responsible for keeping of the minutes and other official records of the State Board, either in person or by an assistant.

Legal Counsel

Legal counsel to the State Board of Education is provided by the State Department of Justice and the Attorney General's Office in accordance with 29 **Del.C.** §2504. (In accordance with 29 **Del.C.** §2507, no agency board, or commission shall employ legal counsel except with approval of the Attorney General and Governor.)

Staff Assistance

Section 104(c), 14 **Del.C.**, provides in part, that: "The Department, through the Secretary, shall provide reasonable staff support to assist the State Board in performing its duties pursuant to this title ...". In addition, the annual appropriations act provides funding for a single independent staff person to provide support and policy advice to the State Board of Education.

Committees

Subcommittees of the Board

The Board may, from time to time, establish temporary committees to help carry out its responsibilities. To preserve Board holism, committees will be used sparingly, only when other methods have been deemed inadequate or to improve efficiency of operations. Board committees, whether external or internal, may not speak for the Board. No more than three Board members may serve on a Board committee. Board members may express their interest and willingness to serve on any committee. Subject to Board approval, the President will identify the charge of the committee and appoint a committee chair and members of the committee. It is expected that committees will report back to the full Board on a regular basis.

Special Board Committees

The Board may, from time to time, create special committees to advise the Board on specific issues, and shall vote to do so at a formal meeting of the Board. Such committees may include membership outside the Board or Department of Education.

Other Committees

Under **Delaware Code**, a member of the State Board must serve on each of the following committees:

- Equalization Committee 14 **Del.C.** §1707(i)
- President of the State Board serves ex-officio on the Board of Trustees of the University of Delaware 14 **Del.C.** §5105
- Traditionally, Board members also serve on numerous external boards and committees at both the State and national level. Examples include the following:
 - Delaware School Boards Association Board of Directors
 - Delaware School Boards Association Legislative Committee
 - Education Consortium
 - Committees and study groups of the National Association of State Boards of Education
 - Education Task Forces and Committees established by Executive Orders and Legislation.

Committees Appointed by the Secretary of Education

In accordance with 14 **Del.C.** §103(a)(11), the Secretary must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval. The Board's view shall be expressed in the form of a vote on the proposed committee membership.

New State Board Member Orientation

The State Board of Education is responsible for the orientation of new members to the State Board. A subcommittee of the Board shall be responsible for planning the orientation of new members. The Secretary of Education shall be an ex-officio member of this committee.

Board Member Development

The State Board of Education shall be responsible for its own development as a Board. This development shall take place through membership and participation in organizations such as the National Association of State Boards of Education, Delaware School Boards Association, the National School Boards Association, and other activities such as Board retreats, conferences, conventions, workshops, or committees.

Evaluation

The Board will monitor its own process and performance to ensure continuity of Board improvements, integrity of Board actions and progress toward Board goals. The Board will be accountable to the public for competent, conscientious, and effective accomplishment of its obligations as a Board.

The Board may seek the input from others regarding the effectiveness or impact of Board initiatives as part of the evaluation process, and may utilize the services of an independent consultant in doing so.

Consultants

The Board may, within available financial resources, hire consultants as needed. The Board shall formally approve the consultant and fee.

State Board Appropriations

Reimbursement to Board members for the normal mileage and incidental expenses are paid by the Department of Education from funds appropriated to the Board and budgeted for that purpose. Reimbursement requests for expenses for conferences or meetings outside the state must be initialed by the Board president. For other expenditures in excess of \$1,000 Board approval is required.

Meetings

Annual Meeting

Pursuant to 14 Del. C. §105(a), the annual meeting of the State Board of Education shall be held in Dover during the month of July. Election of the Vice President of the Board shall occur at this meeting.

Regular Meetings

Regular meetings of the State Board of Education are held once a month in the Cabinet Room of the John G. Townsend Building, Dover. The meetings are normally scheduled on the third Thursday of each month beginning at 1:00 p.m. but may vary as need dictates.

Special Meetings

Special meetings of the State Board of Education may be held to address emergency issues, conduct hearings, develop goals, evaluate board operations, or for in depth study and review of an issue. Special meetings are held at a time and place agreed upon by the Board.

Executive Sessions

The State Board of Education may meet in executive session for the reasons specified in 29 Del.C. §10004. The Board must vote in a public meeting to go into executive session stating the purpose for the executive session.

Board Meeting Procedures

Public Notice of Meetings

As specified in 29 Del. C. §10004(e)(1) the State Board is required to give public notice of all meetings, including executive sessions closed to the public, at least 7 days prior to the meeting. The notice must include the agenda and the

date, time, and place of the meeting. The notice is posted on the bulletin board outside the Cabinet Room of the Townsend Building, Dover.

In addition, notices of all regular meetings are mailed to the district superintendents, state officials, the media, heads of state education organizations and other interested parties. Persons and organizations may request that they be placed on the mailing list by contacting Dani Moore at the Department of Education. Telephone 302/739-4603. Fax 302/739-7768. Email: damoore@state.de.us

Agenda Format - Order of Business

The order of business for regular meetings is as follows:

- I. Opening
 - A. Call to Order
 - B. Approval of Agenda
 - C. Approval of Minutes
- II. Formal Public Comment
- III. State Board Business
 - A. Reports/Discussions
 - B. Budget Items
 - C. Other
- IV. Presentations
 - A. Department of Education
 - B. Secretary's Report, Review and Discussion
 - C. Other Presentations
- V. Action Items
 - A. Policy, Rules and Regulations
 - B. Higher Education
 - C. Charter Schools
 - D. Other Action Items
 - E. Appeals and Reviews
- VI. Information Items

Agenda Preparation and Dissemination

Items included on the Board's agenda for regular meetings are recommended jointly by the Policy Analyst to the State Board and the Cabinet of the Department of Education. The final agenda is subject to the approval of the Board President. Any member of the Board may request that an item be placed on the agenda.

Agendas with all background materials are distributed to Board members at least 5 days prior to the meeting. Board agendas are also distributed to district and state officials and to others on a request basis.

The State Board Agenda is also posted on the Department of Education Web Site prior to the meeting at www.doe.state.de.us

Rules of Order

The Board uses the rules of parliamentary procedure to conduct its meetings, but it is not strictly bound by Robert's Rules of Order. The general conduct of the meeting is

determined by the Board President with input from other board members and advice from the Board's legal counsel.

Quorum

Four (4) members of the State Board must be present to conduct the business of the Board 14 **Del.C.** §105(a)).

Voting Method

Votes by the State Board are taken by voice. When the vote is not a unanimous one, a roll call vote is taken in alphabetical order with the President voting last. All questions before the Board must be approved by a majority (4) of the members of the whole Board.

Minutes

As prescribed in 29 **Del.C.** §10004(f) the State Board maintains minutes of all its meetings including executive sessions. The minutes must include the names of board members present and a record, by individual member, of all votes taken and action agreed upon. The minutes, along with the printed agenda and its backup materials, shall constitute the official record of the Board.

Highlights of the State Board meetings are available on the Department of Education Website within 10 days of the State Board meeting at www.doe.state.de.us. Official Board Minutes are posted on the web site within five days of their approval at the subsequent monthly meeting of the Board.

Public Participation at Board Meetings

There are three ways that individuals and groups may address the Board at its regular meetings:

An individual or group may request time on the Board's agenda to make a formal presentation to the Board. Such a request should be in writing, and be submitted to the President of the State Board of Education, John G. Townsend Building, 401 Federal Street, Suite 2, P.O. Box 1402, Dover, DE 19903-1402, at least 20 days prior to the meeting. The decision to include the presentation will be made by the Board President. (Such presentations are included in Section IV.C. of the agenda.)

Time will be allocated at the beginning of the meeting (Section II) for individuals or groups to address the State Board on general issues. In addition, individual and/or groups may address the State Board on agenda items at the time that they are before the Board for discussion. Persons wishing to make comments should sign up on the appropriate form at least 15 minutes prior to the call to order. Each group should choose one representative to speak and comments should be limited to five minutes. Speakers will be recognized by the Board President in the order their names appear. If a large number of people sign up to speak, the Board President may at his/her discretion, limit the number of persons allowed to speak as well as designate the appropriate time for comments.

Normally the Board will not respond to questions or comments at the meeting but will respond in writing to each person or group. Written responses will not be made to persons/groups addressing action items on the agenda.

Appeals and Reviews

The State Board of Education has several responsibilities under the Code to hear appeals and to review decisions of the Secretary of Education. Those responsibilities are outlined in 14 **Del.C.** §104(b)(5), (b)(6), (b)(7), and (b)(9). The types of controversies and disputes appropriate for Board resolution and the procedures for conducting such hearings are contained in Appendix B.

Policy Development

One of the primary functions of the State Board of Education is to assist the Secretary of Education in the development of policy. Subsection 104(b)(1), **14 Delaware Code** states:

- (1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

In order to meet that responsibility, the State Board has set aside time at each regular meeting for discussions of State Board initiatives (Section III.A.), presentations from the Department of Education and the Secretary of Education's Report (Sections IV A. and B., respectively) and for Board action on policy, rules, and regulations (Section V.).

It is the expectation of the Board that the Secretary and the Department of Education will use those opportunities to obtain advice and counsel from the board as a whole in keeping with the spirit of the statute quoted above.

Appendix A

The following is a list of the powers, duties, and responsibilities of the State Board of Education. Each pertinent section of the Code is paraphrased and annotated. A general description of the powers, duties, and responsibilities can also be found in 14 **Delaware Code**, §104(b), which is quoted in its entirety in the body of this document.

Advisory Board to the Secretary

The State Board shall participate in meetings of the Advisory Board to the Secretary of Education 14 **Del.C.** §106.

Alternative Assessments

The State Board of Education must approve any alternative assessment administered pursuant to §151(i) of Title 14 **Del.C.**

Approval of Charter Schools

The State Board of Education must approve charter schools authorized by the Department 14 **Del.C.** §503 and §511(c). The State Board is also involved in any charter revocation under 14 **Del.C.** §515 and §516.

Approval of Rules and Regulations of the Professional Standards Board

The State Board of Education must approve rules and regulations promulgated by the Professional Standards Board before they become effective 14 **Del.C.** §1203. Such rules and regulations cover a number of areas including the following:

1. Qualifications and certification of educators in the public schools 14 **Del.C.** §1092, §1201, §1230, §1260, §1261, §1264(b), and §3310(4).
2. Licensure of substitute teachers 14 **Del.C.** §1230
3. Establishment of a special institute for teacher certification 14 **Del.C.** §1250.
4. Regarding alternative routes for teacher certification 14 **Del.C.** §1230.
5. Regarding professional development activities that qualify for Skills and Knowledge Salary Supplements 14 **Del.C.** §1305(l).
6. Regarding authorization of stipends for employees who have achieved certification from the National Board for Professional Teaching Standards or an equivalent program 14 **Del.C.** §1305(m)
7. Regarding activities that qualify for Additional Responsibility Salary Supplements 14 **Del.C.** §1305(m).

Approval of Regulations of the Higher Education Commission

The State Board of Education must approve rules and regulations promulgated by the Higher Education Commission before they become effective 14 **Del.C.** §104(b) (13).

Approval of Rules and Regulations

The State Board of Education must approve rules and regulations promulgated by the Department of Education before they become effective. Such rules and regulations cover a number of areas including the following:

1. Issuance of certificates and diplomas for the public schools 14 **Del.C.** §122(b)(3).
2. Statewide assessment of student achievement and the assessment of the educational attainments of the public school system 14 **Del.C.** 151(i).
3. Minimum courses of study for all public elementary schools and public high schools 14 **Del.C.** §122(b)(5).
4. Instruction in driver education in the nonpublic high schools 14 **Del.C.** §122(b)(13).
5. Issuance of Delaware Public Education Profiles on all public schools, including charter schools 14 **Del.C.** §124(a)
6. Delaware performance Appraisal System II 14 **Del.C.** §1270.
7. Excusal of educational hour requirements specified in 14 **Del.C.** §122(b)(8) and §1049(1).
8. Enforcement of school attendance laws 14 **Del.C.** §122(b)(9) and 14 **Del.C.** §2705(b) and truancy 10 **Del.C.** §901(14).
9. Instruction in driver education during summer months 14 **Del.C.** §122(b)(13).
10. Conduct of interscholastic athletics 14 **Del.C.** §122(b)(14).
11. Mandatory drug and alcohol educational programs 14 **Del.C.** §122(b)(16).
12. Operation of adult education and family literacy programs 14 **Del.C.** §122(b)(17).
13. Conduct of the teacher scholarship loan program in critical curriculum areas 14 **Del.C.** §1106 and the student loan program in critical curriculum areas (14 **Del.C.** §1108).
14. Concerning the employment of school principals 14 **Del.C.** §1307(2).
15. Regarding the employment of school nurses 14 **Del.C.** §1310(b).
16. Concerning parent advisory committees, a peer review committee, a human rights committee, and an autistic program monitoring board 14

- Del.C.** §1332(f).
17. Relating to related services for children with disabilities 14 **Del.C.** §1716A(c) and §1716A(d).
 18. Governing the design and operation of school buses 14 **Del.C.** §2901, and the transportation of students of nonpublic nonprofit schools 14 **Del.C.** §2905.
 19. Regarding the creation and operation of programs designed to serve exceptional students, primarily children with disabilities (numerous citations throughout 14 **Del.C.** Chapter 31).
 20. Regarding the extent and content of the instruction in the public schools in the Constitution of the United States, the Constitution and government of Delaware and the free enterprise system 14 **Del.C.** §4103.
 21. Regarding interstate agreements on the qualifications of education personnel 14 **Del.C.** §8212.

Approval of Shared School Decision Making Grants

The State Board of Education must approve guidelines for district transition grants for shared decision making 14 **Del.C.** §803(b); must approve guidelines for school transition grants 14 **Del.C.** §805(b); and must approve guidelines for school improvement grants 14 **Del.C.** §806(a).

Approval of Vocational Centers

The State Board of Education must approve the creation of vocational-technical centers or schools 14 **Del.C.** §205.

Approval of Neighborhood School Plans

The State Board of Education must approve neighborhood school plans submitted by districts 14 **Del.C.** §205.

Committee Appointments

The Secretary of Education must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval 14 **Del.C.** §103(a)(11).

Critical Curriculum Areas

The State Board of Education must approve areas, which are to be designated as critical curriculum areas 14 **Del.C.** §1101; approve academic year programs 14 **Del.C.** §1104; and approve summer in-service programs 14 **Del.C.** §1105.

Deciding Certain Controversies

The State Board of Education shall decide without expense to the parties concerned certain controversies and

disputes involving the administration of the public school system 14 **Del.C.** §121(12) and 14 **Del.C.** §104(b)(5). Rules and regulations regarding such hearings by the Board are contained in Appendix B.

Deciding Controversies Concerning Local Rules and Regulations

The State Board of Education shall decide controversies involving rules and regulations of local school boards 14 **Del.C.** §1058 and some rules and regulations of charter schools 14 **Del.C.** §104b(12).

Drug/Alcohol Education Programs

The State Board of Education must approve of statewide alcohol/substance abuse programs established and implemented by the Department of Education 14 **Del.C.** §4116(a).

Employment of Aides in Autistic Program

The State Board of Education may review decisions of the Department and Secretary of Education regarding requests to employ aides in lieu of teachers in the autistic program 14 **Del.C.** §1332(e).

Establishment of Programs for Children with Disabilities

The State Board of Education must approve the establishment of schools, classes or programs for the disabled 14 **Del.C.** §203, §1703(d), §1703(k), §1703(l), §1703(m), §1703(n) and §1721.

Number and Length of School Days

The State Board of Education must approve a reduction in the number of school hours and the length of full workdays for employees of the school system 14 **Del.C.** 1305(i)(j).

Reorganization of School Districts

The State Board of Education determines and establishes appropriate reorganized school districts through consolidation, division, or a combination of the two as well as establishing tax rates and tax districts for the same. 14 **Del.C.** §1025, §1026, §1027, §1028, §1065, §1924, and §1925

Review of Decisions Regarding Children with Disabilities

The State Board of Education may review a variety of decisions made by the Department regarding services to children with disabilities (numerous citations in 14 **Del.C.** Chapter 31).

Standards for Interpreter/Tutors

The State Board of Education must approve standards

prescribed for interpreter/tutors 14 **Del.C.** §1331(b).

www.legis.state.de.us/onlinepublications)

Statewide Programs for Children with Disabilities

The State Board of Education must approve the designation of a district to serve as administrative agency for the deaf-blind program 14 **Del.C.** §1321(e)(15)a.; to administer a program for the physically impaired 14 **Del.C.** §1321(e)(16); the establishment of intensive learning centers 14 **Del.C.** §1321(e)(17); and the designation of an administering district for the autistic program 14 **Del.C.** §1332(a).

Use of Cash Options in Lieu of Salary Funds

The State Board of Education may review decisions of the Department and Secretary of Education regarding district requests to elect cash options in lieu of receiving salary funds from the State 14 **Del.C.** §1321(e)(11), §1321(e)(12), §1321(e)(15)b., §1321(e)(16), §1332(d), and §1332(e).

Use of Special Education Funds

The State Board of Education may review decisions on the use of special education funds that a district seeks to use in another way if an objection is made to the Department's decision 14 **Del.C.** §1703(o) and §1716A(h).

Vacancies on Local School Boards

The State Board of Education appoints interim members to a local board of education in the event a majority or the entire membership vacates the seats at the same time. The Board may also set the date for a special election to fill the vacancies 14 **Del.C.** §1054.

Waiver of a Regulation

The State Board may, within 30 days or at its next meeting, deny any waiver of a regulation, it must promulgate or approve, granted by the Department of Education 14 **Del.C.** §122(g)(2).

Waiver of Rules Under School Discipline Programs

The Department of Education is authorized to waive certain rules and regulations in the implementation of school discipline programs. The State Board of Education may deny the waiver within a fixed period of time 14 **Del.C.** §1606.

Appendix B

HEARING PROCEDURES AND RULES

RULE MAKING HISTORY:

Initial adoption date September 1998

Revised 2000

Revised date 10-1-01 (see Register of Regulations at www.legis.state.de.us/onlinepublications)

Revised date 11-1-04 (see Register of Regulations at

1.0 Scope and Purpose of Rules

The State Board of Education ("the State Board") is authorized by several sections of the Education Code (Title 14 of the **Delaware Code**) to adopt or approve rules and regulations, resolve disputes, hear appeals, and review decisions of the Secretary of Education. The State Board is also governed by the Administrative Procedures Act (Chapter 101 of Title 29 of the **Delaware Code**), except where specifically exempted by other law.

These Hearing Procedures and Rules ("Rules") shall govern the practice and procedure before the State Board in hearings, appeals, and regulatory proceedings.

2.0 General Provisions

2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the State Board's statutory responsibilities and with the Administrative Procedures Act.

2.2 The State Board may for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.

2.3 Whether a proceeding constitutes an evidentiary hearing, an appeal or regulatory action shall be decided by the State Board on the basis of the applicable laws. A party's designation of the proceeding shall not be controlling on the State Board or binding on the party.

2.4 The State Board may appoint a representative to act as a hearing officer for any proceeding before the State Board. Except as otherwise specifically provided, the duties imposed, and the authority provided, to the State Board by these Rules shall also extend to its hearing officers.

2.5 Notwithstanding any part of these Rules to the contrary, the State Board, or its counsel, designee or hearing officer, may conduct pre-hearing conferences and teleconferences to clarify issues, confer interim relief, specify procedures, limit the time available to present evidence and argument, and otherwise expedite the proceedings.

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

2.7 The State Board may elect to conduct joint hearings with the Department of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.

2.8 Any party to a proceeding before the State Board may be represented by counsel. An attorney representing a party in a proceeding before the State Board shall notify the Executive Secretary of the State Board ("Executive

Secretary”) of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the State Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.

2.9 The State Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the State Board shall be submitted to the Executive Secretary in writing at least three (3) business days before the date scheduled for the proceeding. The President of the State Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.

2.10 A copy of any document filed with or submitted to the State Board or its hearing officer shall be provided to all other parties to the proceeding, or to their legal counsel. Where a local or other school board participates in a proceeding, copies of filed documents shall be directed to the executive secretary of the board, unless that board appoints a different representative for such purpose.

2.11 For purposes of these Rules, unless otherwise specified “day” shall mean a calendar day. “Business day” shall mean weekdays Monday through Friday, except when those days fall on a legal holiday.

3.0 De Novo and Other Evidentiary Hearings

3.1 Section 3.0 governs proceedings where a statute or regulation provides the right to an original or to a de novo hearing before the State Board to decide a specific controversy or dispute.

3.2 Petitions for Hearing

3.2.1 A party may initiate a hearing on matters within the State Board’s jurisdiction by mailing or delivering a petition for hearing to the Executive Secretary. The petition shall be in writing and shall be signed by the party making the request (or by the party’s authorized representative). It shall set forth the grounds for the action in reasonable detail and shall identify the source of the State Board’s authority to decide the matter. Petitions may not be delivered to the Executive Secretary by facsimile or other electronic means.

3.2.2 The petition for hearing shall be filed within a reasonable time after the controversy arises, but in no event shall a petition be filed more than thirty (30) days after the petitioning party’s receipt of notice that official action has been taken by an authorized person, organization, board or agency.

3.2.3 A copy of the petition for hearing shall be delivered to all other parties to the proceeding at the time it is

sent to the Executive Secretary. A copy of any other paper or document filed with the State Board or its hearing officer shall, at the time of filing, also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Secretary shall place the matter on the agenda of the next State Board meeting. At the next meeting, the State Board will either assign the matter to a hearing officer or determine a hearing date for the matter. The parties shall be given at least twenty (20) days notice of the hearing date.

3.2.5 A party shall be deemed to have consented to an informal hearing (as that term is used in Section 10123 of the Administrative Procedures Act) unless the party notifies the Executive Secretary in writing that a formal public hearing is required. Such notice must be delivered to the Executive Secretary within three (3) days of the receipt of the notice scheduling the hearing.

3.3 Record of Prior Proceedings

3.3.1 If proceedings were previously held on the matters complained of in the petition, the agency which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Secretary.

3.3.2 The record shall contain any written decision, a certified copy of any rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a certified, verbatim transcript of the proceedings conducted by the agency below and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

3.3.3 The record shall be filed with the Executive Secretary within ten (10) days of the date the Executive Secretary notifies the agency that the petition has been filed, unless directed otherwise. A copy of the record shall be sent to the petitioner when it is submitted to the Executive Secretary.

3.4 Record Review

3.4.1 If a hearing was previously held on the matters complained of in the petition, the parties to the proceeding before the State Board may agree to submit the matter to the State Board or its hearing officer on the existing record without the presentation of additional evidence.

3.4.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The parties’ written statements shall be submitted according to a schedule determined by the State Board.

3.4.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument by notifying the Executive Secretary in writing at least ten (10) days before the date written statements are due. Oral argument shall be limited to the

matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

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

3.5 Evidentiary hearings

3.5.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the State Board or its hearing officer otherwise decide to receive additional evidence.

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

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

3.5.4 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the State Board or its hearing officer.

3.6 Evidence

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

3.6.2 The State Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.

3.6.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.6.4 Any document introduced into evidence at the hearing shall be marked by the State Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the State Board members present for the hearing unless otherwise directed.

3.6.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Secretary in writing at least fifteen (15) days before the date of the hearing, unless additional time is allowed for good cause. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

3.7 Creation of Record before State Board

3.7.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing or oral

argument. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

3.7.2 If a stenographic reporter is not present at the hearing or argument, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing.

3.8 State Board Decision

3.8.1 When the State Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

3.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within a reasonable time of the conclusion of the proceedings before the hearing officer.

3.8.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order.

3.8.4 To the extent possible, the State Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.

3.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

4.0 Appeals

4.1 Section 4.0 governs proceedings where a statute or regulation provides the right to appeal to the State Board a decision which resolved a specific controversy or dispute. These proceedings include, but are not limited to, appeals of school district decisions involving rules and regulations of the school board 14 **Del.C.** §1051' and appeals of decisions of the Delaware Interscholastic Athletic Association (DIAA) and appeals of decisions by the board of directors of a charter school to suspend or expel a student for disciplinary reasons..

Note': The State Board of Education has held that the local boards of education are not subject to the *Administrative procedures Act* while conducting disciplinary proceedings. See *R.T. v. Sussex County Vocational-Technical School District Board of Education*, SBE No.99-12 (February 17, 2000) and *M.B. v. Sussex Technical School District Board of Education*, SBE No.-03 (April

3, 2000)

4.2 For purposes of Section 4.0:

4.2.1 **“Party”** shall mean any person or organization who participated in the proceedings before the agency which rendered the decision being appealed.

4.2.2 **“Decision”** shall mean the official action taken to resolve the dispute presented below and shall include the factual findings, the rule involved and the agency’s conclusion. “Decision” shall not include policy making or the adoption of rules and regulations of future applicability.

4.3 For purposes of determining the State Board’s jurisdiction under Section 1058 of the Education Code, “controversies involving the rules and regulations of the school board” shall mean the presentation before the local school board of a dispute involving the application of rules and regulations of the local board in a particular factual context. Certain decisions involving the application of rules and regulations of the local board may not be appealed to the State Board, including:

4.3.1 Decisions involving student disciplinary actions where a student is suspended from school for ten (10) or fewer days, except where a request to expunge the disciplinary action from the student’s record has been denied by the local board.

4.3.2 Personnel actions which are covered under a collective bargaining agreement or are otherwise subject to adjudication by the Public Employment Relations Board.

4.3.3 Termination of employees conducted in accordance with Chapter 14 of the Education Code.

4.3.4 Termination or non-renewal of public school administrators and confidential employees, as those terms are defined in Section 4002 of the Education Code, at the conclusion of an employment contract.

4.4 Decisions for the Board of Directors of a charter school to suspend a student from school for ten (10) or fewer days may not be appealed to the State Board, except where a request to expunge the disciplinary action from the student’s record has been denied by the board of directors.

4.5 Notice of appeal

4.5.1 A party may initiate an appeal by mailing or delivering a notice of appeal to the Executive Secretary. The notice shall be in writing, shall be signed by the party making the request (or by the party’s authorized representative. Notices of Appeal may not be delivered to the Executive secretary by facsimile or other electronic means.

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

4.5.3 A notice of appeal form is included at the end of these Rules. People filing appeals are not required to

use the form, but may find it helpful to do so.

4.5.4 The notice of appeal must be postmarked by or delivered to the Executive Secretary within thirty (30) days of the day the party initiating the appeal receives the written decision from which the appeal is taken.

4.5.5 A copy of the notice of appeal shall be mailed or delivered to the agency which made the decision at the same time the original notice of appeal is mailed or delivered to the Executive Secretary. A copy of any other paper or document filed with the State Board shall be provided to all parties to the proceeding at the same time it is filed with the State Board.

4.5.6 Upon receipt of an adequately detailed notice of appeal involving a student disciplinary decision or a decision of the Delaware Interscholastic Athletic Association (DIAA), the Executive Secretary shall assign the matter to a hearing officer from a roster of hearing officers approved by the State Board. The Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting.

4.5.7 Upon receipt of an adequately detailed notice of appeal involving any matter other than a student disciplinary decision or a decision of DIAA, the Executive Secretary shall consult with the President of the State Board to determine whether the matter should be assigned to a hearing officer or placed on the State Board’s next meeting agenda. The President shall have the authority to authorize the Executive Secretary to assign a hearing officer to the matter from a roster of hearing officers approved by the State Board. In such case, the Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting. Nothing in this subsection shall prevent the State Board from later assigning the matter to a hearing officer.

4.6 The record on appeal

4.6.1 Unless instructed otherwise, within ten (10) days of the receipt of the notice of appeal, the agency which made the decision under appeal shall forward the record of the proceedings below to the Executive Secretary. A copy of the record shall be sent to the party filing the appeal at the same time.

4.6.2 The record shall include the agency’s written decision, a copy of any rule or regulation involved, the minutes of the meeting(s) at which the decision was made, a verbatim transcript of the hearing conducted by the agency or party below, and all exhibits presented to the agency. The transcript shall be prepared at the direction and expense of the agency below.

4.6.3 The agency’s executive secretary, executive director or comparable administrator shall complete the “Certification of Record” form provided at the end of these Rules and attach it to the record when the record is forwarded to the Executive Secretary.

4.6.4 If a transcript of the proceedings below is

not or cannot be provided to the State Board, the Executive Secretary shall remand the case to the agency with an instruction that the agency hold a new hearing within ten (10) days.

4.7 Proceedings on appeal

4.7.1 The State Board of Education or its hearing officer shall establish and notify the parties of the date when the State Board or its hearing officer will consider the appeal, hereafter referred to as the consideration date. The parties shall be given at least twenty (20) days notice of the consideration date. The parties may agree to shorten or waive the notice of the consideration date.

4.7.2 Written statements of position and legal briefs or memoranda, if any, shall be filed no later than (10) days prior to the consideration date. Failure to file a written statement by the time specified may result in a postponement of the consideration date until the statement is filed, or a consideration of the appeal without the written statement, at the discretion of the State Board or its hearing officer.

4.7.3 The written statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal concerns a legal issue or interpretation.

4.7.4 Oral argument

4.7.4.1 A party may request that oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted.

4.7.4.2 Oral argument, if requested, shall be limited to fifteen (15) minutes per side with five additional minutes for rebuttal.

4.7.4.3 Any party may request the presence of a stenographic reporter at oral argument by notifying the Executive Secretary at least ten (10) days prior to the date of the argument. The requesting party shall be liable for the expense of the reporter. If a stenographic reporter is not present at the argument, the State Board or hearing officer shall cause an electronic transcript of the hearing to be made by tape recorder or other suitable device. Electronic transcripts shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the appeal.

4.7.4.4 If the State Board or hearing officer permits a party to present oral argument on an issue which was not identified by the party in their written statement, briefs or legal memoranda, or if in the course of the argument, the State Board or hearing officer raises an issue which was not previously raised by either party, the parties shall have a reasonable opportunity to comment in writing within five (5) business days of the oral argument.

4.7.4.5 The State Board or its hearing officer may limit or restrict argument that is irrelevant, insubstantial or unduly repetitive.

4.8 Standard and Scope of Review

4.8.1 The appellate review of the State Board shall be limited to the record of the proceedings below. Neither the State Board nor the hearing officer will consider testimony or evidence which is not in the record. If the State Board determines that the record is insufficient for its review, it shall remand the case to the agency below with instructions to supplement the record.

4.8.2 The standard of review shall be determined by the law creating the right of appeal. In the absence of a specific statutory standard, the substantial evidence rule will be applied, that is, neither the State Board nor the hearing officer will substitute its judgment for that of the agency below if there is substantial evidence in the record for its decision and the decision is not arbitrary or capricious. The State Board will make an independent judgment with respect to questions of law.

4.9 State Board Decision

4.9.1 After considering the record from the proceedings below, the written submissions and the arguments made by the parties, if any, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

4.9.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within fifteen (15) days of the consideration date or the filing of any post argument submissions.

4.9.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional comment. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Secretary.

4.9.4 The State Board shall consider the appeal at its next regular meeting following receipt of the parties' exceptions, comments, and arguments, if any, or the end of the comment period, whichever occurs first.

4.9.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and any written comments thereto, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

4.10 Student Discipline Appeals

4.10.1 To the extent possible, appeals of decisions involving student discipline will be scheduled for consideration by the hearing officer within thirty (30) days of the receipt of the notice of appeal.

4.10.2 If an appeal involves disciplinary action against a student receiving special education and related

services, the record must include evidence that a Manifestation Determination Review was conducted pursuant to the Department of Education's Administrative Manual for Special Education Services. Failure to provide such evidence may result in reversal or remand to agency for additional proceedings.

4.10.3 An appeal of or dispute about the Manifestation Determination Review must be made to the Department of Education as provided in the Administrative Manual for Special Education Services. The State Board of Education will not review such determinations.

5.0 Public Regulatory Hearings

5.1 Section 5.0 governs public hearings before the State Board or its hearing officers where the State Board is required to hold, or decides to hold, such hearings before adopting or approving rules and regulations or taking other regulatory action. See Note 1.

5.2 Notice that the State Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the Administrative Procedures Act. Notice of the public hearing shall also be circulated to individuals and agencies on the State Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the State Board will conduct the hearing, or designate a hearing officer for that purpose.

5.3 Creation of record of public hearing

5.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

5.3.2 If a stenographic reporter is not present at the hearing, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

5.4 Subpoenas

5.4.1 The State Board or its hearing officer may issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) days prior to the public hearing.

5.4.2 The State Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Secretary at least fifteen (15) days prior to the date of the hearing, unless additional time is allowed for good cause.

5.4.3 The party requesting the subpoena is

responsible for delivering it to the person to whom it is directed.

5.5 Documents

5.5.1 The State Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents which it will consider in reaching its decision. Documents received during the hearing shall also be marked as exhibits.

5.5.2 Any person or party submitting a document before or during the public hearing shall provide at least eight (8) copies of the document to the State Board, unless directed otherwise.

5.6 Witnesses

5.6.1 The order of witnesses appearing at the hearing shall be determined by the State Board or its hearing officer. The State Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at the public hearing.

5.6.2 The State Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious comment and information.

5.6.3 Any person who testifies at a public hearing shall be subject to examination by the State Board or its hearing officer. The State Board or its hearing officer may in their discretion allow cross examination of any witness by other participants in the proceedings.

5.7 At the conclusion of the public hearing, the State Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the Administrative Procedures Act. The Board's order shall be rendered within a reasonable time after the public hearing.

Note: The State Board is not subject to the Administrative Procedures Act when approving (or refusing to approve) regulations or regulatory action of the Department of Education, provided that the Department has complied with applicable portions of the Act. See 14 Del.C. 105(b).

GENERAL NOTICES

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STATE BOARD OF EDUCATION OF THE STATE OF DELAWARE

xxxx, _____
 Petitioner

v. _____
 No. 200x-xx

xxxx, _____
 Respondent.

CERTIFICATION OF RECORD

I, [name of executive secretary, executive director or comparable administrator], am the title of the [agency name].

I hereby certify that the attached documents constitute the true and complete record of the proceedings that occurred before the [agency name] in the captioned matter.

I further certify that the following documents are included in the attached record:

- a. the agency's written decision;
- b. the rules or regulations involved;
- c. the minutes of the meeting(s) at which the decision was made;
- d. a verbatim transcript of the hearing;
- e. all exhibits presented; and
- f. if this matter involves disciplinary action against a student receiving special education and related services, documentation evidencing the Manifestation Determination Review.

 Signature

Date: _____

Reference: State Board of Education *Hearing Procedures and Rules*, Sections 4.5 and 4.9.3.

NOTICE OF APPEAL TO THE STATE BOARD OF EDUCATION

To: Executive Secretary of the State Board of Education

I [name of person filing appeal] request that the State Board of Education accept this appeal and enter a decision and order as further explained in this Notice.

1. I am filing this Notice of Appeal on behalf of [myself or my child (give child's name)].

2. Please contact me at: [give address, telephone number(s) and email address if available].

3. I am appealing a decision made by [give name of agency] on [date of written decision]. I received the written decision on [date].

4. I believe the State Board may hear this appeal because it involves:

____ A decision by a school district board of education that decided a controversy involving the district's rules and regulations (including disciplinary rules).

____ A decision by the Delaware Interscholastic Athletic Association that decided a controversy involving athletic rules and regulations.

____ A decision by the board of directors of a charter school to suspend or expel a student for disciplinary reasons.

____ Other (explain why the State Board of Education has authority to consider your appeal): _____.

I am appealing this decision because (you may attach additional pages if you need more room):

I want the State Board of Education to do the following:

The information I have provided in this Notice of Appeal is true and correct to the best of my understanding and knowledge. I will send a copy of this Notice to the agency involved when I mail or deliver the Notice of Appeal to the State Board of Education.

I understand that appeals to the State Board of Education are decided "on the record" of the hearing that was held by the agency and that the State Board will not accept new testimony or other new evidence during this appeal.

 Signature

 Date Signed

Additional Instructions

- 1. Please print or type.
- 2. Provide all of the information requested.

3. Attach a copy of the written decision that you are appealing. The State Board of Education may not consider an appeal until a written decision has been issued.
4. Keep a copy of this Notice for your use and reference.
5. Mail or deliver this Notice and any attachments to the Executive Secretary of the State Board of Education at [add address].
6. Send a copy of this Notice and any attachments to the agency involved at the same time you mail or deliver the Notice to the State Board of Education.
7. The State Board of Education's *Hearing Procedures and Rules* are available at the State Board web page at www.doe.state.de.us or by calling the State Board's offices at 302-739-4603. Rule 4 addresses appeals.

term care continuing education requirement does not need to be met prior to solicitation of the product. The requirement must be met during the biennium that the long term care policy was solicited.

Section 8.2.2 provides that resident adjusters, public adjusters and fraternal producers shall be required to fulfill twelve (12) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period. The maximum number of carryover credits remains at five (5) credits in a biennium reporting period. The carryover credits shall not apply to the ethics credit requirement.

Section 8.3 provides for automatic credit under circumstances that may be revised by bulletin from time to time. This bulletin sets forth the automatic credit exemptions through February 28, 2006. Under Section 8.3, an individual continuously licensed for twenty-five (25) years or longer prior to the start of a biennium reporting period or who holds a professional designation shall receive an automatic credit of twelve (12) credits in each biennium.

The following license types are exempt from completing the Continuing Education requirement:

- Limited Lines Producers writing consumer credit as defined in 18 **Del.C.** §1702(k), title, crop/hail, surety and car rental insurance
- Resident adjusters licensed **solely** for surety and/or marine and transportation
- Non-resident adjusters and non-resident public adjusters
- Limited lines producers licensed under 18 **Del.C.** §1707(b)(2) for life insurance or annuity products used **solely** to fund a pre-need arranged funeral program

Licensed producers with the following designations shall receive credit as provided for in Section 8.3 of Regulation 504:

- AAI
- CEBS
- ChFC
- CFP
- CFP
- CIC
- CLU
- CPCU
- FLMI
- FSPA
- RHU

DEPARTMENT OF INSURANCE

Agents Bulletin No. 13

Continuing Education Changes Under Amended Regulation 504

Issued November 16, 2004

Introduction

Amended Regulation 504 Continuing Education became effective on November 15, 2004. The purposes for amending the regulation were to establish additional requirements for insurance education and to continue to ensure a high level of professionalism for the benefit of Delaware consumers. The Regulation, while taking effect immediately, will apply to Continuing Education compliance filings due February 28, 2006 and thereafter.

Significant Changes Required by Amended Regulation 504

Section 8.2.1 provides that resident licensees required to fulfill continuing education requirements shall complete twenty-four (24) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period. If the resident producer holds a health license and solicits long term care policies, as part of his/her biennial requirement, the producer must complete at least three (3) hours of training in Delaware long term care insurance that consists of product knowledge, laws, rules and regulations. The long

FAQs and Contact Information

Amended Regulation 504 will be posted on the

Delaware Department of Insurance's website, along with a list of FAQ's, on November 15, 2004. The Department's website address is: www.state.de.us/inscom/licensing.htm.

Questions related to the applicability and enforcement of Regulation 504 can be submitted to:

Ms. Linda A. Long
Delaware Department of Insurance
841 Silver Lake Blvd.
Dover, DE 19901-2465
Telephone:302.739.4254
Facsimile:302.739.6278
Email: linda.long@state.de.us

Donna Lee H. Williams
Commissioner

DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING
NOTICE OF PUBLIC HEARING

The Delaware Board of Nursing in accordance with 24 **Del.C.** Subsection 1906(1) has proposed to promulgate Rules and Regulations related to the insertion and removal of epidural catheters by certified Registered Nurse Anesthetists.

The proposed rule and regulation developed by the Board defines that the insertion and removal of epidural catheters is authorized practice for certified Registered Nurse Anesthetists.

A public hearing will be held on Wednesday, January 12, 2005 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed Rule and Regulation may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4515 or (302) 744-4516. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be January 12, 2005.

DIVISION OF PROFESSIONAL REGULATION
BOARD OF PHYSICAL THERAPISTS AND
ATHLETIC TRAINERS
NOTICE OF PUBLIC HEARING

The Delaware Examining Board of Physical Therapists and Athletic Trainers in accordance with 24 **Del.C.** §2604(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of physical therapy and athletic training.

A public hearing will be held on January 18, 2005 at 6:30 p.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. 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 Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public

hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

DIVISION OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL LAND SURVEYORS
NOTICE OF PUBLIC HEARING

The State Board of Professional Land Surveyors in accordance with 24 **Del.C.** §2706 (g) has proposed changes to its rules and regulations as mandated by S.B. 229, 74 **Del. Laws** c. 262. The proposal identifies crimes that are substantially related to the practice of land surveyors.

A public hearing will be held at 9:30 a.m. on January 20, 2005 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the State Board of Professional Land Surveyors, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

DIVISION OF PROFESSIONAL REGULATION
BOARD OF FUNERAL SERVICES
NOTICE OF PUBLIC HEARING

The Delaware Board of Funeral Services in accordance with 24 **Del.C.** §3105 (f) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of funeral services.

A public hearing will be held at 10:30 a.m. on January 26, 2005, 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Funeral Services, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS
NOTICE OF PUBLIC HEARING**

The Delaware Board of Examiners of Psychologists in accordance with 24 **Del.C.** §3506(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of psychology services.

A public hearing will be held on January 3, 2005 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Examiners of Psychologists, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF GEOLOGISTS
NOTICE OF PUBLIC HEARING**

The Delaware Board of Geologists in accordance with 24 **Del.C.** §3606 has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of geological services.

A public hearing will be held on January 14, 2005 at 10:15 a.m. in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Geologists, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed

regulations at its regularly scheduled meeting following the public hearing.

**BOARD OF SPEECH/LANGUAGE PATHOLOGISTS,
AUDIOLOGISTS, AND HEARING AID DISPENSERS
NOTICE OF PUBLIC HEARING**

The Delaware Board Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, in accordance with 24 **Del.C.** §3706 (c) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing.

A public hearing will be held at 2:00 p.m. on January 12, 2005 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION
STATE COMMITTEE ON DIETETICS/NUTRITION
NOTICE OF PUBLIC HEARING**

The State Committee on Dietetics/Nutrition in accordance with 24 **Del.C.** §3805(1) has proposed changes to its rules and regulations as mandated by SB 229 (74 **Del. Laws** c. 262). The proposal identifies crimes that are substantially related to the provision of services as a Certified Dietitian and/or Nutritionist.

A public hearing will be held at 2:30 p.m. on January 19, 2005 in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Committee on Dietetics/Nutrition, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Committee at the

above address. The final date to receive written comments will be at the public hearing.

The Committee will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF COSMETOLOGY AND BARBERING
NOTICE OF PUBLIC HEARING**

The Delaware Board of Cosmetology and Barbering in accordance with 24 **Del.C.** §5106 has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of cosmetology, barbering, electrology and nail technology services.

A public hearing will be held at 9:30 a.m. on January 31, 2005 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Cosmetology and Barbering, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING HOME ADMINISTRATORS
NOTICE OF PUBLIC HEARING**

The Delaware Board of Nursing Home Administrators in accordance with 24 **Del.C.** §5204(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of nursing home administration.

A public hearing will be held on January 11, 2005 at 2:15 p.m. in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Nursing Home Administrators, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to

the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF MASSAGE AND BODYWORK
NOTICE OF PUBLIC HEARING**

The Delaware Board of Board of Massage and Bodywork in accordance with 24 **Del.C.** §5306(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of massage and bodywork services.

A public hearing will be held on January 20, 2005 at 3:00 p.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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Massage and Bodywork, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION
NOTICE OF PUBLIC HEARING**

The Harness Racing Commission proposes to enact new Regulations 8.9 detailing the procedures and possible penalties for prerace testing by blood gas analyzer or similar equipment. The Commission further proposes to enact a new Regulation 8.10 to detail the quarantine procedure for horses that test positive for excessive carbon dioxide levels as a result of either a prerace or postrace test. The Commission will accept written comments from December 1, 2004 to December 30, 2004. Written comments should be sent to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901. The Commission will hold a public hearing on the proposed Regulations on December 20, 2004 at 11:00 a.m. at Dover Downs, 1131 N. DuPont Highway, Dover, DE.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, December 23, 2004 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE
OFFICE OF THE STATE LOTTERY
NOTICE OF PUBLIC HEARING

The Delaware Lottery Office proposes to amend the Video Lottery Regulations. The Lottery's proposed amendments are: i) amend Video Lottery Regulation 4.2 to provide that any entity proposing to contract with the Lottery or a video lottery agent must obtain a technology provider license; ii) amend Video Lottery Regulation 6.34(5) to provide that temporary employees, consultants, or contractors must obtain a license and vendors who propose to contract with the Lottery or a video lottery agent must obtain a technology provider license; iii) amend Video Lottery Regulation 6.35 to require video lottery agents to file copies of video lottery-related contracts in excess of \$50,000; iv) amend Video Lottery Regulation 7.16.2 to require a video lottery agent to update the self-exclusion list within forty-eight (48) hours after receiving notice from the Lottery or VLEU. The proposed amendments are issued pursuant to 29 **Del.C.** §4805(a) and 29 **Del.C.** §10115. The Lottery will accept written comments on the proposed amendments to the Video Lottery Regulations from December 1, 2004 through December 30, 2004. The Lottery will hold a public hearing on the proposed amendments to the Video Lottery Regulations on December 21, 2004 at 10:00 a.m. at the Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments or requests for copies of the proposed Regulation amendments should be submitted to Don Johnson at the Delaware Lottery Office.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH
NOTICE OF PUBLIC HEARING

The Center for Health Information Management and Disease Prevention, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed amendments to the Cancer Treatment Program Regulations. The public hearing will be held on

January 5, 2005 at 10:00 a.m., in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

The Comprehensive Cancer Control Branch
Blue Hen Corporate Center
655 S. Bay Road, Suite 200
Dover, DE 19901
Telephone: (302) 739-4651

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by January 4, 2005. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 7, 2005 to:

David P. Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, Delaware 19903-0637

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE**Delaware Medicaid/Medical Assistance Program****Provider Contractual/Programmatic Responsibilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Delaware Medicaid/Medical Assistance Program Provider Manual to add language to Section 1.6 of the General Policy to promote provider accuracy in processing claims.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by December 31, 2004.

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

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Case Processing Procedures policy in the Division of Social Services Manual (DSSM) regarding redeterminations: eligibility review periods.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by December 31st, 2004.

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

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
Cash Assistance Programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Case Processing Procedures policy in the Division of Social Services Manual (DSSM) regarding redeterminations: eligibility review periods.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by December 31st, 2004.

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

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) for the following reasons: 1) DSS no longer assigns 3-month certification periods; 2) DSS no longer mails benefits to local food stamp offices; and, 3) the implementation of simplified reporting, six-month certification periods, and EBT have made this policy obsolete.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by December 31st, 2004.

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 NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**
DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE

To modify Non-Tidal Fishing Regulation 3308 (Formerly NT-7), Fish Stocking Practices, to add the northern snakehead fish (*Channa argus*) and the blotched snakehead fish (*Channa maculata*) to the list of species for which it shall be unlawful for any person to transport, purchase, possess or sell within Delaware. This action complements action taken recently by the Maryland Department of Natural Resources and previous action taken by the states of Pennsylvania and New Jersey. These two species of snakehead fishes have been identified as the two most likely species of potentially injurious exotic snakehead fishes to thrive and breed in our area when released to the wild. The northern snakehead species has been documented to have escaped efforts at eradication within the state of Maryland and also has been shown to have bred in the wild in southeastern Pennsylvania.

Individuals may present their opinions and evidence

and/or request additional information by writing or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:00 PM on January 4, 2005. The record will remain open for written or e-mail comments to roy.miller@state.de.us until 4:30 PM January 14, 2005.

DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE

Title Of The Regulations:

Tidal Finfish Regulation 3502. Striped Bass Season And Area Restrictions.

Tidal Finfish Regulation 3505. Striped Bass Commercial Fishing Season; Quotas; Tagging And Reporting Requirements.

Brief Synopsis Of The Subject, Substance And Issues:

To increase the length of the commercial gill net season for striped bass to extend from February 15 through May 31 instead of the present March 1-April 30 open season and to require the use of drift nets for any gill nets having a mesh size of 4-inches or greater that are used to take striped bass during the February striped bass season extension;

To increase the duration of the commercial hook and line fishing season for striped bass from April 1 through and including December 31 instead of September 1 through December 31.

To require the use of non-offset "circle hooks" when fishing with natural bait in the designated striped bass spawning areas during the April 1-May 31 spawning season to reduce mortality rates from catch and release recreational fishing. The requirement for the use of circle hooks shall only apply to hooks having a gap greater than 3/8 inches as measured from the hook point to the shank of the hook.

Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:00 PM on December 30, 2004. The record will remain open for written or e-mail comments to roy.miller@state.de.us until 4:30 PM January 4, 2005.

DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE

Title Of The Regulations:

Tidal Finfish Regulation 3553. River Herring Creel Limit

Brief Synopsis of the Subject, Substance and Issues:

This new regulation would set a daily limit on the take and possession of blueback herring and/or alewife (*Alosa aestivalis* and/or *Alosa pseudoharengus*), collectively known as river herring, of 25 per person for the two species combined, except for those possessing a valid commercial finfish license or a receipt from a person legally entitled to take or possess in excess of 25 river herring per day. The purpose of his regulation is to prevent the establishment of a bait fishery for river herring in tidal tributaries of the State. The Department has been attempting to restore river herring to their former abundance by providing passage over dams that block spawning migrations. This action would complement actions previously taken by New Jersey and Pennsylvania. Live river herring are sought after as bait for striped bass and other species and are vulnerable to overexploitation when they approach fishways, dams or other obstructions while on their spawning migrations or out-migrations. This regulation would not affect normal commercial fishing operations in tidal waters, but will impact recreational fishermen who take live river herring as bait for sale.

Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:00 PM on January 4, 2005. The record will remain open for written or e-mail comments to roy.miller@state.de.us until 4:30 PM January 14, 2005

DIVISION OF WATER RESOURCES
REGISTER NOTICE

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, Division of Water Resources, Ground Water Discharges Section, held a public hearing on September 13, 2004 to receive comments on proposed amendments to the **Regulations Governing the Design,**

Installation and Operation of On-Site Wastewater Treatment & Disposal Systems. The proposed amendments and a notice of the September 13, 2004 public hearing were published in the Delaware Register of Regulations on August 1, 2004. In response to public comments, evidence and information provided to the agency regarding Section 5.11015(a) and Section 9.01015 since the public hearing, the Department is revising the number of lots which would require the utilization of a community wastewater treatment and disposal system instead of individual on-site wastewater treatment and disposal systems from 200 lots to 50 lots. therefore, these sections of the regulations are being published in their modified form and presented at a public hearing to provide the public an additional opportunity to submit comments before all of the amendments are promulgated in the manner required by law.

Notice Of Public Comment:

The Department Of Natural Resources And Environmental Control, Division Of Water Resources, Ground Water Discharges Section, Held A Public Hearing On September 13, 2004 To Receive Comments On Proposed Amendments To The **Regulations Governing The Design, Installation And Operation Of On-site Wastewater Treatment & Disposal Systems.** The Proposed Amendments And A Notice Of The Public Hearing Were Published In The Delaware Register Of Regulations On August 1, 2004. In Response To Public Comments, Evidence And Information Provided To The Agency Since The Public Hearing Regarding Section 5.11015(A) And Section 9.01015, The Department Is Revising The Number Of Lots Which Would Require The Utilization Of A Community Wastewater Treatment And Disposal System Instead Of Individual On-site Wastewater Treatment And Disposal Systems From 200 Lots To 50 Lots. The Department Will Conduct A Public Hearing On **Monday, January 10, 2004 At 6:00 P.m.** In The Dnrec Auditorium At 89 Kings Highway, Dover, De To Provide The Public An Additional Opportunity To Comment On These Revisions. Comments On The Proposed Revisions Should Be Submitted In Writing To Lisa Vest, Office Of The Secretary, Dnrec, 89 Kings Hwy., Dover, De 19901. Copies Of The Department's Proposed Revisions To Section 5. 11015 (A) And Proposed Section 9.01015 Are Available By Contacting Jack Hayes At (302) 739-4761.

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