

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 503

FINAL

Regulatory Implementing Order

503 Instructional Program Requirements

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** 503 Instructional Program Requirements in order to comply with House Bill 372 enacted by the 143 General Assembly as it amends 14 **Del.C.** 122(b)(23). The legislation states that the Department of Education is to require each local school district and charter school to assess the physical fitness of all students at least once in elementary, in middle and in high school.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 20, 2006, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities.

The Councils expressed concerns that the physical fitness assessment was not required for Groves' students. The legislation specifically states the assessment is to be done at least once at the appropriate elementary, middle and high school level with no reference to Groves' students. In addition, the Department does not believe that the regulation creates an anomaly for Groves' students as the rules of statutory construction require that the regulation be read as a whole and the exclusion of Groves' students in section 5.1 would apply to the provisions of Section 5.5.

The Councils were also concerned that all grades were not assessed in the 2006-2007 school year. The legislation did not provide a time line for initial implementation of the assessment. Starting with the elementary level will give the Department an opportunity to work out any problems before complete implementation of the assessment in the 2007- 2008 school year. The concern expressed about the inconsistency of assessing either ninth or tenth grade students in high school is not a problem because the assessment compares students by age not grade. Further Section 5.5 takes into consideration the fact that physical education is offered in a variety of configurations in Delaware and placing the fitness testing in the required grades that satisfy graduation requirements will provide consistency statewide. Lastly, physical education teachers will modify the assessment to meet the needs of students with disabilities. The design of the assessments allows for this type of modification.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 503 in order to order to comply with House Bill 372 enacted by the 143 General Assembly as it amends 14 **Del.C.** 122(b)(23). The legislation states that the Department of Education is to require each local school district and charter school to assess the physical fitness of all students at least once in elementary, in middle and in high school.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 503. Therefore, pursuant to 14 **Del.C.** §122(b)(23), 14 **DE Admin. Code** 503 attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 503 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** 503 amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 503 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 16, 2006. 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 16th day of November 2006.

Department of Education

Valerie A. Woodruff, Secretary of Education

Approved this 16th day of November 2006

STATE BOARD OF EDUCATION

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503 Instructional Program Requirements

1.0 English Language Arts

1.1 Local school districts and each charter school shall provide instructional programs in English Language Arts for each grade K to 12.

1.2 All public school students in each grade K to 8 shall be enrolled in an English language arts program.

1.3 All public school students in grades 9 to 12 shall complete the credits in English language arts necessary to graduate from high school.

2.0 Mathematics

2.1 Local school districts and each charter school shall provide instructional programs in mathematics for each grade K to 12.

2.2 All public school students in each grade K to 8 shall be enrolled in a mathematics program.

2.3 All public school students in grades 9 to 12 shall complete the credits in mathematics necessary to graduate from high school.

3.0 Science

3.1 Local school districts and each charter school shall provide instructional programs in science for each grade K to 12.

3.2 All public school students in each grade K to 8 shall be enrolled in a science program.

3.3 All public school students in grades 9 to 12 shall complete the credits in science necessary to graduate from high school.

4.0 Social Studies

4.1 Local school districts and each charter school shall provide instructional programs in social studies for each grade K to 12.

4.2 All public school students in each grade K to 8 shall be enrolled in a social studies program.

4.3 All public school students in grades 9 to 12 shall complete the credits in social studies necessary to graduate from high school.

5.0 Physical Education

5.1 Local school districts and each charter school shall provide instructional programs in physical education for each grade K to 12 with the exception of the James H. Groves High School program.

5.2 All public school students in each grade 1 to 8 shall be enrolled in a physical education program.

5.3 All public school students in grades 9 to 12 shall complete the credit in physical education necessary to graduate from high school.

~~5.4~~ 5.3.1 In addition to the one credit required for high school graduation, only one additional elective credit in physical education may be used to fulfill the graduation requirements.

~~5.5~~ 5.4 The physical education requirements may be waived only for students who have an excuse from a qualified physician or objections based on religious beliefs. The local school district or charter school shall have the authority to grant such waivers. The local school district or charter school shall maintain records of the waivers granted and upon request, make them available for review consistent with Federal and state confidentiality laws.

5.5 Local school districts and charter schools shall annually assess the physical fitness of each student in grades 4 and 7, and in grade 9 or 10. Beginning in the 2006-2007 school year and annually thereafter, all students in grade 4 will be assessed. Beginning in the 2007-2008 school year and annually thereafter all students in grade 7 and in grade 9 or 10 will be assessed. The physical fitness assessment tool used by the districts and charter schools shall be one designated by the Delaware Department of Education.

5.5.1 The local school districts and charter schools shall provide the results of the physical fitness assessment to the parent(s) guardian(s) or Relative Caregiver of each student. The districts and charter schools shall also report this information to the Delaware Department of Education in a format determined by the Department.

5.5.1.1 The Delaware Department of Education shall annually report the statewide grade level results of the physical fitness assessment to the public.

6.0 Visual and Performing Arts

6.1 Local school districts and each charter school shall provide instructional programs in the visual and performing arts for each grade K to 12 with the exception of the James H. Groves High School program.

6.2 All public school students in each grade 1 to 6 shall be enrolled in a visual and performing arts program.

7.0 Career Technical Education

7.1 Local school districts and charter schools, when consistent with the charter school's approved program, shall provide instructional programs in two or more vocational technical education areas in grades 7 and 8.

5 DE Reg. 865 (10/1/01)

8 DE Reg. 1709 (6/1/05)

10 DE Reg. 985 (12/01/06) (Final)