

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 804

FINAL

REGULATORY IMPLEMENTING ORDER

804 Immunizations

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks to amend 14 **DE Admin. Code** 804 Immunizations. This regulation is being amended to be in alignment with advice from the Delaware Division of Public Health related to immunizations for students. This regulation has been and continues to be promulgated pursuant to 14 **Del.C.** §131. A purpose statement has been added to specify this statutory requirement.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **April 27, 2015**, in the form hereto attached as *Exhibit "A"*. Comments were received from the March of Dimes Foundation-Delaware Chapter, Pfizer, Immunization Coalition of Delaware, Delaware School Nurse Association, Sanofi Pasteur, Sussex County Health Promotion Coalition, the Delaware Division of Public Health, Nemours/ Alfred I. duPont Hospital for Children, the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens. Please note the adding of the purpose statement as 1.0 required the regulation to be renumbered. The comment references have been updated to align with the new numbering.

Comments were related to:

- (1) clarification to 4.1.1 regarding the recommended age at which the adolescent booster dose of diphtheria, tetanus and pertussis should be given. The Department clarified in 4.1.1 that the preferred age for the Tdap or other approved vaccine is age 11-12;
- (2) clarification to 4.1.2 to address that the recommended one dose of meningococcal vaccine to be given at age of 11 or 12, with a booster dose at age 16. The Department addressed this comment by adding language to 3.1.6;
- (3) removal of the words in 3.1.1 "DT, or other" and adding "Tdap". The Department clarified in 3.1.1 the specific vaccines or combinations thereof that school enterers shall have;
- (4) adding language in 3.1.1.2 that this requirement can be met with a dose of Tdap and a total of two doses of Td vaccine. The Department addressed this by adding the definition of an "Approved Vaccine";
- (5) editing 3.1.3 to include MMRV (measles, mumps, rubella, varicella) as an additional optional vaccine. The Department addressed this by adding the definition of an "Approved Vaccine";
- (6) inclusion of the recommendation of a vaccine with protection from pertussis for children previously unimmunized over the age of seven. The Department addressed this in 3.1.1.3 and 4.1.1;
- (7) explanation of how schools will coordinate with the DPH to provide services to non-compliant secondary school students. The Department addressed this in 4.2 which notes that schools will coordinate with DPH. Additionally, the Department of Education is collaborating with DPH to advise and train school nurses and school officials regarding the recommended immunizations for the 2015-2016 school year and beyond;
- (8) requesting that DOE implement the regulation by requiring proof of immunizations starting in the 2015-2016 school year. The Department is unable to implement the immunization requirements for the 2105-2016 as sufficient time must be provided to notify school staff and parents on the new requirements;
- (9) review of "school enterer" and "school districts" to ensure that the regulation applies to all those in a public school, including charter schools. The regulation does apply to public schools, which includes charter schools. Charter schools was specifically added to 5.4 of the regulation;
- (10) request for DOE or DPH to consult with DMMA to ensure that the listed immunizations and schedules are covered by Medicaid. The Department has confirmed that the listed immunizations are covered by Medicaid;
- (11) a comment to add a statement in 3.1.5 that notes that in the 2020-2021 school year all students must have two doses of varicella. The Department amended language in 3.1.5 to address this;
- (12) a comment regarding language be added in 4.1 that each year one grade will be added so that by 2019-2020 school year all students in grade 9-12 will have received immunizations. The Department revised 4.0 and 4.1 for clarification;
- (13) a request to change the word "provide" to "assure" regarding the services of DPH. This change was made in 4.2.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 804 Immunizations in order to ensure that this regulation is in alignment with recommendations made by the Delaware Department of Public Health related to immunizations for students.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 804. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 804 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 804 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** 804 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 804 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 **June 18, 2015**. 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 June 2015.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 18th day of June 2015

804 Immunizations

[1.0 Purpose

This regulation is promulgated pursuant to Title 14 Del.C. Ch. 1, §131 which states that, "the Department (of Education) shall from time to time, with advice from Division of Public Health (DPH), adopt and promulgate rules and regulations to establish an immunization program to protect pupils enrolled in public schools from certain diseases.]

[42].0 Definitions

["Approved Vaccine" means a vaccine, vaccine combination, formulation, or schedule which has been reviewed and accepted by the Division of Public Health (DPH) based upon Centers for Disease Control and Prevention (CDC) Recommended Immunization Schedule.

~~"Entering Grade 9 Students" means any child entering Grade 9 or an equivalent school or program for this age.]~~

"School Enterer" means any child between birth and twenty (20) years inclusive entering or being admitted to a Delaware public school district or 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.

["Secondary School", for the purposes of this regulation, means a school with a grade or age configuration including any of the following: grade 9, grade 10, grade 11, or grade 12.]

10 DE Reg. 1807 (06/01/07)

16 DE Reg. 411 (10/01/12)

[23].0 Minimum Immunizations Required for All School Enterers

[23].1 All School Enterers shall have immunizations given up to four days prior to the minimum interval or age and shall include:

[23].1.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other approved vaccine) ~~[or a an approved combination of these vaccines (DTaP, DTP, DT, or other).]~~ A booster dose of Td or Tdap (adult) is recommended by the Division of Public Health for all students at age 11 or five years after the last

DTaP, DTP or DT dose was administered whichever is later. **[(DTaP, DTP, or other Approved Vaccine)]**
Notwithstanding this requirement:

[23].1.1.1 A child who received a fourth dose prior to his or her fourth birthday shall have a fifth dose;

[23].1.1.2 A child ~~[.]~~ who received the first dose of ~~Td (adult) diphtheria and tetanus containing vaccine as adult Td vaccine~~ at or after age seven ~~[.]~~ may meet this requirement with only three doses of Td or [a Approved Vaccine formulation, e.g., Tdap] (adult).

[3.1.1.3 **A booster dose of Tdap (adult) is strongly recommended by DPH for all students at age 11-12 years (preferred) or through 18 years and required as per 4.1 and 4.1.1 below.]**

[23].1.2 Three or more doses of inactivated polio virus vaccine (IPV), oral polio vaccine (OPV), or a **[n Approved Vaccine combination of these vaccines]**. Notwithstanding this requirement:

[23].1.2.1 A child who received a third dose prior to his or her fourth birthday shall have a fourth dose.

[23].1.3 Two doses of measles, mumps and rubella (MMR) **[Approved vV]accine**. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. **[Individual combination vaccines of measles, mumps, rubella (MMR) may be used to meet this requirement.]**

[23].1.3.1 Disease histories for measles, rubella and mumps shall not be accepted unless serologically confirmed.

[23].1.4 Three doses of Hepatitis B vaccine.

[23].1.4.1 For children 11 to 15 years old age, two doses of a **[n Approved vVaccine approved by the Center for Disease Control (CDC)]** may be used.

[23].1.4.2 Titers are not acceptable in lieu of completing the vaccine series and a disease history for Hepatitis B shall not be accepted unless serologically confirmed.

[23].1.5 ~~Two doses of Varicella [Approved vV]accine, is required beginning in the 2003-2004 school year with kindergarten. One grade shall be added each year thereafter so that by the 2015-2016 school year all children in grades kindergarten through 12 shall have received the vaccination. Beginning in the 2008-2009 school year new enterers into the affected grades shall be required to have two doses of the Varicella vaccine. The first dose shall be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school. A written disease history, provided by the health care provider, parent, legal guardian, Relative Caregiver or School Enterer who has reached the statutory age of majority (18), 14 Del.C. §131(a)(9), will be accepted in lieu of the Varicella vaccination. Beginning in the 2008-2009 school year, a disease history for the Varicella vaccination must be verified by a health care provider to be exempted from the vaccination. [Students who entered during or prior to the 2008-2009 school year are required to have one dose. By the 2020-2021 school year all students must have two doses. DPH strongly recommends two doses for all students regardless of date of school entry.]~~

[23].1.5.1 The first dose [shall should] be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school.

[23].1.5.2 A written disease history, provided by the health care provider, will be accepted in lieu of the Varicella vaccination.

[3.1.6 **Two doses of meningococcal vaccine are strongly recommended by DPH, with an initial dose at ages 11-12 and a booster at ages 16-18, and required as per 4.1 and 4.1.2 below.]**

[23].2 Children who enter school prior to age four (4) shall follow current Delaware Division of Public Health recommendations.

10 DE Reg. 1807 (06/01/07)

11 DE Reg. 666 (11/01/07)

16 DE Reg. 411 (10/01/12)

[34].0 **Minimum Immunizations for [Entering Grade 9 Secondary School] Students**

[34].1 ~~Beginning in school year 2016-2017, in addition to those in Section 2.0, proof of the below identified immunizations shall be provided by Ee]ntering [Gg]rade 9 [Ss]tudents. **[These immunizations are strongly recommended, but not required, for Entering Grade 9 Students in school year 2015-2016; shall show proof of immunizations. One Secondary School grade shall be added each year thereafter.]**~~

[34].1.1 ~~An adolescent booster dose of [DTaP or DTP administered at age 11 or five years after the last DTaP, DTP, or DT dose, whichever is later] Tdap or other Approved Vaccine administered at age 11-12 (preferred) or prior to entry to Grade 9].~~

[34].1.2 One dose of meningococcal [Approved vV]accine.

~~3~~**[4]**.2 Schools will coordinate with the Division of Public Health to ~~[provide assure]~~ services to non-compliant ~~[Entering Grade 9 Secondary School Ss]~~students.

(Non-regulatory guidance: Please refer to 14 ~~DE Admin. Code~~ 815 Health Examinations and Screenings for health examinations required for entering grade 9 students.)

~~3.0~~**[45].0**Certification of Immunization

~~3~~**[45].1** The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18)~~[- 14 Del.C. §131(a)(9),]~~ shall present a certificate specifying the month, day, and year that the immunizations were administered by a licensed health care practitioner.

~~3~~**[45].2** According to 14 ~~Del.C.~~ §131, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent, legal guardian, Relative Caregiver~~[,]~~ or a School Enterer who has reached the statutory age of majority (18)~~[- 14 Del.C. §131(a)(9),]~~ shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.

~~3~~**[45].3** A ~~[sS]~~chool ~~[eE]~~nterer may be conditionally admitted to a Delaware school district by presenting a statement from a licensed health care practitioner who specifies that the School Enterer has received at least:

~~3~~**[45].3.1**One dose of DTaP, or DTP, or DT~~[,]~~ **[or Approved Vaccine]**; and

~~3~~**[45].3.2**One dose of IPV or OPV~~[,]~~ **[or Approved Vaccine]**; and

~~3~~**[45].3.3**One dose of measles, mumps and rubella (MMR) **[Approved ~~vV~~accine]**; and

~~3~~**[45].3.4**The first dose of the Hepatitis B series; and

~~3~~**[45].3.5**One dose of Varicella vaccine ~~as per 2.5.~~

~~[45].3.6~~ One dose of meningococcal vaccine~~[,]~~ **[if entering a Secondary School according to 4.1 and 4.1.2].**

~~3~~**[45].4** ~~14 DE Admin. Code 901 Education of Homeless Children and Youth 6.0 states that "School districts [and charter schools] shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth". To that end, school districts shall as stated in 14 DE Admin. Code "assist homeless children and youth in meeting the immunization requirements".~~

~~3~~**[45].5** ~~Title In accordance with the provisions of 14 Del.C., Ch. 1, Subchapter III-A Interstate Compact on Education For Children of Military Families (MIC3) and its enabling regulation, [provides that] a School Enterer or [Entering Grade 9 Secondary School Ss]tudent who is subject to MIC3 shall be allowed thirty (30) calendar days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, to obtain or to initiate the basic a series of immunizations required by this regulation.~~

~~3~~**[45].6** If the School Enterer or ~~[Entering Grade 9 Secondary School Ss]tudent~~ fails to complete the series of required immunizations, the parent, legal guardian, Relative Caregiver or ~~a school enterer student~~ who has reached the statutory age of majority (18)~~[- 14 Del.C. §131(a)(9),]~~ shall be notified that the School Enterer or ~~[Entering Grade 9 Secondary School Ss]tudent~~ will be excluded according to 14 ~~Del.C.~~ §131.

10 DE Reg. 1807 (06/01/07)

16 DE Reg. 411 (10/01/12)

~~4.0~~**[56].0**Lost or Destroyed Immunization Record

When a student's immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent, legal guardian, Relative Caregiver~~[,]~~ or a ~~[sS]~~chool ~~[eE]~~nterer who has reached the statutory age of majority (18)~~[- 14 Del.C. §131(a)(9),]~~ shall sign a written statement to this effect and must obtain at least one dose of each of the immunizations as identified in ~~3-3~~ ~~[45].3~~. Evidence that the vaccines were administered shall be presented to the superintendent or his or her designee.

10 DE Reg. 1807 (06/01/07)

~~5.0~~**[67].0**Exemption from Immunization

~~5~~**[67].1** Exemption from this requirement may be granted in accordance with 14 ~~Del.C.~~ §131 which permits approved medical and notarized religious exemptions.

~~[67].1.1~~ Medical exemptions are reviewed and approved by the Delaware Division of Public Health.

~~5~~**[67].2** Alternative dosages or immunization schedules may be accepted with the written approval of the Delaware Division of Public Health.

10 DE Reg. 1807 (06/01/07)

~~6.0~~**[78].0**Verification of School Records

The Delaware Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

1 DE Reg. 1808 (05/01/98)

4 DE Reg. 1515 (03/01/01)

5 DE Reg. 2295 (06/01/02)

10 DE Reg. 1807 (06/01/07)

7.0[89].0Documentation

7[89].1 School nurses shall record and maintain documentation of each student's immunization status.

7[89].2 Each student's immunization record shall be included in the Delaware Immunization Registry.

1 DE Reg. 1808 (05/01/98)

4 DE Reg. 1515 (03/01/01)

5 DE Reg. 2295 (06/01/02)

10 DE Reg. 1807 (06/01/07)

16 DE Reg. 411 (10/01/12)

19 DE Reg. 43 (07/01/15) (Final)