

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 718

FINAL

REGULATORY IMPLEMENTING ORDER

718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs. There is a minor formatting change for additional clarity and an amendment that requires medical information on employees to be maintained in accordance with any Health Insurance Portability and Accountability (HIPAA) requirements and separated from the individual's personnel file.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 2, 2009, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs in order to change the format for additional clarity and an amendment that requires medical information on employees to be maintained in accordance with any Health Insurance Portability and Accountability (HIPAA) requirements and separated from the individual's personnel file.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs 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** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs 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 October 12, 2009. 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 12th day of October 2009.

DEPARTMENT OF EDUCATION
Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 12th day of October 2009

718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs

1.0 Required Physician's Certification

At initial employment, all employees of school districts, charter schools and alternative programs shall provide a physician's certification that he or she is free (a) from any medical condition which would prevent the applicant from performing the essential functions of the applicant's job and (b) free from any medical condition which cannot be remedied through reasonable accommodations. The physician's certification, along with any other medical information, shall be retained in an individual's file kept in accordance with any Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirement and separate from the individual's personnel file.

Non regulatory note: See 14 **DE Admin. Code** 805 The School Health Tuberculosis Control Program for TB screening and testing. Also, see 21 **Del.C.** §2708 and 14 **DE Admin. Code** 1105 for requirements for school bus drivers.

3 DE Reg. 526 (10/1/99)

8 DE Reg. 702 (11/1/04)

13 DE Reg. 640 (11/01/09) (Final)