

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 805

EMERGENCY

PUBLIC NOTICE

805 The School Health Tuberculosis (TB) Control Program

WHEREAS, the Secretary of the Department of Education ("the Secretary") has been charged by the Delaware legislature with the supervision and direction of the administration and operation of the Department of Education ("the Department"), 14 **Del.C.** §103(a); and

WHEREAS, the Department has been charged by the Delaware legislature to prescribe rules and regulations that, among other things, govern the physical inspection of and the protection of the health and physical welfare of public school students in the State, 14 **Del.C.** §122(b) (2); and

WHEREAS, the Department has promulgated a regulation which requires that School Staff and Extended Services Personnel provide the Tuberculosis Test results from a test administered within the past 12 months during the first 15 working days of employment, 14 **DE Admin. Code** 805.2; and

WHEREAS, the most widely used Tuberculosis Test is the tuberculin skin test ("TST") which is performed using purified protein derivative ("PPD"); and

WHEREAS, on September 5, 2013, the Department received information from the Delaware Department of Health and Social Services, Division of Public Health ("Public Health") that there is a current nationwide shortage of PPD which has begun to impact the Delaware supply and will affect the mandatory testing of all new employees; and

WHEREAS, Public Health has recommended alternative procedures for the mandatory testing requirements of the School Health Tuberculosis Control Program until sufficient quantities of PPD solution are available in Delaware; and

WHEREAS, the Secretary finds that revision of regulation 14 **DE Admin. Code** 805 must occur on an emergency basis in order to properly protect the health and physical welfare of the public school students of the State until such time as sufficient supplies of PPD solution are available in Delaware; and

WHEREAS, the Secretary will accept, consider and respond to petitions by any interested person for the reconsideration or amendment of this regulation who addresses the same to the attention of Susan K. Haberstroh, MPA, Ed.D., Associate Secretary, Education Supports & Innovative Practices Branch, 401 Federal Street, Suite #2, Dover, DE 19901; and

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

NOW, THEREFORE, IT IS ORDERED this 16th day of September, 2013:

In accordance with the provisions of 29 **Del.C.** §10119(3), this Order shall be effective for 120 days from the date of execution.

SO ORDERED this 16th day of September, 2013.

Department of Education

Mark T. Murphy, Secretary of Education

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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 tuberculosis exposure.

"School Staff and Extended Services Personnel" means all persons hired as full or part time employees in a public school. 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.

"**Tuberculosis Test**" means a Mantoux skin test, Quantiferon Gold blood test, or other test approved by the Delaware Division of Public Health.

"**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.

13 DE Reg. 1205 (03/01/10)

2.0 School Staff and Extended Services Personnel

- 2.1 School Staff and Extended Services personnel shall provide the Tuberculosis Test results from a test administered within the past 12 months during the first 15 working days of employment.
 - 2.1.1 Tuberculosis Test requirements may be waived for public school staff and extended services personnel who present a notarized statement that tuberculosis 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 submitted 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 School Staff and Extended Services Personnel need not be retested if they move, within Delaware, from district to district, district to charter school, charter school to district, or charter school to charter school within a five year period; however, a copy of the result of the latest Tuberculosis Test shall be provided to the new district or charter school within sixty (60) days.
 - 2.1.3 During the shortage of purified protein derivative (PPD) and until such time as sufficient quantities of PPD are available in Delaware, newly employed School Staff and Extended Services Personnel shall, within the first 15 working days of employment, complete the Delaware Department of Education TB Health Screening Questionnaire in lieu of tuberculin skin testing.
 - 2.1.3.1 If the Questionnaire indicates symptoms suggestive of active TB disease, or a high risk for exposure to TB, the employee is required to seek immediate TB testing or medical evaluation and provide the results to the employer.
 - 2.1.3.2 Acceptable TB testing or medical evaluation includes:
 - 2.1.3.2.1 tuberculin skin test (TST), if PPD solution is available
 - 2.1.3.2.2 interferon gamma release assays (IGRA)
 - 2.1.3.2.2.1 QuantiFERON - TB Gold In-Tube test; or
 - 2.1.3.2.2.2 T-SPOT TB test.
 - 2.1.3.2.3 chest x-ray, if symptomatic, or if TST/IGRA is positive
 - 2.1.3.2.4 sputum smear and culture, if chest e-ray is abnormal and consistent with TB.
 - 2.1.3.3 When upon notification to the Department from Public Health that supplies of PPD solution are restored or an acceptable substitute testing procedure is available, all school employees whose testing was deferred under this alternative procedure must undergo a TST or the acceptable substitute testing procedure and provide the results to the employer within 20 working days.
- 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 Tuberculosis 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.

13 DE Reg. 1205 (03/01/10)

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 volunteer's School Health Tuberculosis (TB) Control Program and store them in the school nurse's office in a confidential manner.

13 DE Reg. 1205 (03/01/10)

4.0 New School Enterers

- 4.1 New school enterers shall provide tuberculosis screening results from either a Tuberculosis Test or the results of a Tuberculosis Risk Assessment administered within the past 12 months prior to school entry.
 - 4.1.1 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).
 - 4.1.1.1 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 tuberculosis testing 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.

13 DE Reg. 1205 (03/01/10)

5.0 Tuberculosis Status Verification and Follow up

- 5.1 Tuberculosis Status shall be determined through the use of a Tuberculosis Risk Assessment, Tuberculosis Test or other testing, which may include x-ray or sputum culture. Individuals who either refuse the Tuberculosis 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), or other Tuberculosis Test results, current disease status (i.e. contagious or noncontagious), current treatment (or completion of preventative treatment for tuberculosis) and date when the individual may return to his/her 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.
 - 5.1.4 Persons with a positive Tuberculosis Test, without active disease, who do not receive prophylactic treatment shall be excluded from school in the event of showing any signs or symptoms of active, infectious disease as described by the Division of Public Health.
- 5.2 In the event an individual shows any signs or symptoms of active tuberculosis infection, he/she shall be excluded from school until all required medical verification is received by the school. During the specified verification and follow-up an asymptomatic individual, as described by the Division of Public Health, may remain in school until testing and evaluations are completed, but no longer than six (6) weeks.

1 DE Reg. 1971 (6/1/98)

3 DE Reg. 440 (9/1/99)

8 DE Reg. 1134 (2/1/05)

13 DE Reg. 1205 (03/01/10)

17 DE Reg. 361 (10/01/13) (Emer.)