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# Delaware Register of Regulations

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Volume 23 - Issue 9, Pages 693 - 789

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## IN THIS ISSUE:

Regulations:  
Emergency  
Proposed  
Final

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 February 15, 2020.

Cover Photo by  
Dana Miller, Dagsboro, DE  
*Bethany Beach*

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# 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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

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## CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

19 **DE Reg.** 1100 (06/01/16)

Refers to Volume 19, page 1100 of the *Delaware Register* issued on June 1, 2016.

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## 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.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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.

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*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
April 1	March 16	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

**Mark Brainard**, Joint Legislative Oversight Sunset Committee Analyst; **Mark J. Cutrona**, Director; **Deborah Gottschalk**, Legislative Attorney; **Robert Lupo**, Graphics and Printing Technician IV; **Colinda Marker**, Executive Assistant; **Amanda McAtee**, Joint Legislative Oversight Sunset Committee Analyst; **Kathleen Morris**, Office Manager; **Nathan Poore**, Graphics and Printing Technician I; **Joel Rudnick**, Legislative Librarian; **Erika Schrader**, Assistant Registrar of Regulations; **Victoria Schultes**, Administrative Specialist III; **Don Sellers**, Print Shop Supervisor; **Yvette W. Smallwood**, Registrar of Regulations; **Amy Tricarico**, Administrative Specialist II; **Holly Wagner**, Deputy Director; **Cara Wilson**, Legislative Attorney; **Natalie White**, Administrative Specialist III.

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## Symbol Key

Arial 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.

## Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

**§ 10119. Emergency regulations.**

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

## DEPARTMENT OF AGRICULTURE

## PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code, Section 101(2) and (3) (3 **Del.C.** §101(2) & (3))

## ORDER

## 805 Rules and Regulations for Delaware Domestic Hemp Production Program

**WHEREAS**, the Department of Agriculture (the "Department") has been charged by the Delaware legislature pursuant to 3 **Del.C.** §101(2) & (3) with the power to devise and execute measures necessary for the development of the agricultural interests of the State and to make and adopt rules for the government of the Department of Agriculture; and

**WHEREAS**, the Department is developing proposed regulations (the "Proposed Regulations") for publication in the *Register of Regulations* to establish appropriate procedures, permitting process, and governing measures for the hemp agricultural program within the State of Delaware; and

**WHEREAS**, the Secretary finds that adoption of an emergency regulation to govern the hemp program must occur on an emergency basis in order to properly protect the agricultural interests of the State until such time as the Proposed Regulations become effective; and

**WHEREAS** due to additional changes to this regulation, the new regulation replaces, in its entirety, the one that was published on January 1, 2020, Volume 23 – Issue 7, page 494 – 503 of the Delaware *Register of Regulations*.

**WHEREAS**, the Secretary will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of Plant Industries Section, Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901; and

**WHEREAS**, in accordance with the provisions of 29 **Del.C.** §10119(3), this Order shall be effective for 120 days from the date of execution and may be renewed once for a period not exceeding 60 days; 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 25<sup>th</sup> day of February 2020 that the following "Rules and

Regulations for Hemp Program” shall take effect immediately.

**SO ORDERED** this 25<sup>th</sup> day of February 2020.

Michael T. Scuse  
**SECRETARY OF AGRICULTURE**

**\*Please Note: Due to the size of the emergency regulation, it is not being published here. A copy of the regulation is available at:**

**805 Rules and Regulations for Delaware Domestic Hemp Production Program**

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903(h) and 29 Delaware Code, Section 10119  
(7 **Del.C.** §903(h) & 29 **Del.C.** §10119)  
7 **DE Admin. Code** 3504

**Secretary’s Order No: 2020-F-0002**  
**Pursuant to 7 Del.C. §903(h) and 29 Del.C. §10119**

**3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit**  
**3504 Striped Bass Possession Size Limit; Exceptions**

**AUTHORITY**

Pursuant to 7 **Del.C.** §903(h) and 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting amendments to Tidal Finfish Regulation 7 **DE Admin. Code** 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit and to 7 **DE Admin. Code** 3504 Striped Bass Possession Size Limit; Exceptions. 7 **Del.C.** §903(h) authorizes the Department to adopt emergency regulations involving finfish subject to Chapter 9, and in accordance with the procedures set forth in 29 **Del.C.** §10119.

**REASON FOR THE EMERGENCY ORDER**

The mandatory provisions of the Atlantic States Fisheries Commission’s (ASMFC’s) Addendum VI to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan requires a coastwide 18% reduction in striped bass removals (landings + discard mortality). The ASMFC adopted specific, prescribed coastwide management measures to meet the required 18% reduction, but these measures are not preferred for Delaware.

The Department has developed two management alternatives that, if implemented by the Department, would be equivalent to the specific coastwide management measures in Addendum VI. One alternative (Option 1) provides a recreational possession limit of one striped bass and an allowable striped bass size limit of not less than 28-inches or more than 35-inches in total length; except, in the Delaware Bay, Delaware River and their tributaries during July and August, the allowable size limit is not less than 20-inches or greater than 25-inches. Delaware’s authorized commercial striped bass quota is established as 142,474 pounds. The result of Option 1 measures a 1.8% reduction in commercial removals and a 20.4% reduction in recreational removals.

The other alternative (Option 2) provides a recreational possession limit of one striped bass and an allowable striped bass size limit of not less than 28-inches or more than 38-inches in total length; except, in the Delaware Bay, Delaware River and their tributaries during July and August, the allowable size limit is not less than 20-inches or greater than 25-inches. Delaware’s authorized commercial striped bass quota would be 118,969 pounds. The

result of Option 2 measures an 18% reduction in commercial removals and an 18.18% reduction in recreational removals.

The ASMFC's Striped Bass Management Board approved both alternatives for use at their February 4, 2020 meeting; however, there is insufficient time to promulgate regulations for either alternative through standard administrative procedures by the required April 1, 2020 implementation date. There is also a need to implement management measures by the February 15, 2020 opening of Delaware's commercial striped bass fishery to avoid jeopardizing the welfare of the striped bass resource and its dependent commercial and recreational fisheries.

The Department is implementing the management alternative preferred by Delaware's Advisory Council on Tidal Finfisheries (Option 1) through this Emergency Order, until both alternatives are vetted through standard administrative procedures.

This order establishes measures that are compliant with Addendum VI and are expected to reduce Delaware's total striped bass removals by 18.4% relative to 2017. Adoption of these measures by the February 15, 2020 opening of Delaware's commercial striped bass fishery through the provisions of 7 **Del.C.** §903(h) and by the procedures set forth in 29 **Del.C.** §10119, is necessary to ensure the welfare of the striped bass resource and its dependent commercial and recreational fisheries.

#### **EFFECTIVE DATE OF ORDER**

This Emergency Order shall take effect February 15, 2020 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3).

#### **PETITION FOR RECOMMENDATIONS**

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901.

#### **ORDER**

It is hereby ordered, this 12<sup>th</sup> day of February, 2020, that the above referenced amendments to 7 **DE Admin. Code** 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit and 7 **DE Admin. Code** 3504 Striped Bass Possession Size Limit; Exceptions, copies of which are hereby attached, are adopted pursuant to 7 **Del.C.** §903(h) according to the procedures of 29 **Del.C.** §10119 and supported by the evidence contained herein.

**Shawn M. Garvin**  
**Secretary**

#### **3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.**

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It is lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.
- 2.0 It is unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.
- 3.0 Unless otherwise authorized, it is unlawful for any recreational fisherman to take and reduce to possession more than ~~two (2)~~ one striped bass per day (a day being 24 hours) from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.

- 4.0 Unless otherwise authorized, it is unlawful for any recreational fisherman to have in possession more than ~~two (2)~~ one striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.
- 5.0 Notwithstanding 7 **Del.C.** §943, which only relates to commercial fishermen, it is lawful for a recreational fisherman to possess striped bass that have not been tagged, unless otherwise prohibited.

**3504 Striped Bass Possession Size Limit; Exceptions.**

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it is unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than ~~twenty-eight (28)~~ 28 inches in total length or any striped bass that measures greater than ~~thirty-seven (37)~~ 35 inches in total length ~~but less than forty-four (44) inches in total length~~, except that a recreational hook and line fisherman may only take ~~two (2)~~ one striped bass measuring not less than ~~twenty (20)~~ 20 inches in total length and not greater than ~~twenty-five (25)~~ 25 inches in total length from the Delaware River, Delaware Bay, or their tributaries during the months of July and August.
  - 2.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than ~~twenty-eight (28)~~ 28 inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than ~~twenty (20)~~ 20 inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through ~~the month of~~ March 31.
  - 3.0 It is unlawful for any person to possess a striped bass except in accordance with Section 1.0 or 2.0 of this section or unless said striped bass is in one or more of the following categories:
    - 3.1 It has affixed a valid strap tag issued by the Department to a commercial food fisherman and was legally taken and tagged by said commercial food fisherman; or
    - 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
    - 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
    - 3.4 It was legally taken and reduced to possession in another state for noncommercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
    - 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
  - 4.0 It is unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
  - 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
  - 6.0 The words "take and reduce to possession" shall mean the removal of any striped bass from Delaware waters with the intent to keep or harvest the striped bass.
  - 7.0 It is unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than ~~twenty (20)~~ 20 inches in total length.
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**Symbol Key**

Arial 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.

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**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 2005 (14 **Del.C.** §2005)  
14 **DE Admin. Code** 410

**PUBLIC NOTICE****Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****410 Satellite School Agreements****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

Pursuant to 14 **Del.C.** §2005, the Secretary of Education intends to amend 14 **DE Admin. Code** 410 Satellite School Agreements. The Department has reviewed the regulation to comply with 29 **Del.C.** §10407, which requires regulations to be reviewed on a recurring basis every four years, and concluded that the regulation needs to be updated to only make grammatical or other corrections per the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 3, 2020 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, located at the address listed above.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended

regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure 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 continues to help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the 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 does not place any unnecessary reporting or administrative requirements or mandates on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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 is consistent with and not an impediment to the implementation of other state educational policies.

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 amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 708RFA 03-01-20.pdf>

## 410 Satellite School Agreements

### 1.0 Purpose

The purpose of this regulation is to outline the process for the establishment of a satellite school as allowable in 14 Del.C. §2005.

### 2.0 Definitions

**"Charter School school"** shall mean means a school established pursuant to Chapter 5 of Title 14 of the Delaware Code.

**"Charter School Satellite School Agreement school satellite school agreement"** shall mean means the contract between a Charter School charter school and the private sector or governmental employer for the operation of a Satellite School satellite school. The agreement form shall be in a format established and approved by the Department. The contract shall, at a minimum, be consistent with the provisions of 14 Del.C. Chapter 5 and 14 Del.C. §2005. A Charter School charter school authorized by a Local School District local school district shall only establish a Satellite School satellite school arrangement within the authorizer's school district boundaries.

**"Department"** shall mean means the Delaware Department of Education.

**"Local School District Satellite School Agreement school district satellite school agreement"** shall mean means the contract between the Local School District local school district and the private sector or governmental employer for the operation of a Satellite School satellite school that has been approved by the local school district board of education. The Local School District local school district shall be responsible for the development of the agreement form. A local school district shall only establish a Satellite School satellite school arrangement within the school district's boundaries.

**"Local School District school district"** shall mean means mean a reorganized school district or vocational technical school district established pursuant to 14 Del.C. Chapter 10.

**"Satellite School school"** shall mean ~~means~~ means a public school that operates in physical facilities leased from, donated by or located on property that is owned or leased by a private sector or governmental employer which is not the school district or charter school operating the satellite school.

### **3.0 Charter School Application for Approval Process**

- 3.1 A Charter School seeking approval for the operation of a Satellite School shall make the application to the Office of the Secretary, Department of Education. The Charter School shall provide to the Office of the Secretary a copy of the proposed Charter School Satellite School Agreement and any additional information required pursuant to this regulation. An application for the establishment of a Satellite School by a Charter School shall be considered a major modification of the existing charter and shall follow the procedures as outlined in 14 **DE Admin. Code** 275, Section 9.0. Provided further, the Charter School shall, at a minimum, meet the following requirements:
  - 3.1.1 The Satellite School ~~facilities~~ shall be subject to the same health and safety codes and building codes, in accordance with the local code enforcement entity, as required by other public school facilities; and
  - 3.1.2 The enrollment preferences shall be consistent with 14 **Del.C.** §506(b) and with any additional considerations as prescribed in 14 **Del.C.** §2005(c).
- 3.2 Upon receipt of the documentation in subsection 3.1 of this regulation, the Department shall cause a review of the plans or inspection of the proposed facilities to be conducted by appropriate Department staff to determine the adequacy of the facilities for the intended educational purpose.
- 3.3 Approval by the Department shall require the assent of both the Secretary of Education and the State Board of Education. The decision shall be considered final and not subject to appeal.

### **4.0 School District Application for Approval Process**

- 4.1 A Local School District seeking approval for the operation of a Satellite School shall make the application to the Office of the Secretary, Delaware Department of Education. The Local School District shall provide to the Office of the Secretary a copy of the Local School District Satellite School Agreement that has been first approved by the local school board and any additional information required pursuant to this regulation. Provided further, the Local School District Satellite School Agreement criteria shall, at a minimum, meet the following requirements:
  - 4.1.1 The Satellite School ~~facilities~~ shall be subject to the same health and safety codes and building codes, in accordance with the local code enforcement entity, as required by other public school facilities; and
  - 4.1.2 The enrollment considerations shall be consistent with 14 **Del.C.** §2005(c).
- 4.2 Upon receipt of the documentation in subsection 4.1 of this regulation, the Department shall cause a review of the plans or inspection of the proposed facilities to be conducted by appropriate Department staff to determine the adequacy of the facilities for the intended educational purpose.
- 4.3 Approval by the Department shall require the assent of the Secretary of Education. The decision shall be considered final and not subject to appeal.

### **5.0 Compliance with State Risk Management**

- 5.1 The Charter School shall provide evidence that the types and limits of insurance coverage the Charter School plans to obtain for operation of a Satellite School are adequate and consistent with 14 **Del.C.** Chapter 5.
- 5.2 The Local School District shall confer with the State Risk Manager regarding any liabilities that they and their employees may be subject to and shall provide appropriate protection and coverage for same.

### **6.0 Certificates of Occupancy or Occupancy Permits**

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- 6-4 Certificates of Occupancy or Occupancy Permits shall be obtained from the appropriate jurisdictional authorities prior to occupancy of the facilities by the Satellite School. The Satellite School facilities shall be subject to the same periodic inspections for health and safety as other public schools.
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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1725 (14 Del.C. §1725)  
14 DE Admin. Code 775

### PUBLIC NOTICE

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

#### 775 New Teacher Hiring Date Reporting

##### A. Type of Regulatory Action Required

Amendment to Existing Regulation

##### B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. §1725, the Secretary of Education intends to amend 14 DE Admin. Code 775 New Teacher Hiring Date Reporting. The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years and notes that the regulation content is current and that only changes were made to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 3, 2020 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, located at the address listed above.

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure 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 continues to help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the 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 does not place any unnecessary reporting or administrative requirements or mandates on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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 is consistent with and not an impediment to the implementation of other state educational policies.

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 amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 711RFA 03-01-20.pdf>

## 775 New Teacher Hiring Date Reporting

### 1.0 Purpose

The purpose of this regulation is to outline the criteria and process related to new teacher hiring data collection and reporting by school districts as required by 14 Del.C. §1725 and align such with annual reporting done within the ~~Teacher and Leader Effectiveness Branch~~ Educator Support Team of the Department of Education.

### 2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:

**"Contract Offer Date offer date"** ~~shall mean~~ means the date an authorized agent or representative of the district notifies the successful candidate of the intent to hire.

**"District"** ~~shall mean~~ means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.

**"Department"** means the Delaware Department of Education.

**"Hard to Staff Position staff position"** means a position for which school districts have the fewest qualified applicants.

**"New Teacher Hiring Date"** ~~shall mean, for purposes of this regulation, the Contract Offer Date as defined herein.~~

**"Position Availability Date availability date"** ~~shall mean~~ means the date the district Human Resources Office knows the available position is released for a new full-time teacher hire.

**"Position Type type"** ~~shall mean~~ means the appropriate instructional level of the teacher or whether the teacher is in a Hard to Staff Position.

### 3.0 New Teacher Hiring Data Report

- 3.1 On or before December 1st of each year, each District shall annually submit an Educator Hiring Practices and Needs Report to the Department in a format approved by the Department that includes, but is not limited to, Contract Offer Date, Position Availability Date, Position Type, number of positions available and filled, information on Hard To Staff Positions, information on recruitment and selection processes, and information on staffing practices during the most recent hiring ~~season(s)~~ season.
- 3.2 The Department may also require each District to enter such information on an ongoing basis into an electronic statewide information system. The Department shall review and provide information on educator hiring practices and needs, including hiring activity related to the ~~"estimated unit count"~~ estimated unit count as that term is defined pursuant to 14 Del.C. §1704, in the annual Delaware Talent Practices Report (~~Report~~).
- 3.3 The Delaware Talent Practices Report is to be provided no later than March 31<sup>st</sup> of the following year.

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 131 (14 Del.C. §131)  
14 DE Admin. Code 804

### PUBLIC NOTICE

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

#### 804 Immunizations

##### A. Type of Regulatory Action Required

Amendment to Existing Regulation

##### B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. Ch. 1, §131, the Secretary of Education intends to amend 14 DE Admin. Code 804 Immunizations. The provision related to alternative dosages or immunization schedules has been removed at the request of the Department of Health and Social Services, Division of Public Health (DPH). DPH does not approve alternative dosages or immunization schedules. Any exemptions or adjustment to immunizations because an immunization is medically contraindicated fall under the medical exemptions that continue to be in place. Other minor changes were made to bring the regulation into compliance with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 3, 2020 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment regulation will help ensure 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 continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the 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 does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
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 is consistent with and not an impediment to the implementation of other state educational policies.
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 amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 713RFA 03-01-20.pdf>

## 804 Immunizations

### 1.0 Purpose

This regulation is promulgated pursuant to ~~Title~~ 14 Del.C. Ch. 1, §131 which states ~~that~~, 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.”

### 2.0 Definitions

**"Affidavit of Religious Belief religious belief"** means, pursuant to 14 Del.C. Ch. 1, §131(a)(6), the statement to request exemption from immunizations based on individual religious beliefs.

**"Approved Vaccine 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.

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

### 3.0 Minimum Immunizations Required for All School Enterers

- 3.1 All School Enterers shall have immunizations given up to four days prior to the minimum interval or age and shall include:
  - 3.1.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other Approved Vaccine). Notwithstanding this requirement:
    - 3.1.1.1 A child who received a fourth dose prior to his or her fourth birthday shall have a fifth dose;
    - 3.1.1.2 A child who received the first dose of 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 Approved Vaccine.
    - 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 subsections 4.1 and 4.1.1 below.
  - 3.1.2 Three or more doses of inactivated polio virus vaccine (IPV), oral polio vaccine (OPV), or an Approved Vaccine. Notwithstanding this requirement:
    - 3.1.2.1 A child who received a third dose prior to his or her fourth birthday shall have a fourth dose.
  - 3.1.3 Two doses of measles, mumps and rubella (MMR) Approved Vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday.
    - 3.1.3.1 Disease histories for measles, rubella and mumps shall not be accepted unless serologically confirmed.
  - 3.1.4 Three doses of Hepatitis B vaccine.

- 3.1.4.1 For children 11 to 15 years old age, two doses of an Approved Vaccine may be used.
- 3.1.4.2 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.
- 3.1.5 Two doses of Varicella Approved Vaccine. 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.
  - 3.1.5.1 The first dose should be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school.
  - 3.1.5.2 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 16-18 per subsections 4.1 and 4.1.2 below.
- 3.2 Children who enter school prior to age four (4) shall follow current Delaware Division of Public Health recommendations.

#### **4.0 Minimum Immunizations for Secondary School Students**

- 4.1 ~~Beginning in school year 2016-2017 entering grade 9~~ Entering Secondary School students shall show proof of immunizations. ~~One Secondary School grade shall be added each year thereafter.~~
  - 4.1.1 An adolescent booster dose of Tdap or other Approved Vaccine administered at age 11-12 (preferred) or prior to entry to Grade 9.
  - 4.1.2 One dose of meningococcal Approved Vaccine.
- 4.2 Schools will coordinate with the Division of Public Health to assure services to non-compliant Secondary School 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.)

#### **5.0 Documentation of Immunization**

- 5.1 The parent, legal guardian, ~~Relative Caregiver~~ relative caregiver, or a School Enterer who has reached the statutory age of majority (18) shall present documentation specifying the month, day, and year that the immunizations were administered by a licensed health care practitioner.
- 5.2 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~~ relative caregiver, or a School Enterer who has reached the statutory age of majority (18) 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.
- 5.3 A School Enterer 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:
  - 5.3.1 One dose of DTaP, or DTP, or DT, or Approved Vaccine; and
  - 5.3.2 One dose of IPV or OPV, or Approved Vaccine; and
  - 5.3.3 One dose of measles, mumps and rubella (MMR) Approved Vaccine; and
  - 5.3.4 The first dose of the Hepatitis B series; and
  - 5.3.5 One dose of Varicella ~~vaccine~~; vaccine; and
  - 5.3.6 One dose of meningococcal vaccine, if entering a Secondary School according to subsections 4.1 and 4.1.2.
- 5.4 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 assist homeless children and youth in meeting the immunization requirements.

- 5.5 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, a School Enterer or Secondary School student 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 a series of immunizations required by this regulation.
- 5.6 If the School Enterer or Secondary School student fails to complete the series of required immunizations, the parent, legal guardian, ~~Relative Caregiver~~ relative caregiver, or student who has reached the statutory age of majority (18) shall be notified that the School Enterer or Secondary School student will be excluded according to 14 **Del.C.** §131.

## 6.0 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~~ relative caregiver, School Enterer who has reached the statutory age of majority (18), or the school nurse shall sign a written statement to this effect and must obtain at least one dose of each of the immunizations as identified in subsection 5.3. Evidence that the vaccines were administered shall be presented to the district superintendent or charter school chief administrative officer or his or her designee.

## 7.0 Exemption from Immunization

- 7.1 Exemption from this requirement may be granted in accordance with 14 **Del.C.** §131 and this regulation which permits approved medical and notarized religious exemptions.
- 7.1.1 Medical exemptions shall be considered based on a written statement from a physician, i.e., medical doctor or doctor of osteopathy, stating that immunization is medically contraindicated.
- 7.1.1.1 The Delaware Division of Public Health shall review and determine approval.
- 7.1.2 Religious exemptions shall be approved upon receipt of a notarized Affidavit of Religious Belief, and the school shall offer information regarding the benefits of immunization and the risks of not being fully immunized.
- 7.1.3 Upon approval of a medical or religious exemption, the school shall inform the parent, legal guardian, ~~Relative Caregiver~~ relative caregiver, or a School Enterer who has reached the statutory age of majority (18), that the student shall be temporarily excluded from school in the event the Division of Public Health declares an outbreak of a vaccine preventable disease or determines the student has had or is at risk of having an exposure to a vaccine preventable disease. The Division of Public Health shall determine when the student may return to school.
- 7.1.3.1 During a temporary exclusion, the school and parent, legal guardian or ~~Relative Caregiver~~ relative caregiver shall assist the student with keeping up with school work. No academic penalty shall be assessed provided the student completes assignments.
- 7.2 ~~Alternative dosages or immunization schedules may be accepted with the written approval of the Delaware Division of Public Health.~~

## 8.0 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.

## 9.0 Documentation

- 9.1 School nurses shall record and maintain documentation of each student's immunization status.
- 9.2 Each student's immunization record shall be included in the Delaware Immunization Registry.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b) and 1250 (14 Del.C. §§1203, 1205(b) & 1250)  
14 DE Admin. Code 1508

### PUBLIC NOTICE

#### 1508 Special Institute for Teacher Licensure and Certification

#### A. TYPE OF REGULATORY ACTION REQUESTED

Repeal of Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), seeks to repeal 14 DE Admin. Code 1508 Special Institute for Teacher Licensure and Certification pursuant to 14 Del.C. §§1203, 1205(b), and 1250. In 1986, the General Assembly established a special institute to provide a program for college graduates to become certified to teach in Delaware public schools. Currently, the program does not exist. As a result, the regulation is being repealed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 1, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to [DOERegulations.comment@doe.k12.de.us](mailto:DOERegulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 717RFA 03-01-20.pdf>

#### 1508 Special Institute for Teacher Licensure and Certification

#### 1-0 Content

~~This regulation shall apply to the Special Institute for Teacher Licensure and Certification, pursuant to 14 Del.C. §§1250 through 1252.~~

#### 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.~~

~~“Educator” means a person licensed and certified by the State under chapter 12 of 14 Del.C. to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board, but does not include substitute teachers.~~

~~“Emergency Certificate” means a certificate issued to an educator who holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.~~

~~“Examination of Content Knowledge” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

~~“Examination of General Knowledge” means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and~~

writing, such as PRAXIS™ I and which, for the purposes of this regulation, means a pre-professional skills test.

**“Initial License”** means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

**“Major or Its Equivalent”** means no fewer than thirty (30) credit hours in a content area.

**“Secretary”** means the Secretary of the Delaware Department of Education.

**“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.

**“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 Special Institute for Teacher Licensure and Certification**

- 3.1 One or more of Delaware’s teacher training institutions may establish a Special Institute for Teacher Licensure and Certification to provide a program for college graduates without a license and/or certificate to become licensed and certified to teach in Delaware public schools. Tuition may not be charged to participants.
- 3.2 Candidates for admission to a Special Institute for Teacher Licensure and Certification shall:
- 3.2.1 Hold a bachelor’s degree in a field other than Education from a regionally accredited college or university, with a major or its equivalent in a content area that has designated as a critical needs area by the Department.
  - 3.2.2 Have a grade point index in the major field of the bachelor’s degree which is two tenths of a point higher than the grade point index required for students entering regular teacher education programs at the teacher education institution(s).
  - 3.2.3 Pass an examination of general knowledge, such as PRAXIS™ I, or provide an acceptable alternative to the PRAXIS™ I test scores, as set forth in 14 **DE Admin. Code** 1510.
  - 3.2.4 Must agree to teach at least one (1) year in a Delaware public school for each year funding was received. Such service must be completed within five (5) years of successful completion of the Special Institute for Teacher Licensure and Certification program.
    - 3.2.4.1 Failure to meet the requirement set forth in 3.2.4 above shall result in the individual within sixty (60) days arranging for repayment of a sum equivalent to the tuition which would have been paid for the coursework leading to licensure and certification; or
    - 3.2.4.2 An individual may also satisfy the requirement set forth in 3.2.4 above by providing a notarized statement, accompanied by evidence of unsuccessful applications, that the individual has made a good faith effort to seek employment in at least five (5) Delaware public school districts, but has been unable to secure a teaching position in any of these districts.
    - 3.2.4.3 An individual whose license and certificate have been revoked for cause prior to fulfilling the service set forth in 3.2.4 shall, within sixty (60) days, arrange for repayment of their remaining obligation.

### **4.0 Format of the Special Institute for Teacher Licensure and Certification**

- 4.1 A Special Institute for Teacher Licensure and Certification in a secondary content area which corresponds to the major field of study in the bachelor’s degree program shall consist of:
- 4.1.1 One (1) summer of courses in the Special Institute;
  - 4.1.2 One (1) semester of student teaching or one (1) year of supervised, full time teaching experience in a Delaware public school; and
  - 4.1.3 Additional coursework as set forth by the teacher training institution which constitutes the program of study leading to initial licensure and certification.

- ~~4.2 A Special Institute for Teacher Licensure and Certification in elementary or special education shall consist of:~~
- ~~4.2.1 Two (2) summers of courses, one (1) immediately before and one (1) after a student teaching experience or one year of full-time teaching experience;~~
  - ~~4.2.2 One (1) semester of student teaching or one (1) year of supervised, full-time teaching experience in a Delaware public school; and~~
  - ~~4.2.3 Additional coursework as set forth by the teacher training institution which constitutes a program of study leading to initial licensure and certification.~~

**5.0 Examination of Content Knowledge**

~~Prior to completion of the Special Institute for Licensure and Certification, participants must successfully pass the appropriate examination of content knowledge, such as the PRAXIS™ II examination, if applicable and available.~~

**6.0 Licensure and Certification of Special Institute Participants**

- ~~6.1 The Department shall issue an Initial License of no more than three (3) years duration conditioned on continued enrollment in the Special Institute and an Emergency Certificate to an individual employed to complete the one (1) year of full-time teaching experience in lieu of student teaching.~~
- ~~6.2 Upon successful completion of the Special Institute for Teacher Licensure and Certification program, an individual shall be issued an Initial License valid for the balance of the three (3) year term, and a Standard Certificate.~~

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))  
14 DE Admin. Code 1509

**PUBLIC NOTICE**

**1509 Meritorious New Teacher Candidate Designation**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Repeal of Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), seeks to repeal 14 DE Admin. Code 1509 Meritorious New Teacher Candidate Designation pursuant to 14 Del.C. §1203 and 14 Del.C. §1205(b). In 2005, Delaware participated in the Meritorious New Teacher Candidate program, which was a reciprocal licensing agreement with other states in the region through the Mid-Atlantic Regional Teachers Project. The agreement no longer exists. As a result, the regulation is being repealed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 1, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to [DOERegulations.comment@doe.k12.de.us](mailto:DOERegulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 719RFA 03-01-20.pdf>

## 1509 Meritorious New Teacher Candidate Designation

### 1.0 Content

This regulation shall apply to the issuance of a Meritorious New Teacher Candidate Designation to a candidate for an Initial License who meets the criteria set forth by the Mid-Atlantic Regional Teachers Project, pursuant to 14 Del.C. §1210.

### 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.

**“Meritorious New Teacher Candidate Designation”** means a designation of excellence for new teachers which enables them to teach in Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and Virginia.

**“Met the Highest Standard”** means achieved the highest grade or score awarded by the institution.

**“Standard Certificate”** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students”.

### 3.0 Meritorious New Teacher Candidate Requirements

3.1 An applicant for an Initial License who meets the requirements for an Initial License and who also meets the criteria set forth by the Mid-Atlantic Regional Teachers Project shall have a Meritorious New Teacher Candidate Designation affixed to the Initial License, upon receipt of a recommendation from the candidate’s teacher preparation program that the candidate be awarded the designation of Meritorious New Teacher Candidate.

3.2 Criteria for the Meritorious New Teacher Candidate Designation are:

#### 3.2.1 Verbal Skills

3.2.1.1 Scores in the upper quartile of students nationally at the time the test was taken on the verbal portion of the SAT, ACT, or GRE.

#### 3.2.2 Content Knowledge

##### 3.2.2.1 Elementary Education (Grades pre-K to 6):

3.2.2.1.1 A minimum 3.5 cumulative GPA in an undergraduate professional education program, or a minimum 3.7 cumulative GPA in a graduate professional education program; and

3.2.2.1.2 Scores in the upper quartile of students nationally at the time the test was taken in math, science, social studies, and English language arts in the PRAXIS II Content Knowledge for Elementary Teachers test or Elementary Education: Curriculum, Instruction, and Assessment test.

##### 3.2.2.2 Middle School Education (Grades 6 to 8):

3.2.2.2.1 A minimum 3.5 cumulative GPA in an undergraduate academic major or a minimum 3.7 cumulative GPA in a graduate program in the subject area in which a standard certificate is sought; and

3.2.2.2.2 Scores in the upper quartile of students nationally at the time the test was taken on the PRAXIS II test in the applicant’s specialty area.

##### 3.2.2.3 Secondary Education (Grades 9 to 12):

- ~~3.2.2.3.1 A minimum 3.5 cumulative GPA in an undergraduate academic major or a minimum 3.7 cumulative GPA in a graduate program in the subject area in which a standard certificate is sought.~~
- ~~3.2.2.3.2 Scores in the upper quartile of students nationally at the time the test was taken on the PRAXIS II test in the applicant's specialty area.~~
- ~~3.2.3 Professional Preparation and Recommendation:
  - ~~3.2.3.1 Completion of a state approved teacher preparation program, of traditional or alternative format, with a minimum 3.5 cumulative GPA in an undergraduate professional studies program, or a minimum 3.7 cumulative GPA in a graduate professional education program.~~
  - ~~3.2.3.2 Completion of a minimum of 400 hours of supervised clinical experience, of which at least 300 hours are directed instructional student teaching. Clinical experience may occur within any state approved model, including total immersion experiences as teachers of record.~~
  - ~~3.2.3.3 Met the highest standard of both the university supervisor and the cooperating teacher on the institution's formal student teacher or immersion component of the required clinical experience.~~
  - ~~3.2.3.4 Met the highest standard on the institution's professional preparation assessment.~~
  - ~~3.2.3.5 Received a recommendation by the teacher preparation program that the candidate be awarded the designation of Meritorious New Teacher Candidate.~~~~

#### **4.0 Expedited Application**

Applicants for initial licensure and the Meritorious New Teacher Candidate Designation who completed teacher preparation in Delaware will be given expedited consideration of their application by the Delaware Department of Education.

#### **5.0 License from Other Jurisdiction Honored**

A Meritorious New Teacher Candidate Designation issued to a licensee from one of the participating jurisdictions who has less than three (3) years of teaching experience, shall be honored by the Department. The applicant shall be issued a Delaware Initial License pursuant to 14 ~~DE Admin. Code~~ §1510 with a Meritorious New Teacher Candidate Designation and any Delaware Standard Certificate for which the candidate qualifies.

#### **6.0 Validation**

This designation shall be valid for the duration of the individual's initial license

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### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))  
14 DE Admin. Code 1582

#### PUBLIC NOTICE

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

#### 1582 School Nurse

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1582 School Nurse pursuant to 14 **Del.C.** §1203 and 14 **Del.C.** §1205(b). The regulation concerns the requirements for a Standard Certificate for School Nurse pursuant to 14 **Del.C.** §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing School Nurse Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Nurse Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a School Nurse Standard Certification; specifying the requirements for retaining a School Nurse Standard Certificate in Section 8.0; adding Section 9.0, which concerns disciplinary actions; adding Section 10.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 11.0, which concerns recognizing past certification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 1, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators, 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 does not change 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 does 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 Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.
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 is consistent with, and not an impediment to, the implementation of other state educational policies, and 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? There is not a less burdensome method for addressing the purpose of this amended regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 721RFA 03-01-20.pdf>

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## 1582 School Nurse

### 1.0 Content

- 4.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for ~~School Nurse~~ an Educator. This ~~certification~~ Certification is required for all ~~School Nurses~~ school nurses providing services to children ~~within the Delaware public school system~~ in Delaware public schools.
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

### 2.0 Definitions

~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

The following words and terms when used in this regulation shall have the following meaning:

**"Certification"** means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.

**"Department"** means the Delaware Department of Education.

**"Educator"** means a person licensed and certified by the State under 14 ~~Del.C.~~ Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

**"Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

**"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 the educator's unfitness or otherwise.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Regionally Accredited"** means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill 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.

**"Supervised Clinical Nursing Experience"** means that the Educator has worked as a licensed Registered Nurse in a clinical setting providing care to patients and that educator was supervised and evaluated by a licensed Registered Nurse supervisor or other healthcare provider. For the purpose of this regulation, other healthcare provider means a licensed physician, advanced practice nurse, nurse practitioner, or physician assistant.

**"Valid and Current License or Certificate"** means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

# PROPOSED REGULATIONS

## 3.0 Standard Certificate

- 3.1 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a School Nurse Standard Certificate as a School Nurse to an educator applicant who has met the following:
- 3.1.1 ~~Holds a valid Delaware Initial, Continuing, or Advanced License; License or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and, 2003 and meets the requirements set forth in Section 4.0 of this regulation; or~~
  - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505, Standard Certificate including any subsequent amendment or revision thereto; and~~
  - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~
  - 3.1.2 Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a school nurse from another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
  - 3.1.3 Has met the requirements for licensure in Delaware and meets the requirements set forth in Section 5.0 of this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for Certification if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act 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.

## 4.0 Additional Requirements Prescribed Education, Knowledge, and Skill Requirements

- 4.1 ~~An educator must also have met the following additional education and licensure requirements:~~
- 4.1.1 ~~Holds a Bachelor's degree in Nursing (BSN) from a regionally accredited college or university; and,~~
  - 4.1.2 ~~Holds and maintains a current Registered Nurse license, recognized by the Delaware Board of Nursing; and,~~
  - 4.1.3 ~~Holds and maintains a valid and current certification in cardiopulmonary resuscitation (CPR) and in the use of an automatic external defibrillator (AED); and,~~
  - 4.1.4 ~~Completes by the end of the second school year after date of hire, ninety (90) clock hours of training approved by the Department consisting of standards of practice, care coordination, leadership, quality improvement, and community/public health based off of the Framework for 21<sup>st</sup> Century School Nursing Practice.~~
- 4.2 ~~An educator must also have met the following experience requirement:~~
- 4.2.1 ~~Has completed a minimum of three (3) years of supervised clinical nursing experience.~~
- 4.1 The Department may issue a School Nurse Standard Certificate to an applicant who has satisfied the requirements in subsections 4.1.1 through 4.1.4.
- 4.1.1 The applicant shall hold a bachelor's degree in nursing (BSN) from a Regionally Accredited college or university.
  - 4.1.2 The applicant shall hold a license to practice as a registered nurse issued by the Delaware Board of Nursing that is in good standing.
  - 4.1.3 The applicant shall hold valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use.
  - 4.1.4 The applicant shall have completed 3 years of Supervised Clinical Nursing Experience consisting of a minimum of 500 hours per year for a total of 1,500 hours during the 3-year period. This requirement shall not be met in a school setting.

## 5.0 Expiration

- 5.1 ~~A Standard Certificate shall expire if the educator:~~

- ~~5.1.1 Fails to maintain a current Registered Nurse license, recognized by the Delaware Board of Nursing; or~~
- ~~5.1.2 Fails to maintain valid and current certification in cardiopulmonary resuscitation (CPR) and in the use of an automatic external defibrillator (AED); or~~
- ~~5.1.3 Fails to complete by the end of the second school year after date of hire, ninety (90) clock hours of training consisting of standards of practice, care coordination, leadership, quality improvement, and community/public health based off of the Framework for 21<sup>st</sup> Century School Nursing Practice.~~

## **5.0 Reciprocity**

- 5.1 If an applicant is already licensed or certified as a school nurse in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.4 in order for the Department to issue a School Nurse Standard Certificate:
  - 5.1.1 The applicant shall hold a Valid and Current License or Certificate as a school nurse.
  - 5.1.2 The applicant shall hold a bachelor's degree in nursing (BSN) from a Regionally Accredited college or university.
  - 5.1.3 The applicant shall hold a license to practice as a registered nurse issued by the Delaware Board of Nursing that is in good standing.
  - 5.1.4 The applicant shall hold valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use.

## **6.0 Verification of Eligibility and Reporting**

- ~~6.1 Educators holding a School Nurse certificate shall do the following:~~
  - ~~6.1.1 Notify the Department immediately if they fail to meet the qualifications as a School Nurse.~~
  - ~~6.1.2 Annually notify the Department and affirm their continued eligibility for certification and if requested, provide documentation verifying their continued eligibility.~~
  - ~~6.1.3 If employed in the public school system, provide documentation to their employer of their current credentials including a valid nursing license, and CPR and AED certification.~~
  - ~~6.1.4 If not employed in the public school system, provide documentation to the Department of their current credentials including a valid nursing license, and CPR and AED certification.~~
- ~~6.2 Upon employment of a School Nurse, a district or charter school is responsible for verifying that the School Nurse continues to meet the requirements in subsections 4.1.1 through 4.1.3.~~
  - ~~6.2.1 The district or charter school must maintain documentation of the verification of initial credentials and maintain documentation of current credentials including a valid nursing license, and CPR and AED certification.~~
- ~~6.3 Districts and charter schools shall report information to the Department when they receive information that would result in the expiration of a School Nurse Standard Certificate.~~

## **6.0 Application Requirements**

- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with an application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 6.2 For applicants who are applying for the School Nurse Standard Certificate under subsection 3.1.1, the following documentation is required:
  - 6.2.1 Official transcript from the applicant's Regionally Accredited college or university.
    - 6.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
    - 6.2.1.2 Sealed paper transcripts may be submitted.
    - 6.2.1.3 The Department will not accept copies of transcripts; and

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# PROPOSED REGULATIONS

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- 6.2.2 Documentation that the applicant is licensed to practice and is in good standing as a registered nurse issued by the Delaware Board of Nursing; and
  - 6.2.3 Documentation that the applicant holds a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
  - 6.2.4 If applicable, the Department-approved form verifying the applicant's completion of the clinical experience as provided in subsection 4.1.4; and
  - 6.2.5 Additional documentation as required by the Department.
- 6.3 For applicants who are applying for the School Nurse Standard Certificate under subsection 3.1.2, the following documentation is required:
- 6.3.1 An official copy of the Valid and Current License or Certificate; and
  - 6.3.2 Documentation that the applicant is licensed to practice and is in good standing as a registered nurse issued by the Delaware Board of Nursing; and
  - 6.3.3 Documentation that the applicant holds a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
  - 6.3.4 Additional documentation as required by the Department.
- 6.4 For applicants who are applying for the School Nurse Standard Certificate under subsection 3.1.3, the following documentation is required:
- 6.4.1 An official copy of the Valid and Current License or Certificate; and
  - 6.4.2 Official transcript from the applicant's Regionally Accredited college or university.
    - 6.4.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
    - 6.4.2.2 Sealed paper transcripts may be submitted.
    - 6.4.2.3 The Department will not accept copies of transcripts; and
  - 6.4.3 Documentation that the applicant is licensed to practice and is in good standing as a registered nurse issued by the Delaware Board of Nursing; and
  - 6.4.4 Documentation that the applicant holds a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
  - 6.4.5 Additional documentation as required by the Department.

## **7.0 Validity of a Standard Certificate**

- 7.1 A School Nurse Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 7.2 A School Nurse Standard Certificate is not subject to renewal.

## **8.0 Requirements Related to the Retention of a School Nurse Certificate**

- 8.1 In order to retain a School Nurse Standard Certificate, the Educator shall:
  - 8.1.1 Complete a training program approved by the Department within two school years of the date the School Nurse Standard Certificate is issued; and
  - 8.1.2 Hold a license to practice as registered nurse issued by the Delaware Board of Nursing that is in good standing; and
  - 8.1.3 Hold a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
  - 8.1.4 Annually affirm and document to the Department that the Educator satisfies the requirements in subsections 8.1.2 and 8.1.3.
- 8.2 If an Educator fails to meet any the requirements related to retaining a School Nurse Standard Certificate, the Educator shall immediately notify the Department in writing.
- 8.3 The requirements set forth in subsections 8.1.2, 8.1.3, and 8.1.4 apply to all Educators regardless of the date the School Nurse Standard Certificate was issued to them.

## **9.0** **Disciplinary Action**

- 9.1 An Educator's School Nurse Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits or for the Educator's failure to comply with the requirements related to the retention of a School Nurse Certificate as provided in Section 8.0.
- 9.2 An Educator's School Nurse Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 9.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

## **10.0** **Secretary of Education Review**

The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a School Nurse Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School Nurse Standard Certificate but whose effectiveness is documented by the local school district or charter school.

## **11.0** **Past Certificate Recognized**

The Department shall recognize a School Nurse Standard Certificate that was issued prior to the effective date of this regulation. An educator holding such a Standard Certificate issued by the Department before the effective date of this regulation shall be considered certified as a school nurse.

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## DEPARTMENT OF ELECTIONS

### OFFICE OF THE STATE ELECTION COMMISSIONER

Statutory Authority: 15 Delaware Code, Section 5012A(f) (15 Del.C. §5012A(f))

#### PUBLIC NOTICE

#### **101 Procedures for Addressing Post-Election Voting Machine Audit Discrepancies**

The Department of Elections, pursuant to 15 Del.C. §5012A(f), proposes to enact a new regulation. The proposed regulation outlines the procedures to be followed by the Department of Elections in the case of a discrepancy discovered during a post-election audit performed in accordance with the provisions of 15 Del.C. §5012A. The proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other regulations issued by the Department of Elections or the State Election Commissioner are not affected by this proposal. This Notice is issued pursuant to the requirements of 29 Del.C. Ch. 11, Subchapter III, 29 Del.C. Ch. 101, Subchapter II, and 29 Del.C. Ch. 104, §§10404A(b)(1) and 10404B(b)(1).

This proposed regulation is being published in the March 2020 edition of the *Delaware Register of Regulations*. Copies are also on file in the Office of the State Election Commissioner, 905 S. Governors Avenue, Suite 170, Dover, DE 19904 and are available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed regulation or submit written suggestions, compilations of data, briefs, or other materials to State Election Commissioner Anthony Albence at the above address as to whether the proposed regulation should be adopted, rejected or modified. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before April 3, 2020. Written materials submitted will be available for inspection at the above address.

On or after April 3, 2020, following review of the public comments received, the Department of Elections will determine whether to adopt the proposed regulation, or make additional changes because of the public comments received.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 727RFA 03-01-20.pdf>

### **101 Procedures for Addressing Post-Election Voting Machine Audit Discrepancies**

#### **1.0 Purpose**

This regulation is adopted by the Department of Elections pursuant to its authority under 15 Del.C. §5012(A)(f) and outlines the procedures to be followed by the Department of Elections in the case of a discrepancy discovered during a post-election audit performed in accordance with the provisions of 15 Del.C. Ch. 50A.

#### **2.0 Applicability**

This regulation applies to any post-election audit performed pursuant to 15 Del.C. §5012A by or on behalf of the Department of Elections, including any of its county offices through its appointed officials, merit employees, casual/seasonal employees, or temporary employees contracted via a third-party State-authorized vendor.

#### **3.0 Definitions**

For purposes of this regulation, the following words or terms shall have the meaning indicated:

“**Audit**” or “**post-election audit**” means the definition of “audit” as set forth in 15 Del.C. §5012A.

“**Audit team**” means appointed officials, merit employees, casual/seasonal employees, or temporary employees contracted via a third-party State-authorized vendor assigned by the State Election Commissioner to conduct a post-election audit.

“**Certified election results**” means the official results of an election confirmed by the State Election Commissioner following post-election review by Department of Elections staff.

“**Department**” means Delaware Department of Elections, including its three county offices and the Office of the State Election Commissioner

“**Human-readable text**” means the printed names of candidates or answers to ballot questions that may be read and reviewed by individuals during an audit or recount.

“**Logic and accuracy test**” means the testing undertaken following programming an election on a voting machine to ensure accurate ballot marking and tabulation of results.

“**Paper ballots**” means the ballots of record marked and tabulated by voting machines during an election.

“**Recount**” means a manual recompilation of election results by examining the human-readable text printed on the ballot.

“**State**” means the State of Delaware.

“**Voting machine**” means the device which marks and tabulates paper ballots during an election.

#### **4.0 Threshold for Specific Action**

4.1 In the event that audit results from a voting machine do not agree with certified election results, and such discrepancy is greater than one half of one percent (0.5%) from the certified results totals, the following provisions shall be triggered:

4.1.1 Additional audits of the voting machine exhibiting the discrepancy.

4.1.2 Additional testing and analysis of the voting machine exhibiting the discrepancy.

#### **5.0 Specific Actions to be Taken Once Threshold is Triggered**

- 5.1 An additional audit of the ballots shall be conducted by an audit team distinct from the audit team that conducted the initial audit.
- 5.2 If a discrepancy of more than one half of one percent (0.5%) is unresolved following the action prescribed in subsection 5.1, the following additional actions shall be undertaken:
  - 5.2.1 All documentation related to the voting machine in question shall be gathered and reviewed by the audit team. These records include logic and accuracy testing, certification, and all other documentation.
  - 5.2.2 A subsequent manual logic and accuracy test of the impacted voting machine shall be conducted, and the results shall be examined by a team of Department staff not involved in the conduct of the initial logic and accuracy test of the impacted voting machine.
  - 5.2.3 An additional audit shall be initiated on another randomly selected voting machine used in the same election, in order to identify any similar discrepancies.

## **6.0 Corrective Actions by Department to Avoid Discrepancy in the Future**

- 6.1 If an identified discrepancy is unresolved following the activities detailed in Section 5.0, the following shall occur:
  - 6.1.1 The Department shall enlist the assistance of the State's voting machine vendor to undertake additional testing and analysis.
  - 6.1.2 The Department shall enlist the assistance of federal voting equipment certifying authorities to undertake additional testing and analysis that may entail the engagement of independent testing laboratories authorized by federal voting equipment certifying authorities to also undertake additional testing and analysis.
  - 6.1.3 Any corrective actions identified must be certified by the federal voting equipment certifying authorities before being implemented by the Department.
  - 6.1.4 Any corrective actions identified shall be implemented as soon as practical on all voting machines maintained by the Department.
  - 6.1.5 Any voting equipment on which corrective actions have been undertaken shall have a complete logic and accuracy test performed on it before any additional deployment in elections.
  - 6.1.6 Any voting equipment on which such a logic and accuracy test has been performed may not exhibit any discrepancy in a subsequent audit of results before being cleared for subsequent use in elections.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)c. (16 Del.C. §122(3)c.)  
16 DE Admin. Code 4463

### **PUBLIC NOTICE**

#### **4463 Licensing and Registration of Operators of Public Water Supply Systems**

Pursuant to 16 Del.C. §122(3)c., Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Licensing and Registration of Operators of Public Water Supply Systems. On March 1, 2020, the Division of Public Health plans to publish as "proposed" revisions to the Licensing and Registration of Operators of Public Water Supply Systems regulations. The revisions include clarification of definitions, licensing periods, and continuing education credits; updates to the Advisory Council for Certification of Public Water System Operators, including defining the chair, quorum, and reducing membership; and technical corrections to conform with statutes, other drinking water regulations, and legal precedents.

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# PROPOSED REGULATIONS

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Copies of the proposed regulations are available for review in the March 1, 2020 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Tuesday, March 31, 2020, at:

Alanna Mozeik  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Alanna.Mozeik@delaware.gov](mailto:Alanna.Mozeik@delaware.gov)  
Phone: (302) 744-4951

**\*Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

[http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 729RFA 03-01-20.pdf](http://regulations.delaware.gov/register/march2020/proposed/23%20DE%20Reg%20729RFA%2003-01-20.pdf)

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

**4463 Licensing and Registration of Operators of Public Water Supply Systems**

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## DEPARTMENT OF INSURANCE

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 520, 2304(16) and 2312 (18 Del.C. §§311, 520, 2304(16) & 2312)  
18 DE Admin. Code 903

### PUBLIC NOTICE

#### **903 Prompt Payment of Settled Claims [Formerly Regulation 81]**

#### **A. Type of Regulatory Action Required**

Proposal of amendments to Regulation 903 - Prompt Payment of Settled Claims.

#### **B. Synopsis of Subject Matter of the Regulation**

Regulation 903 contains the requirements for prompt payment of settled insurance claims as required by 18 Del.C. §2304(16).

The Delaware Department of Insurance (the Department) is proposing to amend Regulation 903 to allow insurance carriers to pay settled insurance claims other than claims that are subject to the Workers Compensation Statute at 19 Del.C. §2344 by electronic means. The Department is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

The authority for the proposed amendments is 18 Del.C. §§311, 520, 2304(16), and 2312, in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.

#### **C. Notice and Public Comment**

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 903. The proposed amendments appear below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials

concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2<sup>nd</sup> day, April, 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4233-2019  
1351 West North St., Ste. 101  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 730RFA 03-01-20.pdf>

## 903 Prompt Payment of Settled Claims [Formerly Regulation 81]

### 1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311, 520, 2304(16), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

### 2.0 Scope

This regulation ~~will apply~~ applies to all ~~insurers~~ insurance carriers that settle claims either pursuant to a legal action or otherwise.

### 3.0 Purpose

The purpose of this regulation is to ~~ensure prompt payment of claims pursuant to the settlement of claims by insurance carriers~~ set forth requirements for prompt payment of settled insurance claims by insurance carriers as required by 18 **Del.C.** §2304(16)(f).

### 4.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Claimant” means a person covered under an insurance policy or a representative (other than a provider) designated by such person and entitled to make claims on that person’s behalf.

“Commissioner” means the Commissioner of the Delaware Department of Insurance.

“Insurance carrier” means any entity that provides insurance in this State and includes any third-party administrator or other entity that adjusts, administers, or settles claims in connection with insurance provided in this State.

#### 4.05.0 Prompt Payment

5.1 Under 18 Del.C. §2304(16)(f), insurance carriers are required in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. An insurance carrier shall make prompt payment of a claim that has settled. For the purpose purposes of this regulation regulation, prompt payment is defined as remittance of the check requires payment within 30 days from any one of the following dates:

# PROPOSED REGULATIONS

5.1.1 ~~the~~ The date of agreement, memorialized in writing; on which a settlement agreement is fully executed by both the claimant and the insurance carrier, including the settlement of a case prior to a hearing but pursuant to an action filed in court;

5.1.2 The date a final order is issued by the court; or

5.1.3 ~~unappealed~~ The last day by which an arbitration award may be appealed as provided in applicable appellate court rules, when neither a claimant nor an insurance carrier has elected to file an appeal.

5.2 Payment shall be made in accordance with the following:

5.2.1 The insurance carrier shall allow a claimant to choose to receive the payment by check or by electronic payment; and

5.2.2 If the payee chooses to receive an electronic payment, the payment may be by any means except for a prepaid card or other electronic transaction method for which the payee incurs or may incur any transaction fees.

5.2.3 Notwithstanding anything in this regulation to the contrary, payments for settled workers compensation claims shall be made in the form required by 19 Del.C. §2344.

## **5.0 Settlement of Claims**

~~5.1~~ ~~The language in 18 Del.C. §2304 (16)(f) requires good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. The aforementioned section also applies in those instances where a case is settled prior to a hearing but pursuant to an action filed in court. Once liability has been resolved and an amount agreed upon, or ordered by the court, or awarded by an arbitration panel, the carrier is required to make prompt payment.~~

## **6.0 Procedure and Penalties for Failure to Remit Prompt Payment of a Settled Claim**

~~6.1~~ ~~In the event that an insurance carrier does not remit prompt payment pursuant to this regulation and if the Department has determined determines that said an insurance carrier has done so failed to remit prompt payment of a settled claim as required by 18 Del.C. §2304(16)(f) and this regulation in bad faith and with such frequency as to indicate a general business practice, the Department shall may file an administrative action against the insurance carrier pursuant to in accordance with 18 Del.C. §323 and the Administrative Procedures Act. The commissioner may take all of the following actions: If the Commissioner finds after a hearing that the insurance carrier has violated 18 Del.C. §2304(16)(f) and this regulation, the Commissioner may:~~

~~6.1.1~~ ~~Award interest to the claimant in an amount equal to the prime rate of interest plus 3% on the amount of the claim which shall be calculated from the applicable date the claim was settled or ordered, in an amount equal to the prime rate of interest plus 3%.~~ listed in subsection 5.1 of this regulation;

~~6.1.2~~ ~~Fine the insurer insurance carrier according to the provisions outlined in 18 Del.C. §329, §329 and impose other such penalties as provided in 18 Del.C. §520.~~

~~6.1.3~~ ~~Fine any person(s) involved with the claim and/or settlement according to the provisions outlined in 18 Del.C. §2308(a)(1).~~

## **7.0 General Business Practice**

~~7.1~~ ~~Within a 36-month 36-month period, three instances of a an insurance carrier's failure to make prompt payment, as defined in section 4.0 above Section 5.0 of this regulation, shall give rise to a rebuttable presumption that the insurer insurance carrier is in violation of 18 Del.C. §2304 (16)(f).~~

~~7.2~~ ~~The 36-month 36-month period established in section 7.1 above subsection 7.1 of this regulation shall be measured from the applicable date the amount was agreed upon, ordered by the court, or awarded by arbitration as set forth in subsection 5.1 of this regulation.~~

## **8.0 Separability**

8-4 If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected and shall remain valid.

### **9.0 Causes of Action and Defenses**

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an ~~insurer~~ insurance carrier or its representative based upon a violation of 18 **Del.C.** §2304(16). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 **Del.C.** §2304(16).

### **10.0 Effective Date**

This regulation shall become effective 30 days after publication in the Delaware *Register of Regulations*. The amendments to this regulation shall become effective on the eleventh day after publication of a final order signed by the Commissioner adopting the amendments into this regulation.

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## **DEPARTMENT OF STATE**

### **DIVISION OF PROFESSIONAL REGULATION**

#### **2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE**

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 **Del.C.** §2006(a)(1))  
24 **DE Admin. Code** 2000

### **PUBLIC NOTICE**

#### **2000 Board of Occupational Therapy Practice**

Pursuant to 24 **Del.C.** §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to supervision for occupational therapy assistants are amended. The Board is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

A public hearing will be held on May 6, 2020 at 4:30 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 on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a). Written public comments will be accepted until May 21, 2020.

The proposed additions to the rule are reflected in underline and the deletions in strike through:

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

**<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 733RFA 03-01-20.pdf>**

#### **2000 Board of Occupational Therapy Practice**

### **1.0 Supervision/consultation Requirements for Occupational Therapy Assistants**

1.1 Definitions. The following words and terms, when used in this regulation shall have the following meaning unless the context clearly indicates otherwise:

# PROPOSED REGULATIONS

**“Occupational therapy assistant”** shall mean a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist. 24 Del.C. ~~§2002(4)~~ §2002.

**“Under the supervision of an occupational therapist”** means the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or co-signature. The supervising occupational therapist is responsible for insuring the extent, kind, and quality of the services rendered by the occupational therapy assistant.

- 4.1.1 : The phrase, ~~“Under~~ under the supervision of an occupational therapist,” as used in the definition of occupational therapist assistant includes, but is not limited to the following requirements:
- 4.1.2 : Communicating to the occupational therapy assistant the results of patient/client evaluation and discussing the goals and program plan for the patient/client;
- 4.1.3 : In accordance with supervision level and applicable health care, educational, professional and institutional regulations, reevaluating the patient/client, reviewing the documentation, modifying the program plan if necessary and co-signing the ~~plan~~ plan;
- 4.1.4 : Case management;
- 4.1.5 : Determining program termination;
- 4.1.6 : Providing information, instruction and assistance as needed;
- 4.1.7 : Observing the occupational therapy assistant periodically; and
- 4.1.8 : Preparing on a regular basis, but at least annually, a written appraisal of the occupational therapy assistant’s performance and discussion of that appraisal with the assistant.
- 4.1.8.1 : The supervisor may assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist. The occupational therapy assistant may not evaluate or develop a treatment plan independently.

1.2 ~~Supervision for Occupational Therapy Assistants is defined as follows:~~

- 4.2.1 ~~Direct Supervision requires the supervising occupational therapist to be on the premises and immediately available to provide aid, direction, and instruction while treatment is performed in any setting including home care. Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.~~
- 4.2.2 ~~Routine Supervision requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as telephonic or written communication.~~
- 4.2.3 ~~General Supervision requires at least monthly direct contact, with supervision available as needed by other methods.~~

4.3 ~~Minimum supervision requirements:~~

- 4.3.1 ~~Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.~~
- 4.3.1.1 ~~Occupational therapy assistants with experience greater than one (1) full year must be supervised under either direct, routine or general supervision based upon skill and experience in the field as determined by the supervising OT.~~
- 4.3.2 1.2.1 ~~Supervising occupational therapists must have at least one (1) year clinical experience after they have received permanent licensure.~~
- 4.3.3 1.2.2 ~~An occupational therapist may supervise up to three (3) occupational therapy assistants but never more than two (2) occupational therapy assistants who are under direct supervision at the same time on any given day.~~
- 4.3.4 1.2.3 ~~Effective July 1, 2009, the supervising occupational therapist shall submit to the Board a completed Verification of Occupational Therapy Assistant Supervision form upon the commencement of supervision.~~

- ~~4.3.5~~ 1.2.4 Effective July 1, 2009, the supervising occupational therapist shall immediately advise the Board in writing when he or she is no longer supervising an occupational therapy assistant and shall provide the Board with an updated Verification of Occupational Therapy Assistant Supervision form.
- ~~4.3.6~~ 1.2.5 Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness. Special consideration should be given to experience and any changes in practice area concentrations.
- ~~4.3.7~~ 1.2.6 The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the level of supervision and shall document the supervision of each occupational therapy assistant. Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness. This plan shall be reviewed at least every six months or more frequently as demands of service changes.
- ~~4.3.8~~ 1.2.7A A supervisor who is temporarily unable to provide supervision shall arrange for substitute supervision by an occupational therapist licensed by the Board with at least one (1) year of clinical experience, as defined above, to provide supervision as specified by Section 1.0 of these rules and regulations.

## **2.0 Licensure Procedures: Procedures**

### ***(Break in Continuity Within Section)***

- 2.4 To apply for renewal, an applicant shall submit:
- 2.4.1 A completed online renewal application;
- 2.4.2 Renewal fee payable to the State of ~~Delaware~~. Delaware;
- 2.4.3 Evidence of completion of the required continuing education.
- 2.5 To apply for inactive status, a licensee may, upon written request to the Board and payment of the fee established by the Division of Professional Regulation, have ~~his/her~~ the license placed on inactive status if ~~he/she~~ the licensee is not actively engaged in the practice of occupational therapy in the State. To renew an inactive license, a licensee shall submit an online renewal application and renewal fee payable to the State of Delaware.

### ***(Break in Continuity Within Section)***

- 2.7 To apply for renewal of an expired license, an applicant ~~shall (within~~ shall, within one year of the expiration ~~date)~~ date:
- 2.7.1 ~~file~~ File a renewal application online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);
- 2.7.2 ~~attest~~ Attest on the renewal application to the completion of continuing education as required in accordance with Section 3.0 of these regulations;
- 2.7.3 ~~pay~~ Pay a renewal and late fee as determined by the Division of Professional Regulation;
- 2.7.4 ~~all~~ All late renewals shall be audited for compliance with ~~CE~~ continuing education renewal requirements;
- 2.7.5 ~~any~~ Any licensee whose license is in an expired status as of July 31, 2014 must either renew the license no later than July 31, 2016 or fulfill the requirements of subsection 2.1.

## **3.0 Continuing Education**

### ***(Break in Continuity Within Section)***

- 3.4 Continuing Education ~~Content:~~ Content
- ### ***(Break in Continuity Within Section)***
- 3.6 Acceptable forms of continuing education include the following:
- ### ***(Break in Continuity Within Section)***
- 3.6.2 ~~Courses:~~ Courses

## 4.0 Telehealth

### *(Break in Continuity Within Section)*

- 4.2 The Occupational Therapist and Occupational Therapist Assistant (referred to as "licensee" for the purpose of this regulation) who provides treatment through telehealth shall meet the following requirements:

### *(Break in Continuity Within Section)*

#### 4.2.2 Informed consent

- 4.2.2.1 Before services are provided through telehealth, the licensee shall obtain written, informed consent from the patient, or other appropriate person with authority to make health care treatment decisions for the patient.

4.2.2.1.1 The use of electronic communications in the provision of care;

4.2.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of ~~care~~; and care.

- 4.2.3 ~~Confidentiality:~~ Confidentiality. The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices and technology, including disposal of electronic equipment and data.

## 5.0 Competence to Administer Treatment Modalities

Upon the request of the Board, or a member of the public, the licensee shall produce documentation demonstrating ~~his or her~~ competence to administer a particular treatment modality. Competence may be shown by documented professional education, such as continuing education, in-service training or accredited higher education programs with documented coursework related to the modality in question. Determination of competence is at the discretion of the Board.

## 6.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 6.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or ~~his/her~~ the Director's designate of the report. If the Director of Professional Regulation receives the report, ~~he/she~~ the Director shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 6.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform ~~him/her~~ the individual in question in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give ~~him/her~~ the individual in question the opportunity to enter the Voluntary Treatment Option.
- 6.3 In order for the individual to participate in the Voluntary Treatment Option, ~~he/she~~ the individual in question shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 6.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or ~~his/her~~ the Director's designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be

operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

- 6.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 4.8 of this section.
- 6.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

***(Break in Continuity Within Section)***

- 6.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

***(Break in Continuity Within Section)***

- 6.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment ~~program(s)~~ programs. In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 6.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or ~~his/her~~ the chairperson's designate or designates or to the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

***(Break in Continuity Within Section)***

- 6.8 The participating Board's chairperson, ~~his/her~~ the chairperson's designate or designates or the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

***(Break in Continuity Within Section)***

- 6.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have ~~his/her~~ their confidentiality protected if the matter is handled in a nondisciplinary matter.
- 6.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have ~~his/her~~ their confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

**\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 733 03-01-20.htm>

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# PROPOSED REGULATIONS

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## DIVISION OF PROFESSIONAL REGULATION 2900 REAL ESTATE COMMISSION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))  
24 **DE Admin. Code** 2900

### PUBLIC NOTICE

#### 2900 Real Estate Commission

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission (“Commission”) has proposed revisions to its rules and regulations.

On December 1, 2019, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Volume 23, Issue 6. Specifically, the Commission’s proposed regulations included a new subsection 8.5 which set forth requirements for real estate “teams”. New Section 9.0 addressed the scope of permissible activities under the property management licensure exemption. Revisions to the new Section 12.0, Renewal of Licenses, shortened the late renewal period from 60 to 30 days and clarified that the late renewal period is not an extension of the deadline to complete continuing education. Requirements for licensure reinstatement were amended. As set forth in the new subsection 14.13, new licensees would be required to complete twelve hours of education designed to assist individuals new to the real estate profession. Those twelve hours were to be completed within 90 days after the date of initial licensure and would not count towards the continuing education required for license renewal. New licensees would also be required to complete the continuing education applicable to all licensees pursuant to the pro-ratio schedule. Finally, as set forth in the new subsection 14.6.7, a minimum fine of \$250 would be imposed for a finding of unjustified noncompliance with continuing education requirements, and a minimum fine of \$1,000 would be imposed for a second finding of unjustified noncompliance.

A public hearing was held on January 9, 2020. The Commission deliberated on February 13, 2020, and based on those deliberations, has made substantive revisions to the proposed rules and regulations. Therefore, the Commission strikes the rules and regulations as proposed in the December 1, 2019 *Register of Regulations* and proposes revised rules and regulations as attached hereto as Exhibit A.

A public hearing will be held on April 9, 2020 at 9:00 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 Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Danielle Cross, administrative specialist for the Commission, at the above address or at [danielle.cross@delaware.gov](mailto:danielle.cross@delaware.gov). Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be **April 24, 2020**, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its next regularly scheduled meeting.

### NATURE OF THE PROCEEDINGS

A public hearing was held before the Commission on January 9, 2020 in the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public were invited to offer comments on the proposed amendments to the rules and regulations. Members of the public were also invited to submit written comments. In accordance with 29 **Del.C.** §10118(a), the written public comment period was held open until January 24, 2020, which was 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on February 13, 2020.

### Summary of the Evidence

The following exhibits were made part of the record:

**Exhibit 1:** *News Journal* Affidavit of Publication.

**Exhibit 2:** *Delaware State News* Affidavit of Publication.

**Exhibit 3:** December 29, 2019 email from Shirley Kalvinski.

Ms. Kalvinski requested that proposed subsection 14.13.1, concerning new licensee education, be effective May 1, 2020.

**Exhibit 4:** January 5, 2020 email from Jeffrey Fowler.

Mr. Fowler commented on the requirement of proposed subsection 8.6.5.3 that advertisements display brokerage information in greater size than the licensee's name. Mr. Fowler stated that compliance with this requirement would cause him to purchase all new signs at great expense.

**Exhibit 5:** January 5, 2020 email from Colleen Windrow.

Ms. Windrow expressed opposition to the proposed change requiring that the size of the brokerage logo be equal to or larger than the agent/team information. Ms. Windrow stated that the cost associated with this change in signage is unnecessary and would be severe for larger teams with existing signs. The consumer is concerned with the direct contact on listings; the consumer will be communicating with the realtor and not the brokerage.

**Exhibit 6:** January 8, 2020 email from Brigit Taylor.

Ms. Taylor stated that she was opposed to the regulations as written in that they would cause significant burden and expenses to realtors without significant benefit to the public. Ms. Taylor also commented that 60 days was not enough time to have artwork drafted, approved, submitted, printed and delivered. A longer transition period was needed.

**Exhibit 7:** January 16, 2020 email from Cindy Sakowski.

Ms. Sakowski stated that brokers oversee advertisements to ensure compliance with broker and state requirements. The deadline for changes should be extended. Changing websites and other advertisements can take time and funds.

**Exhibit 8:** January 16, 2020 email from Lisa Whited.

Ms. Whited stated that she was not sure what the Commission was trying to accomplish in that teams and individual licensees are already under the supervision of a broker. Her signs already have the brokerage name and number on them, and if forced to incur the expense of changing signs, the cost may be passed on to the public by increased commissions.

**Exhibit 9:** January 17, 2020 email from Terri Favata.

Ms. Favata requested that the Commission reconsider the proposal regarding signage and advertising. The majority of licensees follow the rules. Online, more agents are using only their names. Technology has taken over and needs to be addressed first. A better solution is needed rather than just changing the rules and regulations without first addressing who is not following the requirements and the effect on the public.

**Exhibit 10:** January 21, 2020 letter from Bruce Plummer.

Mr. Plummer expressed support for the proposed changes relating to teams and advertising in that they are in keeping with the Commission's primary objective of public protection, as well as prohibiting misrepresentation and false advertising by licensees, as set forth in subsection 8.5.1. Mr. Plummer had comments regarding Section 9.0 pertaining to property management. Specifically, in subsection 9.1.4, the term "brokerage employee" is misused; unlicensed employees of brokerages should not be able to show real property. Subsection 9.1.6 is ambiguous in use of the word "supplies". Does this term include preparing? Mr. Plummer suggested adding the word "prepare" to subsection 9.2.1. Mr. Plummer supported proposed subsection 14.13 regarding the requirement that new licensees complete education modules in 90 days, but requested a mechanism for auditing compliance.

**Exhibit 11:** January 22, 2020 email from Jeffrey Fowler.

Mr. Fowler commented that DPR/Real Estate Commission does not enforce existing advertising rules. If current rules are enforced, many of the issues that the new rules are trying to fix would go away. The proposed changes will impact many agents with a huge expense to purchase all new advertising supplies such as signs, billboards and websites.

**Exhibit 12:** January 22, 2020 email from Anne Powell.

Ms. Powell stated that many agents, including Ms. Powell, support the changes to Team/Group regulations. Many agents are using group names to misrepresent themselves as stand-alone brokerages. Some signs list the brokerage in tiny print. Consumers need to know who the broker is. Ms. Powell also stated that a team should have to designate a leader and any team leader should have to take management/supervision education and should be responsible as well as the broker.

**Exhibit 13:** January 22, 2020 email from Steven Anzulewicz.

Mr. Anzulewicz expressed concern over not having been notified about the proposed changes. Mr. Anzulewicz has been using the name/brand "Steven Anzulewicz and Associates" since 2003. He objected to having to use the terms "group" or "team" in his name and asked that the Commission permit the use of "associates".

**Exhibit 14:** January 23, 2020 letter from Tony Favata.

Mr. Favata expressed his concerns regarding the proposed rule changes as to advertising. REALTORS are taught to promote themselves and create relationships in the community. People deal with REALTORS, not the company. The proposed changes will discourage all REALTORS from advertising on their own budget.

**Exhibit 15:** January 23, 2020 letter from Yvonne Hall.

Ms. Hall expressed concern about the proposed changes that would require everyone to change their signs. Licensees pay for their own signs, business cards and advertising. The broker office used to pay for such expenses. Licensees' bottom line is less because of these changes but commissions have not changed. Ms. Hall asked that the Commission reconsider punishing licensees who are all independent contractors.

**Exhibit 16:** January 24, 2020 email from Brigit Taylor.

Ms. Taylor expressed support for proposed Sections 9.0 and 12.0 and subsections 14.13. and 14.6.7 but opposed proposed subsections 8.5 and 8.6. The 60 day time frame for compliance was not long enough and cost prohibitive. The brokerage name should be prominent and conspicuous but not larger than the agent or team name.

**Exhibit 17:** January 24, 2020 email from Susan Mills.

Ms. Mills expressed concern about the proposed wording of subsection 8.6.5.4, specifically, the requirement that the brokerage's name must be adjacent to the team name. Ms. Mills suggested use of the terms "above", "below", "adjacent" or "close proximity". Ms. Mills stated her support of subsection 14.13.1; allowing one year for new licensees to complete new agent modules is too long.

**Exhibit 18:** January 24, 2020 email from Will Webber.

Mr. Webber commented that the Commission is doing damage to the general public. Having the agent contact information prominent is what matters. Serving the public also means properly serving the seller who does not want to miss the chance for the buyer to have a conversation with the right agent. The agent's number is the right contact information, not the office number. Buyers who call the office number will not be served. The Commission is doing a disservice to the caller who may reach voicemail or a reception person. The right contact information will better serve the public. The requirement that office numbers be bigger than agent phone numbers "feels like Zillow." Mr. Webber stated that "We Realtors are minimized by our own organization with these proposed changes in rules." Mr. Webber asked that the Commission consider delaying the proposed rule changes that are hurting more than they help.

**Exhibit 19:** January 24, 2020 letter from William Rhodunda.

Mr. Rhodunda offered his comments on behalf of his clients who strongly objected to proposed subsections 8.5.2 and 8.5.2.2 related to names of real estate teams and subsections 8.6.5.3 and 8.6.5.4 related to advertising. Mr. Rhodunda stated that if implemented as proposed, the provisions would result in a severe financial impact on a significant number of realtors and were not warranted based on other existing or proposed regulations. Mr. Rhodunda commented that the revisions were proposed to emphasize the relationship between broker and licensee. Brokers are already responsible for licensee compliance with Commission requirements, as set forth in subsection 1.3.1. Broker oversight, which is enhanced in subsection 8.5.3, addresses concerns about the hierarchy in real estate offices. With respect to the proposed changes concerning teams, the severe financial impact would include: loss of good will, loss of domain dominance on the internet, cost of yard signs and billboards, cost for changing stationary and other written materials, and cost to recreate video campaigns and social proposed changes regarding advertising are not necessary. If the Commission feels that current notification about the broker is insufficient, the language should be changed to "clear and conspicuous." Mr. Rhodunda concluded that if the proposed changes are not amended as suggested in his correspondence, the licensees he represents will have no choice but to pursue legal recourse to recover losses associated with the proposed changes.

**Exhibit 20:** January 24, 2020 letter from Beau Zebley

Mr. Zebley stated that the Delaware Association of REALTORS ("DAR") established two task forces, one on teams, and one to review the balance of the Commission's regulations. During 2017 and 2018, DAR asked for comments from members and the task forces met. The two resulting reports were forwarded to the Commission, which appointed a subcommittee to hold public meetings on the DAR reports and on an overall review of the regulations. Mr. Zebley stated that the resulting proposed regulations will serve well to protect the general public.

**Exhibit 21:** January 25, 2020 email from Wendy Kessler.

Ms. Kessler commented that signage, advertising and print material can add up to a large expense. She asked if it would be possible to grandfather existing materials for at least a year. Ms. Kessler stated that for a team to build its identity, it should be able to prominently display the team logo. She suggested that the company name be at

least  $\frac{3}{4}$  of the size of the team name.

In addition, testimony was presented, as follows:

Emma Payne testified that there should be a focus on internet advertising. As a business owner, she will have to pay for the cost of re-doing her signs. The 60 day window will greatly impact the industry.

Jeffrey Fowler stated that he has a team of five agents including him. He has been selling for twelve years. Previously, the broker would approve everything, but that's not the case now. Mr. Fowler questioned what is the problem that the proposed regulations are trying to solve?

Patricia Anderson testified that she is a trade school administrator. She commented on the need for auditing of the new licensee modules. Requiring completion of the modules within 90 days is excellent and will ensure licensee competence. Ms. Anderson suggested that schools be required to provide continuing education certificates to the Division of Professional Regulation for automatic auditing.

Todd Ruckle stated that he is the president of his team. He commented that the hearing was not properly noticed to the public. His signs display both numbers and Keller Williams is all over the signs. It would cost his team \$25,000 to replace their signs. Mr. Ruckle stated that the Commission should compensate him for this expense.

Barry Ziegler commented he is with a Keller Williams team. He agreed with Todd Ruckle. Keller Williams is on the signs. He has spent thousands building his brand. Buying new signs could cost him name recognition. Mr. Zeigler stated that this would be unfair and asked who would compensate him. Mr. Ziegler suggested that well-established teams should be grandfathered.

Will Weber stated that realtors police themselves. The proposed regulations will punish professionals and favor amateurs. The public will not be protected.

Bill Brown testified that he was representing Keller Williams. Teams self-regulate and help one another. He has built a team and group and the proposed changes would create a financial burden. His signs are not deceiving. He asked that the Commission reconsider the change.

Tommy Burdett stated that he put a lot of money into signs and advertising and that making changes would hurt.

Anne Baker commented that she served on the Commission for two terms. Now, the requirement that the broker information be "legible" is not enforced. She suggested that the Commission just clarify the term "legible". Ms. Baker stated that she is with a team in Sussex County. If a member of the public can walk up to the sign and read the information that is sufficient to permit contact with the appropriate individual.

Ray Petkevis stated that he is with Keller Williams in Wilmington. He agreed with Todd [Ruckle]. His team has put money into branding themselves. Websites such as Zillow and Realtor.com need to be regulated to protect the public. Mr. Petkevis spent \$200,000 on a website to compete with Zillow. With the proposed regulations, he would need to change everything.

Brigit Taylor testified that she is with Keller Williams in Sussex County. With respect to the proposed regulations regarding teams and advertising, changes to electronic advertising could be done more quickly with less expense. Ms. Taylor suggested that signs be grandfathered or that licensees be given a year or more time to come into compliance.

Chrissy Steele stated that she had little concern with proposed changes relating to signs. She offered comments regarding Section 9.0 which addresses property management. Ms. Steele expressed concern that subsection 9.1.4 would allow unlicensed individuals to show property. Ms. Steele questioned the meaning of subsection 9.1.6 and suggested that the word "prepare" be added to subsection 9.2.1.

### **Findings and Conclusions**

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's rules and regulations.

Pursuant to 24 **Del.C.** §2906(a)(1), the Commission has statutory authority to promulgate rules and regulations. During deliberations, the Commission considered the testimony of witnesses and the documents marked as exhibits. The Board addressed the concerns presented through this evidence.

The proposed rules and regulations are the result of many discussions by the Commission and its subcommittee at properly noticed, public meetings. All members of the public were welcome to attend these meetings and offer comments. A public hearing was held on January 9, 2020 and at that time members of the public were afforded the opportunity to present testimony and written comments. The written comments submitted

and the testimony presented at the hearing have been summarized herein and have been thoroughly considered by the Commission in making further revisions to the rules and regulations attached hereto as Exhibit A.

Most of the comments addressed the proposed regulations concerning advertising. Subsection 8.6.5.3, addressing advertising by any licensee, provides that: "Effective 60 days after the effective date of this Regulation, the advertisement shall prominently display the Brokerage Organization name and phone number in greater size and visibility than the Licensee's name." Subsection 8.6.5.4, addressing advertising by teams, provides that: "Effective 60 days after the effective date of this Regulation, team advertising shall prominently display the name of the supervising broker's brokerage organization adjacent to the team name in greater size and visibility than the team name." Commenters objected to these changes based on the financial impact they would sustain from changing signs and other types of advertising. The Commission observed that these comments were not based on the interests of public protection, which is the Commission's primary objective. Frequently, in advertising, teams are presenting themselves as actual brokerages. The public does not know who the broker is. It is essential that members of the public be able to identify and contact *the broker*, who, unlike the salesperson or associate broker, is ultimately responsible for real estate transactions. Perhaps most significantly, the broker is responsible for safeguarding the funds of individuals who are buyers or sellers in a transaction. The proposed amendments will ensure that the broker's name and contact information is emphasized in the interests of public protection.

The Commission did take note of comments regarding the short time frame to come into compliance with the regulatory changes concerning advertisement. The Commission appreciated the effort and expense involved in changing signage and other forms of advertising. To that end, the Commission determined to amend "60 days" to "six months", with respect to all forms of advertising, other than online advertising, which will still be subject to the "60 days" provision. The Commission also agreed with the request that "associates" be permissible as part of a team name, and subsection 8.5.2.1 has been amended accordingly.

The Commission agreed with several commenters that the new licensee education modules, which must be completed within 90 days after the date of licensure, should be part of the Commission's biennial continuing education audit, and subsection 14.13 has been revised accordingly.

With respect to the proposed Section 9.0, addressing property management, the Commission concluded that revision to subsections 9.1.4 and 9.1.6 were not warranted in that the language was clear. However, the Commission amended subsection 9.2.1 to specify that the negotiation or *drafting* of contracts or lease agreements does not fall within the property management exemption.

The proposed rules and regulations published on December 1, 2019 are stricken and the Commission proposes the revised rules and regulations attached hereto as Exhibit A.

**\*Please Note:**

(1) **The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 738RFA 03-01-20.pdf>

(2) **Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

**2900 Real Estate Commission**

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**DIVISION OF PROFESSIONAL REGULATION  
3100 BOARD OF FUNERAL SERVICES**

Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 Del.C. §3105(a)(1))  
24 DE Admin. Code 3100

**PUBLIC NOTICE**

**3100 Board of Funeral Services**

Pursuant to 24 Del.C. §3105(a)(1), the Delaware Board of Funeral Services has proposed revisions to its rules

and regulations. Rules pertaining to internship requirements are proposed to be added. The Board is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

A public hearing will be held on March 24, 2020 at 10 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 on the amendments to the rules and regulations. 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 Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a). Written public comments will be accepted until April 8, 2020.

The proposed additions to the rule are reflected in underline and the deletions in strikethrough.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/march2020/proposed/23 DE Reg 742RFA 03-01-20.pdf>

### **3100 Board of Funeral Services**

#### **1.0 Duties of the Officers**

- 1.1 The President shall preside at all meetings, call meetings, sign certificates with other Board members or other forms that may be required by him or her by law.

***(Break in Continuity Within Section)***

- 1.3 In accordance with ~~29 Del.C. §8807~~, the Division of Professional Regulation shall maintain and keep all records of licensed funeral directors in the State of Delaware issuing a number and date to each license. [Reserved.]

***(Break in Continuity Within Section)***

- 1.5 In accordance with the Freedom of Information Act, 29 ~~Del.C. §10004(e)~~ §10004(e), the Division of Professional Regulation shall publish an agenda of all meetings which shall include the time, dates and places of said meetings and an agenda. The Board shall also give public notice of the regular meetings and its intent to hold an executive session closed to the public at least seven days in advance. However, the agenda may be subject to change to include additional items not on the agenda including executive sessions closed to the public which arise at the time of the Board's meeting.
- 1.6 The Division of Professional Regulation shall insure that accurate and detailed minutes of all business to come before the Board at all Board meetings be transcribed in accordance with ~~29 Del.C. §8807 and 24 Del.C. §3103(d)~~.

#### **2.0 Licensure Requirements**

- 2.1 Requirements for licensing of those applying for a Funeral Director's license in the State of Delaware. The qualifications of applicants for licensure as funeral director are contained in 24 ~~Del.C. §3107(a)(4)-(9)~~ and 24 **Del.C.** §3109.
- 2.2 An applicant who has attended a school or college fully accredited by the American Board of Funeral Service Education "ABFSE" (ABFSE) or its successor and who, after attending such ABFSE accredited school or college, has received an Associate degree or its equivalent in mortuary science, ~~wherein such "degree" required~~ requiring the successful completion of at least sixty (60) semester credit hours, shall be eligible for licensure as a funeral director in accordance with the educational requirements contained within 24 **Del.C.** §3107. The applicant shall request that a copy of an official transcript be sent to the Board.

***(Break in Continuity Within Section)***

- 2.5 As required by 24 **Del.C.** §3107(a)(4), an applicant other than one seeking licensure via reciprocity shall satisfactorily complete an internship of one year's duration in a licensed Delaware funeral establishment under the auspices of a licensed Delaware funeral service practitioner. In order for an applicant to apply for an internship, the applicant shall have certified on a form approved by the Board

that ~~he or she~~ the applicant has graduated from an accredited high school or its equivalent, and has received an Associate Degree or its equivalent in mortuary science, consisting of sixty (60) credit hours, from a school fully accredited by the ABFSE or its successor. Satisfactory completion of an internship requires a minimum of twenty-five (25) embalming reports, 25 arrangements, 25 funeral services, and four (4) completed quarterly work reports evidenced by a notarized statement by the sponsor. An intern may be given one extension of ~~his or her~~ the internship for an additional year.

### 3.0 Federal Trade Commission Regulations

A licensed funeral director in the State of Delaware shall comply with all Federal Trade Commission Regulations governing the pricing of funeral services and merchandise and the method of payment for funeral services ~~as defined under 24 Del.C. §3101(7)~~. Upon the issuance of a funeral director's license, a licensed funeral director represents that he/she is familiar with all Federal Trade Commission rules and regulations and shall abide by the same. A licensee may be subject to discipline pursuant to 24 Del.C. Ch. 31, et seq. if these rules or regulations have been violated by the licensee.

### 4.0 Establishment Permits

#### *(Break in Continuity Within Section)*

- 4.2 Unless exempt under 24 Del.C. ~~§3101(6)~~ §3101, the building in which funeral services are provided shall contain a room having the fixtures necessary for the care and preparation of human remains for funeral service, burial, entombment or cremation. Such fixtures include, at a minimum, embalming machine and table, aspirator, embalming instruments, embalming fluids, an operating drainage system, syringes, needles and surgical supplies and an operating ventilation system.

#### *(Break in Continuity of Sections)*

### 9.0 Continuing Education Regulations

#### 9.1 Board Authority ~~Authority~~.

- 9.1.1 This rule is promulgated under the authority of 24 Del.C. §3105 which grants the Board of Funeral Services (hereinafter "the Board") authority to provide for rules for continuing funeral services education as a prerequisite for license renewal.

#### 9.4 Continuing Education Program Approval

#### *(Break in Continuity Within Section)*

- 9.4.6 Application for CE program approval shall include the following:

#### *(Break in Continuity Within Section)*

- 9.4.6.4 Name of ~~instructor(s)~~ instructors, background, expertise.

#### *(Break in Continuity Within Section)*

#### 9.5 Certification of Continuing Education - Verification and Reporting

#### *(Break in Continuity Within Section)*

- 9.5.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of ~~Rule subsection~~ subsection 9.2.1.

#### *(Break in Continuity Within Section)*

- 9.5.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to ~~Rule subsection~~ subsection 9.3.5.3.

- 9.5.5 Random audits will be performed by the Board to ensure compliance with the CEU requirements.

#### *(Break in Continuity Within Section)*

- 9.5.5.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in ~~Section subsection~~ subsection 9.4, which may include, but is not limited to, the following information:

- Proof of attendance;
- Date of CE course;
- Instructor of CE course;

- Sponsor of CE course;
- Title of CE course; and
- Number of hours of CE course.

9.5.6 If a licensee fails to meet the CE requirement at the time of renewal, the Board may impose discipline as permitted under ~~Section 3114~~ 24 Del.C. §3114. In its discretion, the Board may permit the licensee to obtain the CE credits within a time period prescribed by the Board while maintaining an active license.

## **10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

- 10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or ~~his/her~~ the Director's designate of the report. If the Director of Professional Regulation receives the report, ~~he/she~~ the Director shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, ~~contact~~ notify the individual in question and ~~inform him/her~~ in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give ~~him/her~~ the individual in question the opportunity to enter the Voluntary Treatment Option.
- 10.3 In order ~~for the individual~~ to participate in the Voluntary Treatment Option, ~~he/she~~ the individual in question shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s) designates.
- 10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or ~~his/her~~ the Director's designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 10.8 of this section.
- 10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

### ***(Break in Continuity Within Section)***

- 10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

### ***(Break in Continuity Within Section)***

# PROPOSED REGULATIONS

- 10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment ~~program(s)~~ programs. In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or ~~his/her~~ that chairperson's designate or designates or to the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

***(Break in Continuity Within Section)***

- 10.8 The participating Board's chairperson, ~~his/her~~ that chairperson's designate or designates or the Director of the Division of Professional Regulation or ~~his/her~~ the Director's designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

***(Break in Continuity Within Section)***

- 10.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and ~~shall have his/her~~ the reporting person's confidentiality shall be protected if the matter is handled in a nondisciplinary matter.
- 10.12 ~~Any~~ The confidentiality of any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall ~~have his/her~~ be protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

## **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:

***(Break in Continuity Within Section)***

- 11.1.6 ~~Assault by abuse or neglect.~~ Child abuse in the first degree. 11 Del.C. §1103B.

***(Break in Continuity Within Section)***

- ~~44.1.36 Carjacking in the second degree. 11 Del.C. §835~~  
~~44.1.37 Carjacking in the first degree. 11 Del.C. §836~~  
~~44.1.38~~11.1.36 Felony theft. 11 Del.C. §841  
~~44.1.39~~11.1.37Theft; lost or mislaid property; mistaken delivery. 11 Del.C. §842  
~~44.1.40~~11.1.38Theft; false pretense. 11 Del.C. §843  
~~44.1.41~~11.1.39Extortion 11 Del.C. §846  
~~44.1.42~~11.1.40Theft, extortion; claim of right as an affirmative defense. 11 Del.C. §847  
~~44.1.43~~11.1.41Misapplication of property. 11 Del.C. §848  
~~44.1.44~~11.1.42Use, possession manufacture, distribution and sale of unlawful telecommunication and access devises. 11 Del.C. §850  
~~44.1.45~~11.1.43Receiving stolen property. 11 Del.C. §851  
~~44.1.46~~11.1.44Identity theft. 11 Del.C. §854  
~~44.1.47~~11.1.45Forgery. 11 Del.C. §861

- 44.1.4811.1.46 Possession of forgery devices. 11 **Del.C.** §862
- 44.1.4911.1.47 Falsifying business records. 11 **Del.C.** §871
- 44.1.5011.1.48 Tampering with public records in the second degree. 11 **Del.C.** §873
- 44.1.5111.1.49 Tampering with public records in the first degree. 11 **Del.C.** §876
- 44.1.5211.1.50 Offering a false instrument for filing. 11 **Del.C.** §877
- 44.1.5311.1.51 Issuing a false certificate. 11 **Del.C.** §878
- 44.1.5411.1.52 Unlawful use of ~~credit~~ payment card. 11 **Del.C.** §903
- 44.1.5511.1.53 Reencoder and scanning devices. 11 **Del.C.** §903A
- 44.1.5611.1.54 Criminal impersonation, accident related. 11 **Del.C.** §907A
- 44.1.5711.1.55 Criminal impersonation of a police officer, firefighter, emergency medical technician (EMT), paramedic or fire police. 11 **Del.C.** §907B
- 44.1.5811.1.56 Unlawfully concealing a will. 11 **Del.C.** §908
- 44.1.5911.1.57 Insurance fraud. 11 **Del.C.** §913
- 44.1.6011.1.58 Use of consumer identification information. 11 **Del.C.** §914
- 44.1.6111.1.59 Use of ~~credit~~ payment card information. 11 **Del.C.** §915
- 44.1.6211.1.60 Unauthorized access. 11 **Del.C.** §932
- 44.1.6311.1.61 Misuse of computer system information. 11 **Del.C.** §935
- 44.1.6411.1.62 Endangering the welfare of a child. 11 **Del.C.** §1102
- 44.1.6511.1.63 Sexual exploitation of a child. 11 **Del.C.** §1108
- 44.1.6611.1.64 Unlawfully dealing in child pornography. 11 **Del.C.** §1109
- 44.1.6711.1.65 Possession of child pornography. 11 **Del.C.** §1111
- 44.1.6811.1.66 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 44.1.6911.1.67 Perjury in the second degree. 11 **Del.C.** §1222
- 44.1.7011.1.68 Perjury in the first degree. 11 **Del.C.** §1223
- 44.1.7111.1.69 Tampering with physical evidence. 11 **Del.C.** §1269
- 44.1.7211.1.70 Hate crimes. 11 **Del.C.** §1304
- 44.1.7311.1.71 Abusing a corpse. 11 **Del.C.** §1332
- 44.1.7411.1.72 Trading in human remains and associated funerary objects. 11 **Del.C.** §1333
- 44.1.7511.1.73 Adulteration. 11 **Del.C.** §1339
- 44.1.7611.1.74 Desecration of a burial place. 11 **Del.C.** §1340
- 44.1.7711.1.75 Act of intimidation. 11 **Del.C.** §3532
- 44.1.7811.1.76 Aggravated act of intimidation. 11 **Del.C.** §3533
- 44.1.7911.1.77 Attempt to intimidate. 11 **Del.C.** §3534.
- 44.1.8011.1.78 Alteration, theft, or destruction of will. 12 **Del.C.** §210
- 44.1.8111.1.79 Duty of driver involved in accident resulting in injury or death to any person. 21 **Del.C.** §4202

**\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

**3100 Board of Funeral Services**

## Symbol Key

Arial 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 bold 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 EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(22) and 1280(a) (14 **Del.C.** §§122(b)(22) & 1280(a))  
14 **DE Admin. Code** 290

**REGULATORY IMPLEMENTING ORDER****290 Approval of Educator Preparation Programs****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §§122(b)(22) and 1280(a), the Secretary of Education intends to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. This regulation is being amended to include information from Regulation 1595 Leadership Certification Programs and Regulation 1507 Alternate Routes to Certification which are no longer under the purview of the Professional Standards Board. The information in these two regulations more clearly aligns with the requirements and approval process outlined in Regulation 290 Approval of Educator Preparation Programs.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on January 1, 2020, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation. The Department did correct minor spacing and punctuation.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs in order to include information from Regulation 1595 Leadership Certification Programs and Regulation 1507 Alternate Routes to Certification which are no longer under the purview of the Professional Standards Board. The information in these two regulations more clearly aligns with the requirements and approval process outlined in Regulation 290 Approval of Educator Preparation Programs.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 290 Approval of Educator Preparation 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** 290 Approval of Educator Preparation Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 290 Approval of Educator Preparation 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 February 13, 2020. 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 13<sup>th</sup> day of February 2020.

#### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 13<sup>th</sup> day of February 2020

### 290 Approval of Educator Preparation Programs (Break in Continuity of Sections)

#### 2-01.0 Definitions

The words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

#### (Break in Continuity Within Section)

"Satisfactory Progress" means a teacher candidate is on track to satisfy all program requirements within the required ~~[timeframe time frame]~~.

#### (Break in Continuity of Sections)

### 3.0 Program Requirements

#### 3.1 Entry Requirements

3.1.1 Programs shall establish rigorous entry requirements as ~~[pre-requisites prerequisites]~~ for Program Entrance. At a minimum, Programs shall require Candidates to have a Grade Point Average (GPA) of at least 3.0 on a 4.0 scale or have a GPA in the top 50th percentile for coursework completed during the most recent two years of the applicants general education, whether secondary or post-secondary; or demonstrate mastery of general knowledge, including the ability to read, write, and compute, by achieving a score deemed to be College Ready on a test of general knowledge normed to the college-bound population.

#### (Break in Continuity Within Section)

#### 3.4 Exit Requirements

3.4.1 Programs shall establish rigorous Exit requirements, which shall include but not be limited to achievement of passing scores on both a Content-Readiness Exam and a Performance Assessment, where such exam and assessment in the appropriate area, subject or category is available and approved by the Department.

*(Break in Continuity Within Section)*

3.4.1.2 Performance Assessment (~~This subparagraph shall take effect July 1, 2016.~~)

*(Break in Continuity Within Section)*

3.4.1.2.3 The performance assessment may not be scored by any employees of the Educator Preparation Program or ~~[Unit, Unit]~~ and shall be scored by Certified Reviewers.

*(Break in Continuity of Sections)***5.0 Program Approval Process Where No SPA is Available**

5.1 The approval process for proposed Programs for which there is no SPA shall consist of Department review of an ~~[application, application]~~ and may also include an on-site review if deemed necessary by the Department to confirm information in the application.

*(Break in Continuity of Sections)***6.0 Program Review and Reporting**

6.1 Compliance with Program Requirements

*(Break in Continuity Within Section)*

6.1.6 Programs are subject to full CAEP review at the request of the ~~[Department Department.]~~

**7.0 Renewal, Oversight, and Revocation***(Break in Continuity Within Section)*

7.2 Probation

*(Break in Continuity Within Section)*

7.2.8 Probation may be renewed after the first ~~two (2) year~~ two-year probation cycle has been completed if the Program is deemed to be making satisfactory progress. ~~However~~ However, no new Candidates may enter the Program during this time. Within 30 days of the notification to the Program that its probation is renewed for a second two-year cycle, the Program must notify each Candidate individually in writing of its probationary ~~[status, status]~~ and provide documentation of the notification to the Department.

*(Break in Continuity Within Section)*

7.3 Revocation

*(Break in Continuity Within Section)*

7.3.5 Upon provision of such notification, Program approval is considered revoked. The Program may not recruit or accept new Candidates. Candidates enrolled in the Program who have accumulated enough credits to be on track for graduation within the current academic year may Exit. Within 30 days of the notification to the Program that its probation is renewed for a second two-year cycle, the Unit must notify each Candidate individually in writing of the revocation of Program ~~[approval, approval]~~ and provide documentation of the notification to the Department.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2020 issue of the *Register* at page 505 (23 DE Reg. 505). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**290 Approval of Educator Preparation Programs**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(26) (14 Del.C. §122(b)(26))  
14 DE Admin. Code 614

### REGULATORY IMPLEMENTING ORDER

#### 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion

##### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(b)(26), the Secretary of Education intends to amend 14 DE Admin. Code 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion. The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years and updated Delaware Code citations in the regulation that were previously changed in Delaware Code. Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on January 1, 2020, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens noting that none of the amendments were substantive and suggested that the Department review the amended regulation for punctuation and capitalization.

**Response:** The Department reviewed the regulation and made minor punctuation, capitalization, Delaware Code citation and word changes to be in accordance with the Delaware Code and the *Delaware Administrative Code Drafting and Style Manual*.

##### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years and updated Delaware Code citations in the regulation that were previously changed in Delaware Code.

##### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion 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 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion 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 February 13, 2020. 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 13<sup>th</sup> day of February 2020.

#### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 13<sup>th</sup> day of February 2020

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**614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion**


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**1.0 Purpose**

Pursuant to 14 Del.C. §122(b) (26), this regulation provides uniform definitions for student conduct which may result in alternative placement or expulsion. This regulation shall apply to all school districts and charter schools. Nothing contained here shall be interpreted to require the alternative placement or expulsion of a student, nor shall this regulation be interpreted to restrict the ability of school districts and charter schools to determine which student conduct shall result in expulsion or an alternative placement.

**2.0 Definitions**

Since some definitions of Section 2.0 may not be age appropriate, this section shall not be required to be published in a district or charter school's Student Code of Conduct. The district/charter school shall publish an internet link to this entire regulation in the Student Code of Conduct and provide a paper copy of the regulation upon request of a member of the public. In this regulation, the following terms shall have the meanings indicated below:

**"Alcohol"** shall have the same definition as provided in 4 Del.C. §101(1).

**"Alcohol Liquor"** shall have the same definition as provided in 4 Del.C. §101(2).

**"Charter School"** means a charter school board established pursuant to ~~[Chapter 5 of Title 14 of the Delaware Code 14 Del.C. Ch. 5]~~.

**"Commission by a student"** means that a student has engaged in behavior equivalent to that which is prohibited by law regardless of whether the student has been criminally convicted of the same.

**"Crime"** shall have the same ~~[meaning definition]~~ as provided in 14 Del.C. §4112.

**"Dangerous Instrument"** shall have the same ~~[meaning definition]~~ as provided in 11 Del.C. §222(4).

**"Deadly Weapon"** shall have the same ~~[meaning definition]~~ as provided in 11 Del.C. §222(5).

**"Distribute", "Distributing" or "Distribution"** means the transfer or attempted transfer of Alcohol, a Drug, a Look Alike Substance, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

**"District"** means a reorganized school district or vocational technical school district established pursuant to ~~[Chapter 10 of Title 14 of the Delaware Code 14 Del.C. Ch. 10]~~.

**"Drug"** means any "controlled substance" or "counterfeit controlled substance" as defined in 16 Del.C. §4701 ~~(6) and (7)~~.

**"Drug Like Substance"** means any ~~[noncontrolled and nonprescription non-controlled and non-prescription]~~ substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 DE Admin. Code 877 Tobacco Policy.

**"Drug Paraphernalia"** shall have the same ~~[meaning definition]~~ as provided in 16 Del.C. §4701 ~~(47)~~.

**"Expulsion"** ~~[means, for purposes of this regulation, means]~~ the exclusion from the regular school setting for a period determined by the local District board or Charter School board.

**"Firearm"** means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

**"Look Alike Substance"** means any ~~[noncontrolled non-controlled]~~ substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a Drug or a ~~[noncontrolled non-controlled]~~ substance capable of producing a change in behavior or altering a state of mind or feeling.

**"Nonprescription Medication"** means any over the counter ~~[medication; some of these medications—medication of which some]~~ may be a ~~["Drug Like Substance." Drug Like Substance.]~~

**"Possess", "Possessing", or "Possession"** means that a student has on the student's person, in the student's belongings, or under the student's reasonable control prohibited items or substances.

**"Prescription Drugs"** means any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 Del.C. §4701(34), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose **[Possession possession]** it is found.

**"School Environment"** means within or on school property, and at school sponsored or supervised activities, including, for example, ~~[on school grounds,]~~ on school buses, at functions held on school grounds, at school sponsored extracurricular activities held on and off school grounds, **[and]** on field trips ~~[and at functions held at the school in the evening].~~

**"Sexual Act"** means (1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight; (2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to arouse or gratify the sexual desire of any person.

**"Sexual Intercourse"** shall have the same **[meaning definition]** as provided in 11 Del.C. §761(g).

**"Sexual Offense"** means any offense defined by 11 Del.C. §§763-780 ~~through 780B~~ and §§1108-1112A, ~~through 1112B, [1352(2)]~~ and **[1352 through]** 1353.

**"Student Code of Conduct"** means the District/Charter School approved document which specifies the rights and responsibilities of students, defines conduct that disrupts/threatens a positive/safe school environment, standardizes procedures for consequences, disciplinary action, and defines due process and grievance procedures.

**"Theft"** means those acts described in 11 Del.C. §§841 through ~~846~~847 inclusive.

**"Use"** means that a student is reasonably known to have voluntarily ingested, smoked or otherwise assimilated Alcohol, a Drug or a Drug Like Substance, or is reasonably found to be under the influence of such a substance.

**3.0 Uniform Definitions for Student Conduct**

The following definitions shall be used whenever a school district or charter school uses such conduct as a basis for alternative placement or expulsion of a student:

**"Arson" [shall mean means]** a person recklessly or intentionally damages a building by intentionally starting a fire or causing an explosion.

**"Assault III" [shall mean means:]** (1) A person intentionally or recklessly causes physical injury to another person; or (2) With criminal negligence the person causes physical injury to another person by means of a Deadly Weapon or a Dangerous Instrument.

**"Attorney General's Report (Juvenile Arrest Warrant and Complaint)" [shall mean means]** the Department of Justice's report of out-of-school criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and **[Drug drug]** offenses.

**"Breaking and Entering" [shall mean means]** unauthorized entry of any locked area of the school environment during or after school; including, but not limited to, rooms, classrooms, auditorium, gym, shops, offices, lockers, cabinets and vehicles.

**"Bullying" [shall mean means]** any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of: (1) Placing a student, school volunteer or school employee in reasonable fear of substantial harm to his or her emotional or physical well-being or substantial damage to his or her property; or (2) Creating a hostile, threatening, humiliating or abusive educational environment due to the pervasiveness or persistence of actions or due to a power

differential between the bully and the target; or (3) Interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities or benefits; or (4) Perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to another student, school volunteer or school employee.

**"Criminal Deadly Weapons/Dangerous Instrument Offense, Commission of"** ~~[shall mean means]~~ the Commission by a student of an offense prohibited by 11 Del.C. §§1442 through 1458~~1460~~ inclusive.

**"Criminal Drug Offense, Commission of"** ~~[shall mean means]~~ the Commission by a student of the unlawful Possession, Distribution, or use of Alcohol, a Drug, a Drug-Like Substance, and/or Drug Paraphernalia.

**"Criminal Mischief (Vandalism)"** ~~[shall mean means]~~ a student, in the School Environment, intentionally or recklessly: (1) Damages tangible property of another person or entity; or (2) Tampers with tangible property of another person so as to endanger person or property.

**"Criminal Sexual Offense, Commission of"** ~~[shall mean means]~~ the Commission by a student of an offense prohibited by ~~11 Del.C. §§763 through 780 780B, inclusive, or §§1108 through 1122A1122B, inclusive, or §1352(2) or §1353~~ 11 Del.C. §§763 through 780B and §§1108, 1112B and §1352 through §1353].

**"Criminal Violent Felony Offense, Commission of"** ~~[shall mean means]~~ the Commission by a student of any violent felony as specified in 11 Del.C. §4201(c).

**"Cyberbullying"** ~~[shall mean means]~~ the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.

**"Dangerous Instrument(s) Instrument Possession/Concealment/Sale"** ~~[shall mean means]~~ the unauthorized ~~[Possession/concealment/sale possession, concealment or sale]~~ possession, concealment or sale by a student in the School Environment of any instrument, article or substance which is readily capable of causing serious physical injury or death.

**"Deadly Weapon(s) Weapon Possession/Concealment/Sale"** ~~[shall mean means]~~ the ~~[Possession, possession,]~~ concealment, or sale of a Deadly Weapon in the School Environment.

**"Defiance of School Authority"** ~~[shall mean: means:]~~ (1) A verbal or non-verbal refusal to immediately comply with a reasonable request from school personnel, or refusal to identify oneself at the request of school personnel, and/or refusal to comply with disciplinary action; or (2) A verbal or non-verbal display of disrespect and/or uncivil behavior toward school personnel which either causes a substantial disruption or material interference with school activities.

**"Disorderly Conduct"** ~~[shall mean means]~~ conduct in the School Environment which causes public inconvenience, annoyance or alarm or creates a risk thereof by: engaging in fighting or violent tumultuous or threatening behavior or making an unreasonable noise or an offensively coarse utterance or gesture or display or addressing, abusive language to any person present.

**"Distribution of Drugs and/or Alcohol and/or Drug Paraphernalia"** ~~[shall mean means]~~ the sale, transfer, or ~~Distribution~~ distribution in school, on school property, or on school field trip of ~~Drugs or Alcohol~~ drugs or alcohol.

**"Extortion"** ~~[shall mean means]~~ to obtain or attempt to obtain money, goods, services, or information from another by force or the threat of force.

**"Felony Theft (\$1500 or more)"** ~~[shall mean: means:]~~ (a) When a person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it; or (b) When a person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of Theft, and fraudulently converts the property to the person's own use.

The Theft is considered a felony when the value of the property received, retained, or disposed of is \$1500 or more or the victim is 62 years of age or older, or an "adult who is impaired" as defined in §3902(2) of Title 31, or a "person with a disability" as defined in §3901(a)(2) of Title 12.

**"Fighting" [~~shall mean means~~]** any aggressive physical altercation between two or more individuals.

**"Gambling" [~~shall mean means~~]** participation in games of chance for money or other things of value.

**"Gun Free School's Schools Violation" [~~shall mean means~~]** the prohibited bringing to school, or Possession possession while in school of a Firearm firearm by a student.

**"Harassment" [~~shall mean means~~]** any actions or statements made with the intent to harass, annoy, or alarm another person which: A) insults, taunts, or challenges the other person or; B) is a cause of alarming or distressing conduct which serves no legitimate purpose and is done in a manner which the actor knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress.

**"Inhalant Abuse" [~~shall mean means~~]** chemical vapors that are inhaled for their mind-altering effects.

**"Medications: Inappropriate Use or Possession" [~~shall mean means~~]** Possessing or using Nonprescription Medication or Prescription Drugs of any type in the School Environment in violation of 14 DE Admin. Code 612.

**"Misuse of Technology" [~~shall mean: means:]~~**

The use of school technology equipment in:

Soliciting, using, receiving or sending pornographic or obscene material; or

Accessing unauthorized email; or

The unauthorized downloading and/or installing of files; or

Intentionally damaging technology equipment in the School Environment; or

A situation in which a student deliberately:

Tampers with, damages, alters, accesses, crashes, or corrupts the computer/communications system in the School Environment resulting in the loss or corruption of information or the ability of the system to operate; or

In any way disrupts or degrades the school or District's technology infrastructure.

**"Offensive Touching" [~~shall mean means~~]** intentionally touching another person either with a member of his or her body or with any instrument, knowing that the person is thereby likely to cause offense or alarm to such other person; or Intentionally striking another person with saliva, urine, feces or any other bodily fluid, knowing that the person is thereby likely to cause offense or alarm to such other person.

**"Pornography" [~~shall mean means~~]** the Possession possession, sharing, or production of any known obscene material in the School Environment.

**"Rape or Attempted Rape" [~~shall respectively mean means~~]** sexual intercourse and attempted Sexual Intercourse without consent of the victim in both cases.

**"Reckless Burning" [~~shall mean means~~]** when a person intentionally or recklessly starts a fire or causes an explosion and recklessly places a building or property in danger of destruction or damage or places another person in danger of physical injury.

**"Repeated Violations of Student Code of Conduct" [~~shall mean means~~]** five or more violations of the school's Code of Conduct within a school year, excluding chronic infractions for tardiness or unexcused absences to school/class.

**"Sexual Assault" [~~shall mean means~~]** any unwanted sexual behavior committed by a perpetrator who is a stranger to the victim or by a perpetrator who is known by the victim or related to the victim by blood, marriage or civil union. Behaviors that fall under this definition include but are not limited to: sexual harassment as defined in §763 of Title 11; sexual contact as defined in §761(~~f~~) of Title 11; Sexual Intercourse as defined in §761(~~g~~) of Title 11; sexual penetration as defined in §761(~~h~~) of Title 11; and child sexual abuse as defined in §901 of Title 10.

**"Sexual Misconduct"** ~~[shall mean means]~~ a consensual sexual ~~[act(s) act or acts]~~ between ~~[two]~~ individuals within the School Environment.

**"Stealing"** means taking, exercising control over or obtaining property of another person intending to deprive that person of it or appropriate it.

**"Steroids Possession and/or Use"** ~~[shall mean means]~~ the unlawful ~~[Use or Possession use or possession]~~ of steroids.

**"Tampering with Public Records"** ~~[shall mean means]~~ a person knowingly without valid authorization removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any original record or other written material filed with, deposited in or otherwise constituting a record of a public office or public servant.

**"Teen Dating Violence"** ~~[shall mean means]~~ assaultive, threatening or controlling behavior, including stalking as defined in 11 Del.C. §1312, that one person uses against another person in order to gain or maintain power or control in a current or past relationship. The behavior can occur in both heterosexual and same sex relationships, and in serious or casual relationships.

**"Terroristic Threatening"** ~~[shall mean means]~~ when: (1) A person threatens to commit any Crime likely to result in death or in serious injury to person or property; or (2) A person commits an act with intent of causing an individual to believe that the individual has been exposed to a substance that will cause the individual death or serious injury.

**"Terroristic Threatening - Security Threat"** ~~[shall mean means]~~ when a person makes a false statement or statements: (1) Knowing that the statement or statements are likely to cause evacuation in the School Environment; (2) Knowing that the statement or statements are likely to cause serious inconvenience in the School Environment; or (3) In reckless disregard of the risk of causing terror or serious inconvenience in the School Environment.

**"Unlawful Sexual Contact III"** ~~[shall mean means]~~ when a student has sexual contact with another person or causes the victim to have sexual contact with the student or a third person and the student knows that the contact is either offensive to the victim or occurs without the victim's consent.

**"Use and/or Possession of a Drug and/or Alcohol and/or Drug Paraphernalia"** ~~[shall mean, means]~~ that in the School ~~[Environment, Environment]~~ a student unlawfully ~~Possesses, Uses~~ possesses, uses or is under the influence of Alcohol, a Drug, Drug Paraphernalia, ~~[alcohol, a drug, drug paraphernalia, Alcohol, a Drug, Drug Paraphernalia,]~~ or any substance or paraphernalia consistent with the definitions of these substances or paraphernalia.

**"Violation of Behavior Contract"** ~~[shall mean means]~~ the failure of a student to comply with the provisions of any behavior contract between the student, ~~his/her~~ the student's legal guardian, and the school.

**[4.0 Effective Date**

~~This regulation shall become effective for School Codes of Conduct in the 2014-15 school year.]~~

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 4167 (14 Del.C. §§122(b)(2) & 4167)

14 DE Admin. Code 851

**REGULATORY IMPLEMENTING ORDER**

**851 K to 12 Comprehensive Health Education Program**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 Del.C. §§122 (b)(2) and 4167, the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 851 K to 12 Comprehensive Health Education Program. This

regulation is being amended to include definitions related to drug use prevention and sexual consent to align with Senate Bill 78 of the 150<sup>th</sup> General Assembly, and to indicate that the hours of health education noted herein are minimum requirements.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on November 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from students of Newark Charter School, the American Cancer Society's Cancer Action Network, the Delaware Health and Social Services' Division of Public Health, the Governor's Advisory Council for Exceptional Citizens and the American Lung Association.

Several comments suggested the Department consider adding guidance within the regulation on topics including, but not limited to, reproductive health, mental health, abstinence, tobacco, social/emotional health and healthy eating. These suggestions are beyond the scope of the original proposed amendments. The comments received warrant consideration and further discussion with district, charter and other stakeholder groups to ensure the regulation is updated in a comprehensive manner based upon current best practices, terminology, etc.

Comments received which were pertinent to the proposed amendments suggested the Department consider the following: (1) different focuses being given to repetitive curriculums (such as drugs and alcohol) annually or at school transitions in order to be more interesting to students. The Department notes that in subsection 2.1.9 language was added in the proposed regulation, which was supplied by students, to specifically note that "instructional methods (be used) that encourage student engagement"; (2) that Promising Practices and speakers have qualifying criteria to ensure they are high quality instruction, that they prohibit any education sponsored or delivered by tobacco industry representatives, and that they do not promote biased programming. As per subsection 2.1.7.1, the Department will provide a list of Evidence-based programs and Promising Practices that may be used by school districts and charter schools; (3) that the term "health" be changed to "health outcomes" in subsection 2.1, that subsection 2.1.1 be further clarified to include reference to "facilitate" instead of "coordinate." The Department agrees with clarifying "health" to be "health outcomes" in subsection 2.1 and believes using the word "coordinate" is more appropriate in the first part of subsection 2.1.1 and "facilitate" in the latter part of subsection 2.1.1, and those changes in the regulation; (4) consider requiring schools to implement Evidence-based or evidence-informed health education for students relative to healthy eating and physical activity. The Department will work with the districts and charter schools on identifying high quality instructional materials for these specific topics; (5) separating and further clarifying the definitions of "Evidence-based," "Evidence-informed," and "Promising Practices". Because of varying definitions across disciplines, the Department clarified the definition of "Evidence-based" and removed most references to "Evidence-informed" from the regulation. The Department also clarified references to Promising Practices in subsections 2.1.7, 2.1.8 and 2.1.9; (6) teaching "Consent" and respecting other's personal boundaries to those in grades below seventh with an evidence-based or evidence-informed curriculum as children are capable of understanding this concept at a younger age. The Department notes that pursuant to 14 **Del.C.** §4163 that beginning in the 2019-2020 school year there is a requirement for districts and charter schools to instruct Pre-K to sixth grade students about personal body safety. This is known as Erin's Law or Senate Bill 102 of the 149<sup>th</sup> General Assembly; (7) promoting participation by students with disabilities and ensure students with disabilities are not excluded from accessing such content at levels appropriate for their age and cognitive functioning. The Department notes that this regulation covers comprehensive health education programs for all children in grades K-12, which includes students with disabilities. Other minor grammatical changes were made in the regulation.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program in order to include definitions related to drug use prevention and sexual consent to align with Senate Bill 78 of the 150<sup>th</sup> General Assembly, and to indicate that the hours of health education noted herein are minimum requirements.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program

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** 851 K to 12 Comprehensive Health Education Program amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program 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 January 16, 2020. 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 16<sup>th</sup> day of January 2020.  
**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education  
Approved this 16<sup>th</sup> day of January 2020

#### State Board of Education

Whitney Townsend Sweeney, President	Nina Lou Bunting (absent)
Audrey J. Noble, Ph.D., Vice President	Wali W. Rushdan, II
Candace Fifer (absent)	Provey Powell, Jr. (voted against the motion)
Vincent Lofink	

### 851 K to 12 Comprehensive Health Education Program

#### 1.0 Definitions

In this regulation, the following terms and words shall have the following meaning unless the context clearly indicates otherwise:

"Consent" means the unambiguous, voluntary, and freely given agreement by all participants in each physical act in the course of sexual activity, including respect for personal boundaries. Consent does not include any of the following: (a) the lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another individual in fear or (b) a current or previous dating, social or sexual relationship.

"Department" means the Delaware Department of Education.

"Evidence-based" [or "~~Evidence-informed~~"] means strategies, activities, or approaches, which have been shown through scientific research and evaluation to be effective at preventing or delaying a negative outcome.

"Promising Practices" means programs and strategies that have strong quantitative and qualitative data showing positive outcomes, but does not yet have enough research or replication to support generalizable outcomes.

#### 4.02.0 Program Requirements

4.42.1 Each school district and charter school shall have a sequential, skill-based K to 12 Comprehensive Health Education Program based on the Delaware Health Education ~~Standards~~ Standards, ~~that establishes~~ The program shall establish a foundation of understanding the relationship between personal behavior and health ~~health~~ [health, health outcomes,] and shall include at a minimum the following:

- ~~4.1.12.1.1~~ Identification of a ~~district-level~~ district-level person to coordinate the district program and a coordinator in each ~~building school~~ to assure compliance at the ~~building school~~ level. Each charter school shall identify a person to ~~[coordinate facilitate]~~ the program for the charter school.
- ~~4.1.22.1.2~~ Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and ~~drug-free~~ drug-free schools and communities to serve as members of the ~~district, school or charter school~~ Consolidated Application Planning Committee.
- ~~4.1.32.1.3~~ The use of the state content standards for health education for grades K to 12 to address the core concepts: tobacco, alcohol and other drugs, injury prevention and safety, nutrition and physical activity, family life and sexuality, personal health and wellness, mental health and community and environmental health with minimum hours of instruction as follows:
- ~~4.1.3.42.1.3.1~~ In grades K to 4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which at least ten (10) hours, in each grade, must address drug and alcohol education.
- ~~4.1.3.22.1.3.2~~ In grades 5 and 6, a minimum of thirty five (35) hours in each grade of comprehensive health education and family life education of which at least fifteen (15) hours, in each grade, must address drug and alcohol education.
- ~~4.1.3.32.1.3.3~~ In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education and family life education of which at least fifteen (15) hours, in each grade, must address drug and alcohol education. If all of the ~~60~~ sixty (60) hours are provided in one year ~~at~~ in grade 7 or 8, an additional fifteen (15) hours of drug and alcohol education must be provided in the other grade.
- ~~4.1.3.42.1.3.4~~ In grades 9 to 12, one half (1/2) credit of comprehensive health education is required for graduation of which at least fifteen (15) hours of this 1/2 credit course must address drug and alcohol education. In addition, no less than two (2) hours of this 1/2 credit course shall include a cardiopulmonary resuscitation (CPR) instructional program which uses the most current ~~evidence-based~~ Evidence-based emergency cardiovascular care guidelines, and incorporates psychomotor skills learning into the instruction, use of an Automated External Defibrillator (AED) as well as a component on the ~~life-saving~~ life-saving and ~~life enhancing~~ life-enhancing effects of organ and tissue donation. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug and alcohol education must be provided for all students. ~~CPR instruction, use of an AED and organ/tissue donation awareness shall be integrated into each high school Health Education Program no later than the 2015-2016 school year.~~
- ~~4.1.42.1.4~~ Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from ~~high-risk~~ high-risk behaviors.
- ~~4.1.52.1.5~~ Inclusion of the core concepts of ~~nutrition and~~ nutrition, family life and sexuality ~~implemented through Family and Consumer Science courses.~~
- ~~4.1.62.1.6~~ Inclusion of research-based fire safety education in grades kindergarten through grade 6.
- ~~4.1.72.1.7~~ Inclusion of an ~~evidence-based~~ Evidence-based tobacco, alcohol, drug and interpersonal violence prevention program. ~~[For purposes of this subsection, Evidence-based may include Promising Practices and components such as guest speakers, those with lived experience and may be taught through other subjects. Promising Practices may be used to supplement instruction.]~~
- ~~2.1.7.1~~ The Department shall prepare and distribute on its website a list of Evidence-based and Promising Practices for tobacco, alcohol, drug, and interpersonal violence prevention programs and resources that may be used by school districts or charter schools.
- ~~2.1.7.2~~ A description of the method or methods used to implement and review for the effectiveness of the program or programs shall be reported to the Department no later than August 2021.
- ~~2.1.8~~ Inclusion of [Evidence-informed, Evidence-based, if available, or evidence-informed,] age- and developmentally-appropriate instruction on the meaning of Consent and respecting others'

~~personal boundaries shall be provided by each school district and charter school serving one (1) or more of the grades 7 through 12 no later than the 2020-2021 school year. [For the purposes of this subsection, Evidence-informed may include Promising Practices and components such as guest speakers, those with lived experience and may be taught through other subjects.]~~

~~4.1.82.1.9 The use of effective instructional methods as demonstrated in sound research. Inclusion of instructional methods that encourage student engagement in the core concepts and skills inclusive of accessing information, [self-management, self-management,] analyzing internal and external influences, interpersonal communication, decision making and making, goal setting and advocacy. [These methods may include guest speakers or those with lived experience. Topics included in the K to 12 Comprehensive Health Program may be taught or supplemented through other subjects.]~~

~~4.1.92.1.10 A description of the method(s) method or methods used to implement and evaluate the effectiveness of the program shall be reported upon request of to the Department annually by November 15.~~

### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))  
14 DE Admin. Code 1513

### REGULATORY IMPLEMENTING ORDER

#### 1513 Denial of Licenses and Permits

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. Sections 1203 and 1205(b), the Delaware Department of Education (“Department”), in consultation and cooperation with the Professional Standards Board, is amending 14 DE Admin. Code 1513 Denial of Licenses and Permits. The regulation sets forth rules of practice and procedure concerning license denial actions and is being amended under the provision of 29 Del.C. §10113(b)(2). The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 Del.C. §10113(b)(2).

#### II. FINDINGS OF FACT

The Department finds that the regulation sets forth rules of practice and procedure concerning license denial actions. Accordingly, the Department finds that it is appropriate to amend 14 DE Admin. Code 1513 Denial of Licenses and Permits.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 DE Admin. Code 1513 Denial of Licenses and Permits. Therefore, pursuant to 14 Del.C. §§1203 and 1205(b), 14 DE Admin. Code 1513 Denial of Licenses and Permits, attached hereto as Exhibit “A,” is hereby amended.

#### IV. TEXT AND CITATION

The text of 14 DE Admin. Code 1513 Denial of Licenses and Permits adopted hereby shall be in the form attached hereto as Exhibit “A” and said regulation shall be cited as 14 DE Admin. Code 1513 Denial of Licenses, Standard Certificates, and Permits in the Administrative Code of Regulations for the Department.

#### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 14<sup>th</sup> day of February, 2020.  
Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

## 1513 Denial of Licenses, Standard Certificates, and Permits

### 1.0 Content

This regulation shall apply to the denial of a license and standard certificate for educators pursuant to 14 **Del.C.** §1217 and a permit for paraprofessionals pursuant to 14 **Del.C.** §1205(b).

### 2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"**Advanced License**" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1213 and §1214.

"**Continuing License**" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1211 and §1212.

"**Immorality**" means conduct which is inconsistent with the rules and principles of morality expected of an educator or paraeducator and may reasonably be found to impair an educator's or paraeducator's effectiveness by reason of his or her unfitness or otherwise.

"**Initial License**" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1210.

"**Nolo Contendere**" means a plea by a defendant in a criminal prosecution that, without admitting guilt, subjects him or her to conviction but does not preclude him or her from denying the truth of the charges in a collateral proceeding.

"**Paraeducator**" means a paraprofessional as it is used in 14 **Del.C.** §1205(b). Paraeducators are not "educators" within the meaning of 14 **Del.C.** §1202(5).

"**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.

"**Standards Board**" means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

### 3.0 Grounds for Denial

3.1 The Department may deny an application and refuse to issue a license, standard certificate, or permit based on one or more of the following grounds:

3.1.1 Failure to meet the qualifications for an Initial License as provided in 14 **DE Admin. Code** 1510 Issuance of Initial License;

3.1.2 Failure to meet the qualifications for a Continuing License as provided in 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License;

3.1.3 Failure to meet the qualifications for an Advanced License as provided in 14 **DE Admin. Code** 1512 Issuance and Renewal of Advanced License;

3.1.4 Failure to meet the qualifications for a Paraeducator Permit as provided in 14 **DE Admin. Code** 1517 Paraeducator Permit; or

3.1.5 Failure to meet the qualifications for the standard certificate sought as provided in the applicable regulation:

3.1.5.1 14 **Del. Admin. Code** 1520 Early Childhood Teacher;

3.1.5.2 14 **Del. Admin. Code** 1521 Elementary Teacher;

3.1.5.3 14 **Del. Admin. Code** 1522 Elementary School Counselor;

- 3.1.5.4 14 Del. Admin. Code 1531 Middle Level English Language Arts Teacher;
- 3.1.5.5 14 Del. Admin. Code 1532 Middle Level Mathematics Teacher;
- 3.1.5.6 14 Del. Admin. Code 1533 Middle Level Science Teacher;
- 3.1.5.7 14 Del. Admin. Code 1534 Middle Level Social Studies Teacher;
- 3.1.5.8 14 Del. Admin. Code 1539 Health Education Teacher;
- 3.1.5.9 14 Del. Admin. Code 1540 Secondary English Language Arts Teacher;
- 3.1.5.1014 Del. Admin. Code 1542 Secondary Mathematics Teacher;
- 3.1.5.1114 Del. Admin. Code 1543 Secondary Science Teacher;
- 3.1.5.1214 Del. Admin. Code 1544 Secondary Social Studies Teacher;
- 3.1.5.1314 Del. Admin. Code 1545 Secondary School Counselor;
- 3.1.5.1414 Del. Admin. Code 1549 Dance Teacher;
- 3.1.5.1514 Del. Admin. Code 1550 AgriScience Teacher;
- 3.1.5.1614 Del. Admin. Code 1551 Business Education Teacher;
- 3.1.5.1714 Del. Admin. Code 1553 Driver Education and Traffic Safety Education Teacher;
- 3.1.5.1814 Del. Admin. Code 1554 Family and Consumer Sciences Teacher;
- 3.1.5.1914 Del. Admin. Code 1555 Marketing Education Teacher;
- 3.1.5.2014 Del. Admin. Code 1556 School to Work Transition Teacher;
- 3.1.5.2114 Del. Admin. Code 1557 Technology Education Teacher;
- 3.1.5.2214 Del. Admin. Code 1558 Theater Teacher;
- 3.1.5.2314 Del. Admin. Code 1559 Skilled and Technical Sciences Teacher;
- 3.1.5.2414 Del. Admin. Code 1560 Art Teacher;
- 3.1.5.2514 Del. Admin. Code 1561 Bilingual Teacher;
- 3.1.5.2614 Del. Admin. Code 1562 Teacher of English Learners;
- 3.1.5.2714 Del. Admin. Code 1563 Music Teacher;
- 3.1.5.2814 Del. Admin. Code 1564 Physical Education Teacher;
- 3.1.5.2914 Del. Admin. Code 1565 World Language Teacher;
- 3.1.5.3014 Del. Admin. Code 1570 Early Childhood Exceptional Children Special Education Teacher;
- 3.1.5.3114 Del. Admin. Code 1571 Special Education Teacher of Students with Disabilities;
- 3.1.5.3214 Del. Admin. Code 1572 Teacher of Students Who Are Gifted and Talented;
- 3.1.5.3314 Del. Admin. Code 1573 Teacher of Students with Autism or with Severe Intellectual Disabilities;
- 3.1.5.3414 Del. Admin. Code 1574 Teacher of Students Who Are Deaf or Hard of Hearing;
- 3.1.5.3514 Del. Admin. Code 1575 Teacher of Students with Visual Impairments;
- 3.1.5.3614 Del. Admin. Code 1580 School Library Media Specialist;
- 3.1.5.3714 Del. Admin. Code 1581 School Reading Specialist;
- 3.1.5.3814 Del. Admin. Code 1582 School Nurse;
- 3.1.5.3914 Del. Admin. Code 1583 School Psychologist;
- 3.1.5.4014 Del. Admin. Code 1584 School Social Worker;
- 3.1.5.4114 Del. Admin. Code 1591 School Principal and Assistant School Principal;
- 3.1.5.4214 Del. Admin. Code 1592 Certified Central Office Personnel;
- 3.1.5.4314 Del. Admin. Code 1593 Superintendent and Assistant Superintendent; or
- 3.1.5.4414 Del. Admin. Code 1594 Special Education Director; or
- 3.1.5.3.1.6 For any of the following causes:
- 3.1.5.43.1.6.1 Obtaining or attempting to obtain a license, certificate, or permit by fraudulent means or through misrepresentation of material facts;
- 3.1.5.23.1.6.2 Falsifying official school records, documents, statistics, or reports;

- ~~3.1.5.33.1.6.3~~ Knowingly violating any of the provisions of the state assessment system set forth in 14 **Del.C.** §172;
- ~~3.1.5.43.1.6.4~~ Pleading guilty or Nolo Contendere with respect to, or is convicted of, any crime against a child constituting a misdemeanor, except for unlawful sexual contact in the third degree in violation of 11 **Del.C.** §767;
- ~~3.1.5.53.1.6.5~~ Pleading guilty or Nolo Contendere with respect to, or is convicted of, possession of a controlled substance or a counterfeit controlled substance classified as such in Schedule I, II, III, IV, or V of 16 **Del.C.** Ch. 47;
- ~~3.1.5.63.1.6.6~~ Immorality, incompetence, misconduct in office, wilful neglect of duty, disloyalty, or misconduct involving any cause for suspension or revocation of a license, certificate, or permit;
- ~~3.1.5.73.1.6.7~~ Having a license, certificate, or permit suspended, revoked, or voluntarily surrendered in another jurisdiction for cause which would be grounds for suspension or revocation;
- ~~3.1.5.83.1.6.8~~ Pleading guilty or Nolo Contendere with respect to, or is convicted of, any of the following:
  - ~~3.1.5.8.13.1.6.8.1~~ Any crime constituting the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance or counterfeit controlled substance as classified in Schedule I, II, II, IV, or V of 16 **Del.C.** Ch. 47;
  - ~~3.1.5.8.23.1.6.8.2~~ Any crime constituting a violent felony as defined in 11 **Del.C.** §4201(c);
  - ~~3.1.5.8.33.1.6.8.3~~ Any crime against a child constituting a felony, or unlawful sexual contact in the third degree in violation of in violation of 11 **Del.C.** §767;
  - ~~3.1.5.8.43.1.6.8.4~~ Any crime constituting a felony sexual offense;
  - ~~3.1.5.8.53.1.6.8.5~~ Any crime constituting a felony offense against public administration involving bribery, improper influence, or abuse of office; or
- ~~3.1.5.93.1.6.9~~ Committing a sexual offense against a child.

#### 4.0 Right to Hearing, Burden of Proof, and Standards Board Hearing Procedures

- 4.1 The Department shall not take action to deny a license, a standard certificate, or a permit without providing the applicant with written notice of the reasons for denial and an opportunity for a full and fair hearing before the Standards Board.
    - ~~4.1.1 The notice of denial shall be sent by certified mail, return receipt requested to the applicant's last known mailing address and shall give notice that a full and fair hearing may be requested before the Standards Board.~~
  - 4.2 The burden of proof in a license, standard certificate, or permit denial action shall be on the applicant to show by a preponderance of the evidence that he or she should not be denied a license, standard certificate, or permit because he or she meets the qualifications for a license, standard certificate, or permit pursuant to the applicable laws and regulations or he or she did not engage in misconduct as provided in subsection ~~3.1.5.3.1.6~~.
  - 4.3 Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.
-

# FINAL REGULATIONS

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 & 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1515

### REGULATORY IMPLEMENTING ORDER

#### 1515 Hearing Procedures and Rules

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Sections 1203 and 1205(b), the Delaware Department of Education ("Department"), in consultation and cooperation with the Professional Standards Board, is amending 14 **DE Admin. Code** 1515 Hearing Procedures and Rules. The regulation sets forth rules of practice and procedure concerning hearings used by the Professional Standards Board and is being amended under the provision of 29 **Del.C.** §10113(b)(2). The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §10113(b)(2).

#### II. FINDINGS OF FACT

The Department finds that the regulation sets forth rules of practice and procedure concerning hearings used by the Professional Standards Board. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1515 Hearing Procedures and Rules. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1515 Hearing Procedures and Rules, attached hereto as Exhibit "A," is hereby amended.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1515 Hearing Procedures and Rules adopted hereby shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1515 Hearing Procedures and Rules in the Administrative Code of Regulations for the Department.

#### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 24<sup>th</sup> day of February, 2020.

**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

#### 1515 Hearing Procedures and Rules

#### 1.0 Applicability, Construction, and Waiver

- 1.1 This regulation shall apply to ~~license or~~ license, certificate, and permit denial actions under 14 **Del.C.** §§1205(b) and 1217 and ~~license or~~ license, certificate, and permit disciplinary actions under 14 **Del.C.** §§1205(b) and 1218.
- 4.2 This regulation shall be ~~liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the Standards Board's authority under 14~~ **Del.C.** Ch. 12 and with the Administrative Procedures Act under 29 **Del.C.** Ch. 101.
- 4.31.2 The Standards Board may waive any of the procedures and rules in this regulation upon application or upon its own initiative for good cause and to the extent consistent with the law.

## 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.

"**Executive Director**" means the Executive Director of the Delaware Professional Standards Board.

"**Secretary**" means the Secretary of the Delaware Department of Education.

"**Standards Board**" means the Delaware Professional Standards Board established pursuant to 14 Del.C. §1201 or its designee.

## 3.0 License, Certificate, and Permit Denial Actions

### 3.1 Requests for a Hearing

3.1.1 An applicant may request a hearing by sending a request to the Executive Director.

3.1.2 The request must be sent within 20 calendar days from the date that the Department's notice was sent to the applicant.

3.1.3 The hearing will be scheduled in accordance with the Administrative Procedures Act (29 Del.C. Ch. 101).

3.1.4 Notice of the date, time, and place of the hearing shall be mailed to the applicant.

### 3.2 Prehearing Procedures and Rules

#### 3.2.1 Subpoena Requests

3.2.1.1 Requests for subpoenas for witnesses and other sources of evidence shall be mailed or hand-delivered to the Executive Director at least 15 business days before the date of the hearing.

3.2.1.1.1 Requests for subpoenas for witnesses shall specify the witness' name and address.

3.2.1.1.2 Requests for subpoenas for other sources of evidence shall specify the person or entity to whom the subpoena is directed, the person or entity's address, and the date by which the person or entity is to respond to the request.

3.2.1.2 The Standards Board shall issue subpoenas in accordance with the law.

3.2.1.3 The applicant is responsible for delivering the subpoena to the person or entity to whom the subpoena is directed. Proof of service of a subpoena shall be mailed or hand-delivered to the Standards Board.

#### 3.2.2 Witness List

3.2.2.1 A written list of witnesses the applicant intends to call during a hearing shall be mailed or hand-delivered to the Executive Director at least 5 business days prior to the hearing.

#### 3.2.3 Continuances, Adjournments, and Postponements

3.2.3.1 The Standards Board may continue, adjourn, or postpone proceedings for good cause at the request of an applicant or on its own initiative.

### 3.3 Hearing Procedures and Rules

3.3.1 The applicant has the burden of proof.

3.3.2 The Standards Board may permit the applicant to present opening and closing statements.

3.3.3 The Standards Board may take testimony, hear proof, and receive exhibits into evidence at a hearing.

3.3.3.1 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.

3.3.3.2 The Standards Board may exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence and limit unduly repetitive proof, rebuttal, and cross-examination in accordance with 29 Del.C. §10125(b).

3.3.4 Testimony shall be under oath or affirmation. The Standards Board may administer oaths to witnesses.

- 3.3.5 Any person who testifies as a witness shall also be subject to questions by the Standards Board.
- 3.3.6 Any document introduced into evidence at the hearing shall be marked by the Standards Board and shall be made a part of the record of the hearing.

#### 3.4 Post-hearing Rules and Procedures

- 3.4.1 The Standards Board may direct an applicant to submit a post-hearing brief. Post-hearing briefs shall be filed as directed by the Standards Board.
- 3.4.2 If the Standards Board has designated a hearing officer, the hearing officer shall prepare a proposed order in accordance with 29 Del.C. §10126.
- 3.4.3 The applicant shall have 20 calendar days from the date the proposed order is delivered to the applicant to submit in writing to the Standards Board any exceptions, comments, and arguments respecting the proposed order.
- 3.4.4 The Standards Board shall consider the entire record of the case, the hearing officer's proposed order, and any written exceptions, comments, and arguments thereto in reaching its final decision. The Standards Board's decision shall be incorporated in a final order which is signed and mailed to the applicant.

### **3.04.0 Requests for a Hearing License, Certificate, and Permit Disciplinary Actions**

#### 4.1 Requests for a Hearing

- ~~3.14.1.1~~ 3.14.1.1 A person ~~An~~ educator may request a hearing by mailing or hand-delivering a ~~written~~ request for a hearing to the Executive Director.

~~3.1.4~~ Requests shall not be sent by electronic mail, facsimile, or other electronic means.

~~3.24.1.2~~ The request shall:

~~3.2.14.1.2.1~~ 3.14.1.2.1 Be in writing;

~~3.2.24.1.2.2~~ 3.14.1.2.2 Be signed by the person making the request or the person's ~~educator or the educator's~~ counsel;

~~3.2.34.1.2.3~~ 3.14.1.2.3 Set forth the grounds for action in reasonable detail; and

~~3.2.4~~ Identify the source of the Standards Board's authority to decide the matter; and

~~3.2.54.1.2.4~~ 3.14.1.2.4 Provide the person's ~~educator's~~ preferred mailing address, phone number, and e-mail address.

~~3.3~~ Requests must be submitted to the Executive Director as follows:

~~3.3.1~~ For license or permit denial actions, requests must be postmarked or hand-delivered within 20 calendar days from the date that the Department's notice was mailed.

~~3.3.24.1.3~~ 3.14.1.3 For license or permit disciplinary actions, requests Requests must be postmarked or hand-delivered sent within 30 calendar days from the date that the Secretary's notice was mailed sent to the educator.

~~3.4~~ A copy of the request shall be provided to the Department, in license or permit denial actions, or to the Secretary, in license or permit disciplinary actions.

~~3.5~~ The Executive Director shall provide the request for a hearing to the Standards Board at its next regularly scheduled meeting.

~~3.64.1.4~~ 3.14.1.4 Upon receipt of a request that meets all of the requirements set forth in subsection ~~3.24.1.2~~, the Standards Board may decide to conduct the hearing itself or designate a hearing officer from a list of hearing officers approved by the Standards Board to conduct the hearing.

~~3.6.4~~ The hearing officer designated shall have the same authority, powers, and duties as the Standards Board for the purpose of conducting the hearing.

~~3.7~~ The Standards Board may direct the person or agency taking official action to file a written response to the request for a hearing.

#### 4.2 Prehearing Procedures and Rules

##### 4.2.1 Scheduling the Hearing

4.2.1.1 Generally, hearings are scheduled for 1 full day from 8:30 a.m. to 4:30 p.m.

## 4.2.1.2 Requests for Additional Time

4.2.1.2.1 If a party believes that the presentation of the party's case cannot reasonably be accomplished in one half of the allotted time or less, then the party may mail or hand-deliver a written request for additional time to the Executive Director within 10 days of receipt of the notice of hearing. The request shall specify the reasons for the request. The party shall provide a copy of the request to the other party at the same time.

4.2.1.2.2 The Standards Board may grant the request upon a showing of good cause.

4.2.2 Notice of the Hearing - Notice of the date, time, and place of the hearing shall be mailed to the educator.

## 4.2.3 Requests for a Public Hearing

4.2.3.1 An educator shall be deemed to have consented to a closed hearing unless the educator notifies the Executive Director in writing that a public hearing is requested.

4.2.3.2 A request for a public hearing must be mailed or hand-delivered to the Executive Director within 5 business days of the receipt of the notice in subsection 4.2.2. A copy of the request shall be provided to the Department at the same time.

## 4.2.4 Subpoena Requests

4.2.4.1 Requests for subpoenas for witnesses and other sources of evidence shall be mailed or hand-delivered to the Executive Director at least 15 business days before the date of the hearing.

4.2.4.1.1 Requests for subpoenas for witnesses shall specify the witness' name and address.

4.2.4.1.2 Requests for subpoenas for other sources of evidence shall specify the person or entity to whom the subpoena is directed, the person or entity's address, and the date by which the person or entity is to respond to the request.

4.2.4.2 The Standards Board shall issue subpoenas in accordance with the law.

4.2.4.3 The party requesting a subpoena is responsible for delivering the subpoena to the person or entity to whom the subpoena is directed. Proof of service of a subpoena shall be mailed or hand-delivered to the Standards Board.

4.2.5 Witness List - A written list of witnesses a party intends to call during a hearing shall be mailed or hand-delivered to the Executive Director at least 5 business days prior to a hearing. A copy of the list shall be mailed to the other party at the same time.

## 4.2.6 Exchange of Documents

4.2.6.1 The parties shall exchange documents they intend to introduce at the hearing at least 5 business days prior to the hearing.

4.2.6.2 The documents shall be labeled "Petitioner" or "Department" and numbered in sequential order (1, 2, 3).

4.2.7 Prehearing Conferences - The Standards Board may hold prehearing conferences and teleconferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes, and to regulate and expedite the course of the hearing.

## 4.2.8 Continuances, Adjournments, and Postponements

4.2.8.1 The Standards Board may continue, adjourn, or postpone proceedings for good cause at the request of a party or on its own initiative.

4.2.8.2 Any request to continue, adjourn, or postpone a proceeding shall be submitted to the Executive Director in writing at least 3 business days before the date scheduled for the hearing. A copy of the request shall also be provided to the other party at the same time.

## 4.3 Hearing Procedures and Rules

4.3.1 The Department is the party with the burden of proof. The hearing will proceed with the Department first presenting its evidence and case. The educator may then present his or her case. The Department will then have an opportunity to present rebuttal evidence.

4.3.2 The Standards Board may permit the parties to present opening and closing statements.

- 4.3.3 The Standards Board may take testimony, hear proof, and receive exhibits into evidence at a hearing.
- 4.3.3.1 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.
- 4.3.3.2 The Standards Board may exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence and limit unduly repetitive proof, rebuttal, and cross-examination in accordance with 29 Del.C. §10125(b).
- 4.3.3.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection.
- 4.3.4 Testimony shall be under oath or affirmation. The Standards Board may administer oaths to witnesses.
- 4.3.5 Any person who testifies as a witness shall also be subject to cross examination by the other party and questions from the Standards Board.
- 4.3.6 Witnesses may be sequestered upon a party's request.
- 4.3.7 Any document introduced into evidence at the hearing shall be marked by the Standards Board and shall be made a part of the record of the hearing.
- 4.3.8 The party offering the document into evidence shall provide a copy of the document to the other party, the Standards Board, and counsel for the Standards Board.

#### 4.4 Post-hearing Rules and Procedures

- 4.4.1 The Standards Board may direct the parties to submit post-hearing briefs. Post-hearing briefs shall be filed as directed by the Standards Board.
- 4.4.2 If the Standards Board has designated a hearing officer, the hearing officer shall prepare a proposed order in accordance with 29 Del.C. §10126.
- 4.4.3 The parties shall have 20 calendar days from the date the proposed order is delivered to them to submit in writing to the Standards Board and the other party any exceptions, comments, and arguments respecting the proposed order.
- 4.4.4 The Standards Board shall consider the entire record of the case, the hearing officer's proposed order, and any written exceptions, comments, and arguments thereto in reaching its final decision. The Standards Board's decision shall be incorporated in a final order which is signed and mailed to the parties.

#### **4.0 Prehearing Procedures and Rules**

##### 4.1 Scheduling a Hearing

- 4.1.1 Generally, hearings are scheduled for 1 full day from 8:30 a.m. to 4:30 p.m.
- 4.1.1.1 If a party believes that the presentation of the party's case cannot reasonably be accomplished in one half of the allotted time or less, then the party may mail or hand-deliver a written request for additional time to the Executive Director within 10 days of receipt of the notice of hearing. The request shall specify the reasons for the request. The party shall provide a copy of the request to the other party at the same time.
- 4.1.1.2 The Standards Board may grant the request upon a showing of good cause.

##### 4.2 Notice of the Hearing

- 4.2.1 Notice of the date, time, and place of the hearing shall be mailed to the parties.

##### 4.3 Requests for a Public Hearing

- 4.3.1 A party shall be deemed to have consented to a closed hearing unless the party notifies the Executive Director in writing that a public hearing is requested.
- 4.3.1.1 The request must be mailed or hand-delivered to the Executive Director within 5 business days of the receipt of the notice in subsection 4.2. A copy of the request shall be provided to the other party at the same time.

##### 4.4 Subpoena Requests

- 4.4.1 ~~Requests for subpoenas for witnesses and other sources of evidence shall be mailed or hand-delivered to the Executive Director at least 15 business days before the date of the hearing. A copy of the request shall be provided to the other party at the same time.~~
    - 4.4.1.1 ~~Requests for subpoenas for witnesses shall specify the witness' name and address.~~
    - 4.4.1.2 ~~Requests for subpoenas for other sources of evidence shall specify the person or entity to whom the subpoena is directed, the person or entity's address, and the date by which the person or entity is to respond to the request.~~
  - 4.4.2 ~~The Standards Board shall issue subpoenas in accordance with the law.~~
  - 4.4.3 ~~The party requesting a subpoena is responsible for delivering the subpoena to the person or entity to whom the subpoena is directed.~~
    - 4.4.3.1 ~~Proof of service of a subpoena shall be mailed or hand-delivered to the Standards Board.~~
  - 4.5 ~~Requests for a Stenographic Reporter~~
    - 4.5.1 ~~Any party may request the presence of a stenographic reporter at the hearing.~~
      - 4.5.1.1 ~~The request shall be mailed or hand-delivered to the Executive Director at least 10 business days prior to the date of the hearing. A copy of the request shall be provided to the other party at the same time.~~
    - 4.5.2 ~~The requesting party shall be liable for the expense of the stenographic reporter and any transcript the party requests.~~
  - 4.6 ~~Witness List~~
    - 4.6.1 ~~A written list of witnesses a party intends to call during a hearing shall be mailed or hand-delivered to the Executive Director at least 5 business days prior to a hearing. A copy of the list shall be mailed to the other party at the same time.~~
    - 4.6.2 ~~The Standards Board may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.~~
  - 4.7 ~~Exchange of Documents~~
    - 4.7.1 ~~The parties shall exchange documents they intend to introduce at the hearing at least 5 business days prior to the hearing.~~
    - 4.7.2 ~~The documents shall be labeled "Petitioner" or "Department" and numbered in sequential order (1, 2, 3).~~
  - 4.8 ~~Prehearing Conferences~~
    - 4.8.1 ~~The Standards Board may hold prehearing conferences and teleconferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes, and to regulate and expedite the course of the hearing.~~
  - 4.9 ~~Continuances, Adjournments, and Postponements~~
    - 4.9.1 ~~The Standards Board may continue, adjourn, or postpone proceedings for good cause at the request of a party or on its or his or her own initiative.~~
    - 4.9.2 ~~Any request to continue, adjourn, or postpone a proceeding shall be submitted to the Executive Director in writing at least 3 business days before the date scheduled for the hearing. A copy of the request shall also be provided to the other party at the same time.~~
- 5.0 ~~Hearing Procedures and Rules~~**
- 5.1 ~~A verbatim record of the proceedings before the Standards Board will be made either electronically or stenographically, if a party submits a request under subsection 4.5.~~
  - 5.2 ~~The hearing will proceed with the party with the burden of proof first presenting its evidence and case. The other party may then present its case. The party with the burden of proof will then have an opportunity to present rebuttal evidence.~~
    - 5.2.1 ~~In license or permit denial actions, the applicant is the party with the burden of proof.~~
    - 5.2.2 ~~In license or permit disciplinary actions, the Department is the party with the burden of proof.~~
  - 5.3 ~~The Standards Board may permit the parties to present opening and closing statements.~~

- 5.4 The Standards Board may take testimony, hear proof, and receive exhibits into evidence at a hearing.
- 5.4.1 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.
- 5.4.2 The Standards Board may exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence and limit unduly repetitive proof, rebuttal, and cross-examination in accordance with 29 ~~Del.C.~~ §10125(b).
- 5.4.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection.
- 5.5 Testimony shall be under oath or affirmation.
- 5.5.1 The Standards Board may administer oaths to witnesses.
- 5.6 Any person who testifies as a witness shall also be subject to cross-examination by the other party and by the Standards Board.
- 5.7 Witnesses may be sequestered upon a party's request.
- 5.8 Any document introduced into evidence at the hearing shall be marked by the Standards Board and shall be made a part of the record of the hearing.
- 5.8.1 The party offering the document into evidence shall provide a copy of the document to the other party, the Standards Board, and counsel for the Standards Board.

## **6.0 Post hearing Rules and Procedures**

- 6.1 The Standards Board may direct the parties to submit post hearing briefs.
- 6.1.1 Post hearing briefs shall be filed as directed by the Standards Board.
- 6.2 If the Standards Board has designated a hearing officer, the hearing officer shall prepare a proposed order in accordance with 29 ~~Del.C.~~ §10126.
- 6.3 The parties shall have 20 calendar days from the date the proposed order is delivered to them to submit in writing to the Standards Board and the other party any exceptions, comments, and arguments respecting the proposed order.
- 6.3.1 The parties may agree to shorten or waive the comment period.
- 6.3.2 The parties may agree to consent to the hearing officer's proposed order.
- 6.3.2.1 When the parties consent to the hearing officer's recommendation, they shall send written notice to the Executive Director.
- 6.4 The Standards Board shall consider the entire record of the case, the hearing officer's proposed order, and any written exceptions, comments, and arguments thereto in reaching its final decision. The Standards Board's decision shall be incorporated in a final order which is signed and mailed to the parties.

## **7.05.0 Other Hearing Rules and Procedures**

### **7.15.1 Communications**

- 7.1.1 Pursuant to 29 ~~Del.C.~~ §10129, no member or employee of the Standards Board assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any person or party, except upon notice to and opportunity for all parties to participate.
- 7.1.1.1 Subsection 7.1.1 does not apply to communications required for the disposition of ex parte matters authorized by law or to communications by and among members of the Standards Board, the Standards Board's staff, and the Standards Board's counsel.
- 7.1.25.1.1 A In license, certificate, and permit disciplinary actions, a copy of any document filed with or submitted to the Standards Board or the hearing officer shall be provided to the other party or the other party's counsel.
- 7.1.35.1.2 Address of the Standards Board and Parties' Contact Information
- 7.1.3.15.1.2.1 Hand-delivered submissions shall be delivered to the Standards Board at the Townsend Building, 401 Federal Street, 2nd Floor, Dover, Delaware 19901.

~~7.1.3.25.1.2.2~~ Mailed submissions shall be delivered to the Standards Board at 401 Federal Street, Suite 2, Dover, Delaware 19901.

~~7.1.3.35.1.2.3~~ ~~Parties~~ Applicants and educators shall keep the Standards Board informed of their current mailing addresses, phone numbers, and email addresses.

## ~~7.25.2~~ Counsel

~~7.2.15.2.1~~ Any party to a proceeding before the Standards Board Applicants and educators may be represented by counsel.

~~7.2.25.2.2~~ The attorney representing a party an applicant or an educator in a proceeding before the Standards Board shall notify the Executive Director of the representation in writing as soon as practical. A In license, certificate, and permit disciplinary actions, a copy of the notice shall be provided to the ~~other party~~ the Department at the same time.

~~7.2.35.2.3~~ Attorneys who are not members of the Delaware Bar may be admitted pro hac vice ~~before the Standards Board pursuant to~~ in accordance with Rule 72 of the Rules of the Supreme Court of the State of Delaware.

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 & 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1595

### REGULATORY IMPLEMENTING ORDER

#### 1595 Certification Programs for Leaders in Education

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Sections 1203 and 1205(b), the Delaware Department of Education (“Department”), in consultation and cooperation with the Professional Standards Board, is repealing 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education under the provision of 29 **Del.C.** §10113(b)(5). Title 14, Chapter 12, Subchapter VI of the Delaware Code (14 **Del.C.** §§1260–1266) Alternative Routes for Teacher Licensure and Certification was amended effective June 28, 2018. The amendments provide that the Department, not the Professional Standards Board, shall promulgate rules and regulations to implement 14 **Del.C.** §§1260–1266. The Department has a regulation in place that addresses alternative routes for teacher licensure and certification programs (14 **DE Admin. Code** 290 Approval of Educator Preparation Programs). Because 14 **DE Admin. Code** 1595 is being repealed to be consistent with changes in basic law, it is exempt from the requirement of public notice and comment and is repealed informally in accordance with 29 **Del.C.** §10113(b)(5).

#### II. FINDINGS OF FACT

The Department finds that the regulation is being repealed to be consistent with the amendments to Title 14, Chapter 12, Subchapter VI of the Delaware Code (14 **Del.C.** §§ 1260–1266) Alternative Routes for Teacher Licensure and Certification that went into effect on June 28, 2018. Accordingly, the Department finds that it is appropriate to repeal 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education.

#### III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to repeal 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education, attached hereto as Exhibit “A,” is hereby repealed.

#### IV. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 14<sup>th</sup> day of February, 2020.  
 Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

### 1595 Certification Programs for Leaders in Education

#### 4.0 Content

This regulation shall apply to Certification Programs for Leaders in Education, pursuant to ~~14 DE Admin. Code 1591 School Principal and Assistant School Principal, 14 DE Admin. Code 1592 Certified Central Office Personnel, 14 DE Admin. Code 1593 Superintendent or Assistant Superintendent, and 14 DE Admin. Code 1594 Special Education Director.~~

#### 2.0 Definitions

2.1 The definitions set forth in ~~14 DE Admin. Code 1505 Standard Certificate~~, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**“Certified Central Office Personnel”** means Directors, Supervisors, Administrative Assistants, Coordinators, and Managers in instructional areas.

**“Cohort”** means a group of educators that begins and finishes a course of study or certification program as an entity.

**“School Principal”** means a School Principal or an Assistant School Principal.

**“Secretary”** means the Delaware Secretary of Education

**“Superintendent”** means a Superintendent or an Assistant Superintendent.

#### 3.0 Minimum Requirements for Leaders in Education Programs

##### 3.1 School Principal Certification Program

3.1.1 A School Principal Certification Program must include the following minimum components:

3.1.1.1 A minimum of two hundred (200) hours of graduate level coursework or the equivalent in professional development with a focus on the responsibilities of a school principal and aligned with ~~14 DE Admin. Code 1590 Delaware Administrator Standards, 14 DE Admin. Code 1597 Delaware Professional Teaching Standards, 14 DE Admin. Code 1598 Delaware Professional Development Standards and DPAS for Administrators.~~ The course work or equivalent professional development must be completed prior to a residency, internship or clinical experience;

3.1.1.2 A minimum of six hundred (600) hours of residency, internship, or clinical experience under the mentorship of a currently employed effective or highly effective building level administrator in a public school who is licensed in Delaware and holds a standard certificate under ~~14 DE Admin. Code 1591~~;

3.1.1.3 An additional one hundred (100) hours of professional development during and/or after the residency, internship or clinical experience in areas appropriate for a school principal;

3.1.1.4 Training and successful certification and calibration in DPAS; and

3.1.1.5 An evaluation process that includes evaluation of the participant for competency, and feedback regarding the clinical placements, mentors and the program's coursework or professional development.

##### 3.2 School Principal Course of Study

3.2.1 A School Principal Course of Study must include the following minimum components:

3.2.1.1 The course of study must have a focus on the responsibilities of a school principal and be aligned with ~~14 DE Admin. Code 1590 Delaware Administrator Standards, 14 DE Admin.~~

~~Code 1597 Delaware Professional Teaching Standards, 14 DE Admin. Code 1598 Delaware Professional Development Standards and DPAS for Administrators.~~

- ~~3.2.1.2 A minimum of eighteen (18) graduate level credit hours or their equivalent in professional development provided by a regionally accredited college or university;~~
- ~~3.2.1.3 A minimum of two hundred and forty (240) additional clinical hours equitably distributed within the course of study. The clinical hours must be completed under the mentorship of currently employed effective or highly effective building level administrators;~~
- ~~3.2.1.4 Training and successful certification and calibration in DPAS; and~~
- ~~3.2.1.5 An evaluation process that includes evaluation of the participant for competency, and evaluation of the course of study's effectiveness including the clinical placements, mentors, and the coursework or professional development.~~

**3.3 Certified Central Office Personnel Certification Program**

- ~~3.3.1 A Certified Central Office Personnel Program must include the following minimum components:~~
  - ~~3.3.1.1 A minimum of two hundred (200) hours of graduate level coursework or the equivalent in professional development aligned with 14 DE Admin. Code 1590 Delaware Administrator Standards, 14 DE Admin. Code 1597 Delaware Professional Teaching Standards, 14 DE Admin. Code 1598 Delaware Professional Development Standards and DPAS for Administrators, with a focus on the responsibilities of a Director, Supervisor, Administrative Assistant, Coordinator or Manager in an instructional area. The course work or equivalent professional development must be completed prior to a residency, internship or clinical experience;~~
  - ~~3.3.1.2 A minimum of six hundred (600) hours of a residency, internship or clinical experience under the mentorship of a currently employed effective or highly effective administrator in a public school system who is licensed in Delaware and holds a standard certificate under 14 DE Admin. Code 1592;~~
  - ~~3.3.1.3 An additional one hundred (100) hours of professional development during and/or after the residency, internship or clinical experience in areas appropriate for an instructional area Director, Supervisor, Administrative Assistant, Coordinator or Manager;~~
  - ~~3.3.1.4 Training and successful certification and calibration in DPAS; and~~
  - ~~3.3.1.5 An evaluation process that includes evaluation of the participant for competency, and evaluation of the program effectiveness including the clinical placements, mentors, and the program's coursework or professional development.~~

**3.4 Superintendent Certification Program**

- ~~3.4.1 A Superintendent Program must include the following minimum components:~~
  - ~~3.4.1.1 A minimum of two hundred and fifty (250) hours of graduate level coursework or the equivalent in professional development aligned with 14 DE Admin. Code 1590 Delaware Administrator Standards, 14 DE Admin. Code 1597 Delaware Professional Teaching Standards, 14 DE Admin. Code 1598 Delaware Professional Development Standards and DPAS for Administrators, with a focus on the responsibilities of a superintendent. The course work or equivalent professional development must be completed prior to a residency, internship or clinical experience;~~
  - ~~3.4.1.2 A minimum of six hundred (600) hours of a residency, internship or clinical experience under the mentorship of a currently employed effective or highly effective superintendent in a public school system who is licensed in Delaware and holds a standard certificate under 14 DE Admin. Code 1593;~~
  - ~~3.4.1.3 An additional one hundred (100) hours of professional development during and/or after the residency, internship or clinical experience in areas appropriate for a Superintendent;~~
  - ~~3.4.1.4 Training and successful certification and calibration in DPAS; and~~
  - ~~3.4.1.5 An evaluation process that includes evaluation of the participant for competency, and evaluation of the program effectiveness including the clinical placements, mentors, and the program's coursework or professional development.~~

### 3.5 ~~Special Education Director Certification Program~~

3.5.1 A Special Education Director Program must include the following minimum components:

- 3.5.1.1 A minimum of two hundred and fifty (250) hours of graduate level coursework or the equivalent in professional development aligned with 14 ~~DE Admin. Code~~ 1590 Delaware Administrator Standards, 14 ~~DE Admin. Code~~ 1597 Delaware Professional Teaching Standards, 14 ~~DE Admin. Code~~ 1598 Delaware Professional Development Standards and DPAS for Administrators, with a focus on exceptional children/special education. The course work or equivalent professional development must be completed prior to a residency, internship or clinical experience;
- 3.5.1.2 A minimum of six hundred (600) hours of a residency, internship or clinical experience under the mentorship of a currently employed effective or highly effective Special Education Director in a public school system who is licensed in Delaware and holds a standard certificate under 14 ~~DE Admin. Code~~ 1594;
- 3.5.1.3 An additional one hundred (100) hours of professional development during and/or after the residency, internship or clinical experience in areas appropriate for a Special Education Director;
- 3.5.1.4 Training and successful certification and calibration in DPAS; and
- 3.5.1.5 An evaluation process that includes evaluation of the participant for competency, and evaluation of the program effectiveness including the clinical placements, mentors, and the program's coursework or professional development.

### 4.0 ~~Application Approval Procedure~~

- 4.1 An application for a certification program pursuant to 14 ~~DE Admin. Code~~ 1595 Certification Programs for Leaders in Education will be reviewed in the following sequence:
  - 4.1.1 Applications must be submitted to the Standards Board well in advance of the prospective initiation of the program or course of study's cohort to allow for the review and approval process to be completed.
  - 4.1.2 A designee of the Standards Board will screen each application for completeness. Incomplete applications will not be processed and the applicant will be notified.
  - 4.1.3 The complete application will be forwarded to the Standards Board's Licensure and Certification Criteria Committee for initial review and recommendation. The complete application will also be forwarded to the Secretary or his designee.
  - 4.1.4 The recommendation and comments from the Standards Board's Licensure and Certification Criteria Committee shall be submitted to the Standards Board for consideration. The Standards Board shall decide upon a recommendation as to the approval of the program, the duration, and any special considerations or conditions.
  - 4.1.5 The Standards Board's recommendation shall be submitted to the Secretary for the final approval or denial of the certification program.
- 4.2 Programs are initially approved for two (2) cohorts. However if the recommendations of the Standards Board's Licensure and Certification Criteria Committee and the Standards Board are unanimous in their recommendation to approve for three (3) cohorts, the Secretary may approve the program for three (3) cohorts.
- 4.3 Program Renewal
  - 4.3.1 Renewal is necessary for continued program approval.
    - 4.3.1.1 The renewal request must be made at least nine (9) months prior to approval expiration and must contain an updated application including program success and evaluation information.
    - 4.3.1.2 The applicant must submit all requested information for continued approval.
    - 4.3.1.3 The applicant is responsible for establishing the effectiveness of the program.

- ~~4.3.1.4 A certification program may be renewed for up to an additional three (3) cohorts, contingent upon meeting all requirements.~~
- ~~4.3.2 The renewal application, including the program data and evaluations, and any additional information submitted by the applicant, shall be submitted to the Secretary and shall be considered in the approval determination.~~
- ~~4.3.3 A designee of the Secretary shall screen each renewal application for completeness. Incomplete applications will not be processed and the applicant will be notified. Complete renewal applications will be forwarded to the State Board.~~
  - ~~4.3.3.1 The complete renewal application shall be forwarded to the State Board. The Secretary or designee shall provide a presentation to the State Board outlining the renewal application.~~
  - ~~4.3.3.2 After review of the renewal application the State Board shall submit their recommendation to the Secretary for the final approval or denial of the renewal application.~~
  - ~~4.3.3.3 The Secretary shall review and make a decision as to the renewal of the program, the duration, and any special considerations or conditions.~~

## **5.0 Accountability and Evaluation**

- ~~5.1 All programs will be evaluated for fidelity to the approved application.~~
- ~~5.2 At least biannually on the first day of December and June, upon request at any other time, and at the conclusion of each cohort, the provider must submit a report to the Standards Board and the Secretary. The provider of an approved Certification Program for Leaders in Education must submit evidence in the report of the following:~~
  - ~~5.2.1 The applicant selection process is consistent with that described in the approved program application.~~
  - ~~5.2.2 The delivered professional development is consistent with that described in the approved program application.~~
  - ~~5.2.3 The residency, internship or clinical experience for participants has been monitored for appropriateness and meeting the participants' needs.~~
  - ~~5.2.4 The program has met or exceeded the hours mandated.~~
  - ~~5.2.5 All program participants have been evaluated on an ongoing basis for:~~
    - ~~5.2.5.1 Program participation and attendance.~~
    - ~~5.2.5.2 Successful completion of assignments.~~
    - ~~5.2.5.3 Successful application of skills and knowledge attained by program participation.~~
    - ~~5.2.5.4 Successful job placement or employment of current or past cohort participants.~~
- ~~5.3 Failure by the provider to meet the requirements of this regulation or to file biannual reports may result in the removal of the program's approval and the subsequent non-issuance of the appropriate Standard Certificate to a program participant.~~
  - ~~5.3.1 The Secretary shall have the authority to remove the approval of the program for failure to meet the requirements of this regulation.~~

## **6.0 Recommendation for Certification**

- ~~6.1 The approved program provider shall recommend individual program participants to the Department for the appropriate Standard Certificate based on criteria set forth in the approved program application and applicable regulation.~~
  - ~~6.1.1 The recommendation shall be on approved program provider's letterhead and must attest to the participant's successful completion of all program components.~~
- ~~6.2 The Department shall issue the appropriate Standard Certificate to qualified educators who successfully complete the program and meet the minimum requirements as verified by the approved program provider.~~

**7.0 Oversight**

- ~~7.1 The Department shall work in consultation and cooperation with the Standards Board or their designee to monitor the program's components as listed in Section 5.0 and make reports to the Standards Board and the State Board.~~
- ~~7.1.1 The Standards Board or their designee shall work with the Department to develop procedures for program application and monitoring.~~

**DEPARTMENT OF JUSTICE**  
**FRAUD AND CONSUMER PROTECTION DIVISION**  
**INVESTOR PROTECTION UNIT**

Statutory Authority: 6 Delaware Code, Section 73-102(b) (6 Del.C. §73-102(b))

**ORDER**

**Rules Pursuant to the Delaware Securities Act**

**WHEREAS**, on January 1, 2020 the Delaware Registrar of Regulations, pursuant to the request of the Investor Protection Director, caused the proposed rule pursuant to the Delaware Securities Act to be published in the Delaware *Register of Regulations*, 23 DE Reg. 540 (1/1/20); and

**WHEREAS**, the proposed rule was held open for public comment until January 31, 2020; and

**WHEREAS**, no comments were received by the Investor Protection Director, and therefore no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence";

**NOW THEREFORE, IT IS HEREBY ORDERED** this 17<sup>th</sup> day of February, 2020 that the information set forth herein shall constitute the required summary evidence and information submitted; the summary of findings of fact with respect to the evidence and information submitted; and the decision to adopt the rule in the form attached hereto as **Exhibit A**.

**IT IS FURTHER ORDERED** that, pursuant to 6 Del.C. §73-102(b) and 29 Del.C. §10118(b)(3), upon consideration of the information submitted to the Director of the Investor Protection Unit, and based upon the findings of fact with respect to the information submitted, the Rules Pursuant to the Delaware Securities Act, in the form attached hereto as **Exhibit A**, is adopted effective April 1, 2020.

**A. SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED**

The public comment period was open from January 1, 2020 to January 31, 2020. No comments were received on the proposed rule during the public comment period and no changes have been made to the proposed rule.

**B. SUMMARY FINDINGS OF FACT**

The revision makes substantial changes to the Rules and Regulations Pursuant to the Delaware Securities Act (the "Rules"). The Rules are being changed as follows:

1. to increase the fee for written interpretive opinions from the Unit to \$500 per question (see Rule 102);
2. to delete reference to a federal rule, Rule 505 of SEC Regulation D (17 C.F.R. §§230.505), which was repealed (see Rule 502);
3. to eliminate citation to an outdated code reference with respect to the definition of the word "offer" (see Rule 505);
4. to require investment adviser sole proprietorships to register at least one investment adviser representative with the Unit (see Rule 700(d)); and
5. to modify the requisite language of signs required to be displayed by broker-dealers and investment advisers in their places of business (see Rules 611 and 712).

Dated this 17<sup>th</sup> day of February, 2020.

**BY ORDER OF:**

Jillian Lazar  
Investor Protection Director  
For the State of Delaware

\*Please note that no changes were made to the regulation as originally proposed and published in the January 2020 issue of the *Register* at page 540 (23 DE Reg. 540). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Rules Pursuant to the Delaware Securities Act**

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## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

#### 2925 REAL ESTATE COMMISSION EDUCATION COMMITTEE

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))  
24 **DE Admin. Code** 2925

### ORDER

#### 2925 Real Estate Commission Education Committee

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 9, 2020 at a scheduled meeting of the Delaware Real Estate Commission (“the Commission”) to receive comments regarding proposed amendments to the Commission’s Education Guidelines (“Guidelines”). The Commission proposed revisions to the Guidelines to provide that instructor and course application denials are subject to a written request for reconsideration. Instructor qualifications for pre-licensing, broker and continuing education courses have been revised to ensure instructor competence and experience. Pursuant to proposed amendments, continuing education programs must be a minimum of three hours and must be delivered in three hour increments. The proposed revisions emphasize that course sponsors and providers are responsible for the qualifications and conduct of course instructors and clarify that prelicensing school instructors may not use class time for recruiting purposes. The proposed changes also require a prelicensing school to provide prospective students with notice that a criminal history may impact or pose a bar to licensure.

The proposed changes to the Guidelines were published in the *Register of Regulations*, Volume 23, Issue 6, on December 1, 2019. Notice of the January 9, 2020 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was January 24, 2020, 15 days following the public hearing. The Commission deliberated on the proposed revisions at its regularly scheduled meeting on February 13, 2020.

#### Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Commission Exhibit 1: *News Journal* Affidavit of Publication.

Commission Exhibit 2: *Delaware State News* Affidavit of Publication.

There was no verbal testimony given at the public hearing on January 9, 2020. Further, no written comments were received by the Commission.

#### Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony on the proposed amendments to the Commission’s Guidelines. There were no public comments provided to the Commission either in writing or during the public hearing.

Pursuant to 24 **Del.C.** § 2906(a)(1), the Commission has the statutory authority to promulgate rules and regulations.

Having received no public comments, the Commission finds no reason to amend the regulations as proposed.

**Decision and Effective Date**

The Commission hereby adopts the changes to Guidelines as proposed, to be effective 10 days following publication of this Order in the *Register of Regulations*. The new Guidelines are attached hereto as Exhibit A.

**IT IS SO ORDERED** this 13<sup>th</sup> day of February 2020.

**DELAWARE REAL ESTATE COMMISSION**

Nikki Lane, Professional Member, Chairperson

Randy Marvel, Professional Member, Vice Chairperson

Nora Martin, Professional Member, Secretary

Lynette Scott, Professional Member

Jason Giles, Professional Member

Lynn Rogers, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2019 issue of the *Register* at page 443 (23 DE Reg. 443). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2925 Real Estate Commission Education Committee**

**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a)(1) and 29 Delaware Code, Section 10111(2) (26 **Del.C.** §209(a)(1) & 29 **Del.C.** §10111(2))  
26 **DE Admin. Code** 1001

**ORDER****1001 Rules of Practice and Procedure of the Delaware Public Service Commission**

IN THE MATTER OF REVISIONS TO THE  
RULES OF PRACTICE AND PROCEDURE  
OF THE DELAWARE PUBLIC SERVICE  
COMMISSION

(FILED JANUARY 6, 1999; RE-OPENED  
OCTOBER 9, 2012; RE-OPENED  
JANUARY 29, 2020)

PSC REGULATION DOCKET  
NO. 99-9

**ORDER NO. 9547**

**AND NOW**, this 19<sup>th</sup> day of February 2020, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, on January 29, 2020, by Order No. 9533, the Commission adopted certain amendments to its "*Rules of Practice and Procedure of the Delaware Public Service Commission*," 26 *Del. Admin. C.* § 1001 et seq. ("Rules") and directed the Secretary of the Commission ("Secretary") to transmit the amended Rules to the Registrar of Regulations ("Registrar") for publication in the *Delaware Register*, as required by 29 **Del.C.** §10113; and

**WHEREAS**, minor revisions to the Rules were necessary to update and clarify certain procedures relating to the handling of complaints and to the filing of documents via the Commission's "DelaFile" electronic filing system, as well as one revision to update a statutory reference; and

**WHEREAS**, on January 30, 2020, the Secretary transmitted the amended rules to the Registrar, who responded on February 6, 2020 with certain recommendations for changes to the drafting style of the Rules so that the published regulation would align with the guidelines set forth in the *Delaware Administrative Code Drafting and Style Manual* (September 2014 Edition); and

**WHEREAS**, Commission Staff made the recommended changes to the Rules and now proposes that the

Commission adopt the corrected version of the amended Rules, as reflected in the marked-up version of the Rules attached hereto as Exhibit "A"; and

**WHEREAS**, under 29 **Del.C.** § 10113(b)(2), an agency's adoption or amendment of its rules of practice and procedure is exempt from the requirements of 29 **Del.C.** Ch. 101 relating to notice and public comment and may instead be informally adopted or amended;

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE  
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10113(b)(2), the Commission hereby adopts the *Rules of Practice and Procedure of the Delaware Public Service Commission* as amended herein as its official regulation as defined by 29 **Del.C.** § 1132(3). A marked-up version of the Rules reflecting only the amended sections is attached as **Exhibit "A"**.

2. That pursuant to 29 **Del.C.** §10113, the Secretary of the Commission shall transmit a copy of this Order, including Exhibit "A," to the Registrar of Regulations for publication in the Delaware *Register*. An exact copy of the Rules, as amended, shall be published as the current official regulations in the Delaware *Register*.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper

**BY ORDER OF THE COMMISSION:**

Dallas Winslow, Chairman  
Joann T. Conaway, Commissioner  
Harold B. Gray, Commissioner  
Manubhai C. Karia, Commissioner  
K. F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

**\*Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

**1001 Rules of Practice and Procedure of the Delaware Public Service Commission**

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# GENERAL NOTICES

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MANAGEMENT SERVICES

Statutory Authority: 16 Delaware Code, Sections 210-218 (16 Del.C. §§210-218)

### NOTICE OF PUBLIC COMMENT

#### Birth to Three Early Intervention System

The Delaware Department of Health and Social Services will submit its annual grant application under Part C of the Individuals with Disabilities Education Improvement Act of 2004. The grant application is available for review from February 1 – March 31, 2020. Public Comment is being accepted between February 1 - March 31, 2020.

Please contact the Part C Birth to Three office at 302-255-9134 (call collect from Kent and Sussex) or visit the Birth to Three website: <https://www.dhss.delaware.gov/dms/epqc/birth3/> to secure a copy of the grant application.

Any person who wishes to make written suggestions, testimony, briefs or provide other written materials concerning the proposed grant application must submit these to Susan Campbell by Tuesday, March 31, 2020 at:

Susan Campbell  
DHSS - Division of Management Services  
Birth to Three Early Intervention Program  
1901 N Dupont Hwy  
New Castle, DE 19720  
Email: [susan.campbell@delaware.gov](mailto:susan.campbell@delaware.gov)  
Fax: 302-255-4407

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 3366 and 3570A  
(18 Del.C. §§3366 & 3570A)

### REGISTER NOTICE

#### Autism Spectrum Disorders Coverage

The purpose of this order is to comply with 18 Del.C. §§3366(b) (Health Insurance Contracts – Autism spectrum disorders coverage) and 3570A(b) (Group and Blanket Health Insurance – Autism spectrum disorders coverage), which require that:

After December 31, 2012, the Insurance Commissioner shall, on or before April 1 of each calendar year, publish in the Delaware *Register of Regulations* an adjustment to the maximum benefit [for coverage for autism spectrum disorders, which is] equal to the change in the United States Department of Labor Consumer Price Index for all Urban Consumers (CPI-U) in the preceding year and the published adjusted maximum benefit shall be applicable to all health insurance policies issued or renewed thereafter.

The Legislature established the maximum benefit on August 13, 2012 at \$36,000 per twelve-month period per person (See SB No. 22/SA Nos 1&3, 146<sup>th</sup> Gen. Assem. (2011-2012)), and specified that the benefit “shall not be subject to any limits on the number of visits an individual may make to an autism services provider, or that a provider may make to an individual, regardless of the locations in which services are provided.”

Using the CPI-U Historical Tables published by the U.S. Bureau of Labor Statistics at [https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical\\_us\\_table.htm](https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical_us_table.htm), the maximum benefit for autism coverage

has fluctuated since 2012 as follows:

Benefit Year	CPI-U	Calculation	Resulting Benefit
2012			\$36,000.00
2013	1.5	$(\$36,000 * 0.0015) = \$540$	\$36,540.00
2014	0.8	$(\$36,540 * 0.0008) = \$29.23$	\$36,569.23
2015	0.7	$(\$36,569.23 * 0.0007) = \$25.60$	\$36,594.83
2016	2.1	$(\$36,594.83 * 0.0021) = \$76.85$	\$36,671.68
2017	2.1	$(\$36,671.68 * 0.0021) = \$77.02$	\$36,748.70
2018	1.9	$(\$36,748.70 * 0.0019) = \$69.82$	\$36,818.52
2019	2.3	$(\$36,818.52 * 0.0023) = \$84.68$	\$36,903.20

As indicated in the above table, the maximum per person benefit for 2020 is \$36,903.20. The 2020 maximum per person benefit shall go into effect on April 1, 2020 and shall remain in effect until March 31, 2021. Thereafter, the maximum benefit shall increase annually by the applicable CPI-U by operation of 18 **Del.C.** §§3366 and 3570A.

Questions concerning this notice should be directed to:

Delaware Department of Insurance

ATTN: Consumers Division – Autism spectrum disorders coverage

1351 West North St., Ste. 101

Dover, DE 19904

[consumers@delaware.gov](mailto:consumers@delaware.gov) (please put “Autism spectrum disorders coverage” in the subject line of the email).

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6010(c) (7 **Del.C.** §§6010(a) & 6010(c))

#### REGISTER NOTICE

**State Implementation Plan (SIP) Revision to certify that Delaware’s Emission Statement program meets all 2015 Ozone National Ambient Air Quality (NAAQS) requirements**

**State Implementation Plan Revision to certify that Delaware’s Nonattainment New Source Review program meets all 2015 Ozone NAAQS requirements**

**State Implementation Plan Revision to certify that Delaware requirements for Reasonably Available Control Technology (RACT) meets all 2015 Ozone NAAQS requirements**

**1. TITLE OF SIP REVISION:**

State Implementation Plan (SIP) Revision to certify that Delaware’s Emission Statement program meets all 2015 Ozone National Ambient Air Quality (NAAQS) requirements.

State Implementation Plan Revision to certify that Delaware’s Nonattainment New Source Review program meets all 2015 Ozone NAAQS requirements.

State Implementation Plan Revision to certify that Delaware requirements for Reasonably Available Control Technology (RACT) meets all 2015 Ozone NAAQS requirements.

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

DNREC is proposing to submit to the EPA three revisions to its SIP. The SIP revisions are to certify that the following meet all 2015 Ozone NAAQS requirements: 1) Emission Statement program under 7 **DE Admin. Code** 1117, 2) Preconstruction Review program under 7 **DE Admin. Code** 1125, and 3) Requirements for Reasonably Available Control Technology (RACT).

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del.C. Ch. 60 Environmental Control, Sections 6010(a) and 6010(c).

**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**

N/A

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing (Docket #2020-R-A-0003) on the proposed SIP revisions will be held on March 25, 2020 beginning at 6:00PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Persons wishing to comment on the proposed amendments may do so either orally or in written form at the public hearing on March 25, 2020. In lieu of attending the public hearing, written comment may be submitted to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901. The Department will accept public comment through the close of business on Thursday, April 9, 2020.

**7. PREPARED BY:**

Mark A. Prettyman [mark.prettyman@delaware.gov](mailto:mark.prettyman@delaware.gov) (302) 739-9402

**Delaware State Implementation Plan Revision  
Under the 2015 Ozone National Ambient Air Quality Standard**

**Certification of Delaware's Non-attainment New Source Review (NNSR) and Emissions Statement Programs**

**PROPOSAL**

Submitted to:

**U.S. Environmental Protection Agency  
Region 3 – Philadelphia, PA**

Prepared by:

**Department of Natural Resources & Environmental Control  
Division of Air Quality  
Emission Inventory Development Program**

State Street Commons  
100 W. Water Street, Suite 6A  
Dover, DE 19904

**March, 2020**

**1. Introduction**

On June 4, 2018, EPA issued final designations under the 2015 ozone National Ambient Air Quality Standards (NAAQS) for Delaware counties. EPA included New Castle County in the marginal Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area. The area was classified as a Marginal nonattainment area which became effective on August 3, 2018.

When new NAAQS are promulgated, states must submit certifications of adequacy for their Non-attainment New Source Review (NNSR) and Emissions Statement Programs as part of the required State Implementation Plan (SIP) elements. The purpose of this document is to certify that Delaware's NNSR and Emission Statement Programs satisfy the requirements of the CAA for the 2015 ozone NAAQS.

In addition, Delaware is required to submit two additional elements as part of the new 2015 NAAQS promulgation: 1) a base year inventory of ozone precursors to EPA for New Castle and 2) a Reasonably Available

Control Technology (RACT) SIP revision certifying that Delaware, as part of the Ozone Transport Region, meets its obligation to establish RACT controls for VOC and NOx. Delaware plans to submit these required elements of the SIP to EPA in conjunction with the NNSR and Emission Statement Program certifications discussed below.

## 2. Certification of NNSR program

EPA previously approved a state-wide NNSR SIP revision on August 12, 2019 (84 FR 39758) which covered the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Seaford, DE nonattainment areas for the 2008 ozone NAAQS. EPA published a proposed amendment to the NNSR program in Delaware’s approved SIP on February 10, 2020 to update a reference to the current version of EPA’s modeling guidance. Delaware does not believe that this amendment will affect 2015 ozone NAAQS implementation. Upon review of the SIP-approved NNSR program, Delaware finds and certifies that no changes are necessary to comply with the 2015 ozone NAAQS NNSR requirements.

The State of Delaware is certifying that its existing NNSR program is at least as stringent as the requirements at 40 CFR 51.165 for ozone and its precursors, as amended by the final rule titled *Implementation of the 2015 National Ambient Air Quality Standard for Ozone: Nonattainment Area State Implementation Plan Requirements* (83 FR 62998, December 6, 2018).

Note that the emission offset provisions of 7 **DE Admin. Code** 1125 approved by EPA into Delaware’s SIP on October 2, 2012 (77 FR 60053) continue to apply to Delaware sources in nonattainment areas. EPA did not approve into the SIP the provisions in 7 **DE Admin. Code** 1125 that DE adopted on December 11, 2016. Thus the provisions in the approved Delaware SIP remain applicable requirements, and offsets can only be obtained from the expanded area identified in the December 11, 2016 adoption if the offsets also meet the provisions in the SIP (i.e., they are generated in an area of equal to or higher nonattainment classification, and they are shown to directly impact the nonattainment area where the offsets are being used.) The requirements necessary to appropriately implement Delaware’s NNSR program are included in Table 1.

## 3. Certification of Emission Statement Program

Section 182(a)(3)(B) of the Clean Air Act (CAA) requires states with ozone nonattainment areas to develop emission statement programs for VOC and NOx sources. The required state program and associated regulation defines how states obtain emissions data directly from facilities and report it to the EPA. On July 5, 2019 (84 FR 32068) EPA approved Delaware’s certification that its existing Emission Statement program satisfies the emissions statements requirements of the CAA for the 2008 ozone NAAQS. The approved emission statement rule, in force for the 1997 ozone NAAQS and the 1-hour ozone NAAQS, covers all portions of Delaware’s nonattainment areas for the 2015 ozone NAAQS, and is sufficient for purposes of the emissions statement requirements for the 2015 ozone NAAQS.

The State of Delaware is certifying that its existing emission statement rule meets the emission statement requirements for the 2015 ozone NAAQS. The requirements necessary to appropriately implement Delaware’s Emission Statement program are included in Table 1.

<b>Table 1: 2015 Ozone NAAQS SIP Requirements</b>	
<b>Non-attainment New Source Review</b>	
<b>40 CFR 51.165</b>	<b>Delaware Requirements</b>
(a)(1)(iv)(A)(1)(i)-(iv) and (2): Major source thresholds for ozone – VOC and NOx	7 DE Admin. Code 1125 Section 2.2.
(a)(1)(iv)(A)(3): Change constitutes a major source by itself	7 DE Admin. Code 1125 Section 2.2.3.
(a)(1)(v)(E): Significant net emissions increase of NOx is significant for ozone	7 DE Admin. Code 1125 Section 1.9, Definitions – <b>“Major Modification”</b> .

# GENERAL NOTICES

(a)(1)(v)(F): Any emissions change of VOC in Extreme area triggers NNSR	Not applicable since no Delaware nonattainment area is or has previously been designated as Extreme.
(a)(1)(x)(A)-(C) and (E): Significant emissions rates for VOC and NOx as ozone precursors	7 DE Admin. Code 1125 Section 1.9, Definitions – “ <b>Significant</b> ”.
(a)(3)(ii)(C)(1)-(2): Provisions for emissions reduction credits	7 DE Admin. Code 1125 Section 2.5 as approved into Delaware’s SIP on October 2, 2012. These SIP-approved provisions continue to apply to Delaware sources in nonattainment areas.
(a)(8): Requirements for VOC apply to NOx as ozone precursors	7 DE Admin. Code 1125 Section 2.2.4.
(a)(9)(i)-(iii): Offset ratios for VOC and NOx for ozone nonattainment areas <i>[subparagraphs (a)(9)(i)-(iii) were changed to (a)(9)(ii)-(iv)]</i>	7 DE Admin. Code 1125 Section 2.4.3.
(a)(12): Anti-backsliding provision(s), where applicable	Sources in Kent and New Castle Counties remain subject to requirements and major source thresholds based on the Severe designation for the 1-hour ozone standard. Sussex County remains subject to requirements and major source thresholds based on the Moderate designation as part of an ozone transport region.
<b>Emission Statement Program</b>	
<b>CAA Section 182(a)(3)(B)</b>	<b>Delaware Requirements</b>
182(a)(3)(B)(i) – Submit an emissions statement	7 DE Admin. Code 1117 Section 7.1 – Emissions statement requirements apply to all stationary sources located in an ozone nonattainment area that emit NOx and VOC.
182(a)(3)(B)(i) –Emission statement requirements	7 DE Admin. Code 1117 Section 7.2 – Emissions statements are required to include the following information: Source identification information, operating data, actual emissions data, control equipment information, and process rate information.
182(a)(3)(B)(i) – Submit yearly	7 DE Admin. Code 1117 Section 7.3. Annual emission statements due April 30 for the preceding calendar year.
182(a)(3)(B)(i) – Source certification	7 DE Admin. Code 1117 Section 7.2. Certification statement contained on the Emission Statement to be signed by the Responsible Official.
182(a)(3)(B)(ii) – Reporting thresholds	7 DE Admin. Code 1117 Section 7.1. Annual emissions of 25 tons/year of NOx or VOCs in nonattainment areas.

**\*Please Note: Due to the size of the SIP, it is not being published here. A PDF version is available at the following location:**

**[DNREC DE RACT SIP - Proposed.pdf](#)**

**[DNREC DE RACT SIP - Proposed](#)**

**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE**

[Docket D-2017-009-2]

**Adjudicatory Hearing and Additional Written Comment Period****SUMMARY:**

The Delaware River Basin Commission will hold an adjudicatory hearing (a trial-like proceeding) commencing April 15, 2020 on Docket D-2017-009-2, issued by the Commission on June 12, 2019, to Delaware River Partners, LLC for the project known as Gibbstown Logistics Center Dock 2. The purpose of the hearing is to afford objectors an opportunity to show that the Commission's docket approval should be changed. The Commission will accept additional written comment on this matter during the pendency of the hearing, through April 24, 2020.

**DATES:**

The hearing commencing on April 15, 2020 will run from 9 a.m. until no later than 4 p.m. and will continue on successive business days until complete. The start time on successive days will be determined by the Hearing Officer at the close of each day's proceedings and will be posted on the DRBC website, [www.drbc.gov](http://www.drbc.gov) (see link under "Recent Postings") each day after 4 p.m. Additional written comments on Docket D-2017-009-2 will be accepted through 5 p.m. on April 24, 2020.

**ADDRESSES:**

The hearing will take place at the State of New Jersey Office of Administrative Law, Quakerbridge Plaza Building 9, Mercerville (Hamilton), NJ 08619, Hearing Room 1. Additional written comments on Docket D-2017-009-2 may be submitted through the Commission's web-based comment system, a link to which is provided at [www.drbc.gov](http://www.drbc.gov). Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged. Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628-0360. For assistance, please contact Giselle Hernandez at [giselle.hernandez@drbc.gov](mailto:giselle.hernandez@drbc.gov).

**SUPPLEMENTARY INFORMATION:**

The Commission on June 6, 2019 held a duly noticed public hearing on a draft of Docket D-2017-009-2 for the Gibbstown Logistics Center Dock 2.

The Commission accepted written comment on the draft docket through 5 p.m. on June 7, 2019. Pursuant to Section 3.8 of the Delaware River Basin Compact, Pub.L. 87-328, 75 Stat. 688, the Commission by unanimous vote at its regularly scheduled quarterly business meeting on June 12, 2019 approved the final docket, incorporating changes made in response to comments received on the draft. In accordance with Article 6 (Subpart F) of the Commission's *Rules of Practice and Procedure*, The Delaware Riverkeeper and The Delaware Riverkeeper Network (collectively, "DRN") by letter dated July 11, 2019 requested an adjudicatory hearing on the docket approval, and during its business meeting of September 11, 2019, the Commission granted DRN's request. Copies of Docket D-2017-009-2 as approved, staff's memo responding to comments received on the draft docket, DRN's request for an administrative hearing on the approval, and Minutes of the Commission's meetings of June 12 and September 11, 2019 are available on the Commission's website at [drbc.gov](http://drbc.gov) (see link under "Recent Postings").

Hearing Procedure. The adjudicatory hearing, a trial-like proceeding, will be conducted pursuant to Article 6 (Subpart F) of the *Rules of Practice and Procedure* – Sections 2.6.1 through 2.6.10 (18 CFR 401.71 – 401.90). Participants are limited to those interested parties who have been identified pursuant to Section 2.6.4(a) (18 CFR 401.84(a)), consisting of docket holder Delaware River Partners, LLC; objector DRN; and members of the Commission staff.

To attend the Adjudicatory Hearing. Limited seating – an estimated 40 places – will be available for the general public on a first-come first-served basis. Doors open at 8 a.m. Members of the public will not be afforded an opportunity to speak during the hearing.

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the adjudicatory hearing should contact the Commission Secretary directly at 609-883-9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to

discuss how we can accommodate your needs.

Updates. Because the daily start time and the duration of the adjudicatory hearing in its entirety cannot be pre-determined, between April 15, 2020 and the close of the hearing, the next day's start time will be posted after 4 p.m. on the DRBC website, [www.drbc.gov](http://www.drbc.gov) (see link under "Recent Postings").

Additional Information, Contacts. Additional public records relating to Docket D-2017-009-2 may be obtained through a request in accordance with Article 8 (Subpart H) of the Rules of Practice and Procedure. See <https://www.state.nj.us/drbc/about/public/records-access.html> for details, and/or contact Denise McHugh at 609-883-9500, ext. 240.

Dated: February 14, 2020

Pamela M. Bush  
Commission Secretary and Assistant General Counsel

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**DELAWARE RIVER BASIN COMMISSION**  
**PUBLIC NOTICE**

The Delaware River Basin Commission held a public hearing on **Wednesday, February 12, 2020** beginning at **1:30 p.m.** The hearing was open to the public and was held at the Delaware River Basin Commission Office, Goddard Conference Room, 25 Cosey Road, West Trenton, New Jersey 08628.

A business meeting will be held on **Wednesday, March 11, 2020** beginning at **10:30 a.m.** The business meeting is also open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania 18977. For more information, visit the DRBC web site at [www.drbc.gov](http://www.drbc.gov) or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting March 19, 2020 at 5:00pm in the Smyrna School District (82 Monrovia Avenue, Smyrna, DE 19977).

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**DEPARTMENT OF ELECTIONS**  
**OFFICE OF THE STATE ELECTION COMMISSIONER**  
**PUBLIC NOTICE**

**101 Procedures for Addressing Post-Election Voting Machine Audit Discrepancies**

The Department of Elections, pursuant to 15 **Del.C.** §5012A(f), proposes to enact a new regulation. The proposed regulation outlines the procedures to be followed by the Department of Elections in the case of a discrepancy discovered during a post-election audit performed in accordance with the provisions of 15 **Del.C.** §5012A. The proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other regulations issued by the Department of Elections or the State Election Commissioner are not affected by this proposal. This Notice is issued pursuant to the requirements of 29 **Del.C.** Ch. 11, Subchapter III, 29 **Del.C.** Ch. 101, Subchapter II, and 29 **Del.C.** Ch. 104, §§10404A(b)(1) and 10404B(b)(1).

This proposed regulation is being published in the March 2020 edition of the *Delaware Register of Regulations*. Copies are also on file in the Office of the State Election Commissioner, 905 S. Governors Avenue, Suite 170, Dover, DE 19904 and are available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed regulation or submit written suggestions, compilations of data, briefs, or other materials to State Election Commissioner Anthony Albence at the above address as to whether the proposed regulation should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public

comments must be received on or before April 3, 2020. Written materials submitted will be available for inspection at the above address.

On or after April 3, 2020, following review of the public comments received, the Department of Elections will determine whether to adopt the proposed regulation, or make additional changes because of the public comments received.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4463 Licensing and Registration of Operators of Public Water Supply Systems**

Pursuant to 16 **Del.C.** §122(3)c., Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Licensing and Registration of Operators of Public Water Supply Systems. On March 1, 2020, the Division of Public Health plans to publish as "proposed" revisions to the Licensing and Registration of Operators of Public Water Supply Systems regulations. The revisions include clarification of definitions, licensing periods, and continuing education credits; updates to the Advisory Council for Certification of Public Water System Operators, including defining the chair, quorum, and reducing membership; and technical corrections to conform with statutes, other drinking water regulations, and legal precedents.

Copies of the proposed regulations are available for review in the March 1, 2020 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Tuesday, March 31, 2020, at:

Alanna Mozeik

Division of Public Health

417 Federal Street

Dover, DE 19901

Email: [Alanna.Mozeik@delaware.gov](mailto:Alanna.Mozeik@delaware.gov)

Phone: (302) 744-4951

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**DEPARTMENT OF INSURANCE****OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****903 Prompt Payment of Settled Claims [Formerly Regulation 81]**

The Delaware Department of Insurance (the Department) is proposing to amend Regulation 903 to allow insurance carriers to pay settled insurance claims other than claims that are subject to the Workers Compensation Statute at 19 **Del.C.** §2344 by electronic means. The Department is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

The authority for the proposed amendments is 18 **Del.C.** §§311, 520, 2304(16), and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 903. The proposed amendments appear below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2<sup>nd</sup> day, April, 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4233-2019  
1351 West North St., Ste. 101  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to supervision for occupational therapy assistants are amended. The Board is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

A public hearing will be held on May 6, 2020 at 4:30 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 on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del. C.** §10118(a). Written public comments will be accepted until May 21, 2020.

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**DIVISION OF PROFESSIONAL REGULATION**  
**2900 REAL ESTATE COMMISSION**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission ("Commission") has proposed revisions to its rules and regulations.

On December 1, 2019, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Volume 23, Issue 6. Specifically, the Commission's proposed regulations included a new subsection 8.5 which set forth requirements for real estate "teams". New Section 9.0 addressed the scope of permissible activities under the property management licensure exemption. Revisions to the new Section 12.0, Renewal of Licenses, shortened the late renewal period from 60 to 30 days and clarified that the late renewal period is not an extension of the deadline to complete continuing education. Requirements for licensure reinstatement were amended. As set forth in the new subsection 14.13, new licensees would be required to complete twelve hours of education designed to assist individuals new to the real estate profession. Those twelve hours were to be completed within 90 days after the date of initial licensure and would not count towards the continuing education required for license renewal. New licensees would also be required to complete the continuing education applicable to all licensees pursuant to the pro-ratio schedule. Finally, as set forth in the new subsection 14.6.7, a minimum fine of \$250 would be imposed for a finding of unjustified noncompliance with continuing education requirements, and a minimum fine of \$1,000 would be imposed for a second finding of unjustified noncompliance.

A public hearing was held on January 9, 2020. The Commission deliberated on February 13, 2020, and based on those deliberations, has made substantive revisions to the proposed rules and regulations. Therefore, the Commission strikes the rules and regulations as proposed in the December 1, 2019 *Register of Regulations* and proposes revised rules and regulations as attached hereto as Exhibit A.

A public hearing will be held on April 9, 2020 at 9:00 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 Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Danielle Cross, administrative specialist for the Commission, at the above address or at [danielle.cross@delaware.gov](mailto:danielle.cross@delaware.gov). Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be **April 24, 2020**, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its next regularly scheduled meeting.

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**DIVISION OF PROFESSIONAL REGULATION**  
**3100 BOARD OF FUNERAL SERVICES**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3105(a)(1), the Delaware Board of Funeral Services has proposed revisions to its rules and regulations. Rules pertaining to internship requirements are proposed to be added. The Board is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

A public hearing will be held on March 24, 2020 at 10 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 on the amendments to the rules and regulations. 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 Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a). Written public comments will be accepted until April 8, 2020.

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