

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 3003A, 29 Delaware Code, Section 10119 (14 **Del.C.** §§122(b)(2) & 3003A & 29 **Del.C.** §10119)
14 **DE Admin. Code** 815

EMERGENCY

EMERGENCY ORDER

14 DE Admin. Code 815 Health Examinations and Screening

815 Health Examinations and Screening

AUTHORITY

Pursuant to 14 **Del. C.** § 122(b)(2), 14 **Del. C.** §3003A, and 29 **Del. C.** §10119, the Department of Education ("Department") is renewing emergency regulatory amendments to 14 **DE Admin. Code** 815 Health Examinations and Screening. Additionally, 29 **Del. C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** §10115. Moreover, 14 **Del. C.** §122(b)(2) authorizes the Department to prescribe rules and regulations governing the physical inspection of and the protection of the health and physical welfare of public school students in the State.

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

An emergency order regulation to require persons in schools and child care facilities to wear masks was published in the September 1, 2021 issue of the *Register*.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 **DE Admin. Code** 815 Health Examinations and Screening, is amended by adding Section 6.0 which requires certain facilities to require masks. The regulation is temporarily modified by making deletions as shown by strikethrough and insertions as shown by underline as follows:

6.0 COVID-19 Mitigation and Prevention

6.1 Schools

6.1.1 All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

6.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.

6.1.3 Masks are not required in school buildings:

6.1.3.1 When seated at a table to eat or drink.

6.1.3.2 When asleep.

6.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

6.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's

household are not present.

6.1.3.5 When outdoors.

6.1.3.6 When students are not in the building, except when students travel on school buses.

6.1.4 All schools that provide bus service to and from school shall require mask use by all students, faculty, staff, and visitors riding school buses, regardless of vaccination status.

6.2 Child Care Facilities

6.2.1 All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

6.2.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

6.2.3 Masks are not required in child care facilities:

6.2.3.1 When seated at a table to eat or drink.

6.2.3.2 When asleep.

6.2.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

6.2.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

6.2.3.5 When outdoors.

6.2.3.6 When children are not in the building.

6.2.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order took effect on August 16, 2021 and was effective for 120 days. Because the public health threat continues, this renewal shall take effect on December 14, 2021 and shall remain in effect for 60 days, consistent with 29 Del.C. § 10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 Del. C. §10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the 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.

ORDER

It is hereby ordered, this 3rd day of December, 2021, that the above referenced amendment to 14 DE Admin. Code 815 Health Examinations and Screening, a copy of which is hereby attached, is renewed, pursuant to 14 Del.C. §3003A and 29 Del.C. §10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 3rd day of December, 2021.

Department of Education

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

815 Health Examinations and Screening

1.0 Definitions

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

"Delaware School Health Examination Form" means the age-appropriate form developed by the Delaware Department of Education or a substantially similar form for documenting information from the parent, guardian or Relative Caregiver and healthcare provider on the student's health status.

"Delaware Interscholastic Athletic Association (DIAA) Pre-Participation Physical Evaluation" means the form approved by the DIAA.

"Health Examination" means the medical examination done by a Healthcare Provider to determine health status and conditions.

"Healthcare Provider" means a currently licensed physician, advanced practice nurse or physician's assistant.

"Lead Screening" means a capillary blood lead test, including where a drop of blood is taken from a finger or heel of the foot (16 **Del.C.** Ch. 26).

"School Enterer" means any child between birth and twenty (20) years inclusive enrolling and attending 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 or territories, and children entering from non-public schools.

"Screenings" means the vision, hearing, and postural gait screening performed by the school nurse or other qualified healthcare professional.

15 DE Reg. 838 (12/01/11)

25 DE Reg. 410 (10/01/21)

2.0 Health Examinations

2.1 All public school students shall have two health examinations, as provided in this section, that have been administered by a healthcare provider.

2.1.1 The first health examination shall have been done within the two years prior to enrollment into a Delaware public school.

2.1.1.1 Within thirty (30) calendar days after enrollment, any public school student who has not complied with the health examination requirement shall have received the health examination or shall have a documented appointment with a healthcare provider for the health examination. If this documentation is not provided within this thirty (30) calendar days, the student shall be excluded from school until this documentation is received.

2.1.2 The second required health examination shall be done within the two years prior to entry into grade 9.

2.1.2.1 Within thirty (30) calendar days after entry, any grade 9 student who has not complied with the second health examination requirement shall have received the health examination or shall have a documented appointment with a healthcare provider for the health examination. If this documentation is not provided within these thirty (30) calendar days, the student shall be excluded from school until this documentation is received.

2.1.3 Notwithstanding subsections 2.1.1.1 and 2.1.2.1, all students must meet the requirements under 14 **DE Admin. Code** 804 Immunizations.

2.1.4 The requirement for the health examination may be waived for students whose parent, guardian or relative caregiver as defined in 14 **Del.C.** §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of health examinations.

2.1.5 Notwithstanding the above, a second health examination shall not be required if the first health examination is within two years of entering Grade 9.

2.1.6 The Delaware School Health Examination Form or the DIAA Pre-Participation Physical Evaluation form may be used as documentation of the health examination. In addition, a district or charter school may accept a health examination or evaluation documentation on a form which includes, at a minimum, health history, immunizations, results of medical tests and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.

2.1.7 The school nurse shall record all findings within the student's electronic health record (see 14 **DE Admin. Code** 811) and maintain the original copy in the child's medical file.

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

15 DE Reg. 838 (12/01/11)

16 DE Reg. 283 (09/01/12)

25 DE Reg. 410 (10/01/21)

Non regulatory note: See 14 **DE Admin. Code** 1008.3 and 14 **DE Admin. Code** 1009.3 for physical or health examination requirements associated with participation in sports.

3.0 Screening

3.1 Vision and Hearing Screening

3.1.1 Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year.

3.1.1.1 In addition to the screening requirements in subsection 3.1.1, screening shall also be provided to school enterers, students referred by a teacher or an administrator, and students considered for special education.

3.1.1.1.1 Driver education students shall have a vision screening within a year prior to their in-car driving hours.

3.1.2 The school nurse shall record the results within the student's electronic health record (see 14 **DE Admin. Code** 811) and shall notify the parent, guardian or relative caregiver as defined in 14 **Del.C.** §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if the student has a suspected problem.

3.2 Postural and Gait Screening

3.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December 15th.

3.2.2 The school nurse shall record the findings within the student's electronic health record (see 14 **DE Admin. Code** 811) and shall notify the parents, guardian or relative caregiver as defined in 14 **Del.C.** §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if a suspected deviation has been detected.

3.2.2.1 If a suspected deviation is detected, the school nurse shall refer the student for further evaluation through an onsite follow up evaluation or a referral to the student's healthcare provider.

3.3 Lead Screening

3.3.1 School enterers at kindergarten or at age 5 or prior, shall be required to provide documentation of the results of lead screening as per 16 **Del.C.** Ch. 26.

3.3.1.1 For school enterers in kindergarten, documentation of lead screening shall be provided within sixty (60) calendar days of the date of enrollment. Failure to provide the required documentation shall result in the child's exclusion from school until the documentation is provided.

3.3.1.2 Exemption from this requirement may be granted for religious exemptions, per 16 **Del.C.** §2603.

3.3.1.3 The Childhood Lead Poisoning Prevention Act, 16 **Del.C.** Ch. 26, requires all healthcare providers to order lead screening for children at or around the age of 12 months of age.

3.3.1.4 For school year 2021-2022, children entering first grade, who did not provide documentation of the results of lead screening when enrolling in kindergarten for the 2020-2021 school year, shall provide such documentation within sixty (60) calendar days of the date of the beginning of the 2021-2022 school year. Failure to provide the required documentation shall result in the child's exclusion from school until documentation is provided.

3.3.2 The school nurse shall document the lead screening within the student's electronic medical record. See 14 **DE Admin. Code** 811.

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

15 DE Reg. 838 (12/01/11)

16 DE Reg. 283 (09/01/12)

25 DE Reg. 410 (10/01/21)

4.0 Health Records

If the student is at risk of exclusion because of not meeting the health examinations or immunization documentation requirements, the school nurse may contact the previous Delaware public school nurse to obtain health examinations and immunization records.

25 DE Reg. 410 (10/01/21)

5.0 Special Considerations

5.1 School districts and charter schools shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment and participation of identified special populations.

5.1.1 Homeless Children and Youth - The federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301 et seq., requires immediate enrollment and entry to school, even if students are unable to produce immunization or other medical records. The Delaware public school nurse and the LEA Homeless Education Liaison at the enrolling school shall work together to obtain the necessary immunization records as soon as possible. If a student has not had immunizations, the school nurse and LEA Homeless Education Liaison shall assist homeless children and youth in meeting the immunization requirements.

- 5.1.2 Youth in Foster Care – The federal Elementary and Secondary Education Act of 1965. Section 1111(g)(1)(E) requires that when a determination is made that it is not in a youth in foster care’s best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment. The enrolling school shall immediately contact the school last attended by any such child to obtain relevant academic and other records. The school nurse and LEA foster care liaison at the enrolling school shall work together to obtain the necessary immunization records as soon as possible.
- 5.1.3 Military-Connected Youth - 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. The Delaware public school nurse of the enrolling school shall work with the parent or guardian of the school enterer to obtain the necessary immunization records as soon as possible.

25 DE Reg. 410 (10/01/21)

6.0 COVID-19 Mitigation and Prevention

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 - 6.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.
 - 6.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
 - 6.1.3.5 When outdoors.
 - 6.1.3.6 When students are not in the building, except when students travel on school buses.
- 6.1.4 All schools that provide bus service to and from school shall require mask use by all students, faculty, staff, and visitors riding school buses, regardless of vaccination status.

6.2 Child Care Facilities

- 6.2.1 All persons or associations conducting child care as defined in 14 **Del.C.** §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.
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 - 6.2.3.6 When children are not in the building.
- 6.2.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

7 DE Reg. 68 (07/01/03)

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

15 DE Reg. 838 (12/01/11)

16 DE Reg. 283 (09/01/12)

23 DE Reg. 208 (09/01/19)

25 DE Reg. 410 (10/01/21)

25 DE Reg. 660 (01/01/22) (Emer.)