

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

FINAL

REGULATORY IMPLEMENTING ORDER

804 Immunizations

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §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*.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on March 1, 2020, in the form hereto attached as *Exhibit "A"*. No comments were received for the proposed regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 804 Immunizations because 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*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 804 Immunizations. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 804 Immunizations attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 804 Immunizations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 DE Admin. Code 804 Immunizations amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 804 Immunizations 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 and 131 on May 11, 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 11th day of May 2020.

Department of Education

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

Approved this 11th day of May 2020

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.”

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

2.0 Definitions

"Affidavit of Religious Belief religious belief" means, pursuant to 14 Del.C. [~~Ch. 4,~~] §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.

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

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

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

20 DE Reg. 441 (12/01/16)

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.

- 10 DE Reg. 1807 (06/01/07)
- 11 DE Reg. 666 (11/01/07)
- 16 DE Reg. 411 (10/01/12)
- 19 DE Reg. 43 (07/01/15)
- 20 DE Reg. 441 (12/01/16)

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.)

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

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.

- 10 DE Reg. 1807 (06/01/07)
- 16 DE Reg. 411 (10/01/12)
- 19 DE Reg. 43 (07/01/15)
- 20 DE Reg. 441 (12/01/16)

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.

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

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

20 DE Reg. 441 (12/01/16)

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.~~

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

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

20 DE Reg. 441 (12/01/16)

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.

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

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

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

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

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

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.

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

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

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

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

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

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

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

20 DE Reg. 441 (12/01/16)

23 DE Reg. 1020 (06/01/20) (Final)