

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 **Del.C.** §122(b)(2))
14 **DE Admin. Code** 815

FINAL

REGULATORY IMPLEMENTING ORDER

815 Health Examinations and Screening

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del. C.** §122(b)(2), the Secretary of Education intends to amend 14 **DE Admin. Code** 815 Health Examinations and Screening. This amendment is needed to: (1) clarify that children enrolling in first grade that have not provided documentation of lead screening when enrolled in kindergarten must provide such documentation within sixty calendar days of the date of enrollment, or they can be excluded from school until the documentation is presented, (2) update and expand definitions regarding the health examinations and screenings, and (3) add language referencing homeless, foster care, military family youth. Grammatical changes were also made to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on August 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on August 1, 2021, in the form hereto attached as *Exhibit "A"*. Two comments were received which were pertinent to the proposed amendments which suggested the Department consider the following:

(1) The regulation still states "lead screening," which could mean a lead blood test or a questionnaire-type screening. Clarification is needed on exactly what is being required.

Response: The Department clarified the definition of lead screening as the term is defined in 16 **Del.C.** Chapter 26.

(2) The reference to "documentation of a lead screening *shall* be provided" and "failure to provide the required documentation *shall* result in the child's exclusion", specifically the word "shall" should be further defined as either "must" or "optional."

Response: Per the *Delaware Administrative Code Drafting and Style Manual* the word "shall" is to be used in regulations "in the imperative sense to express a duty or obligation to act." The Department uses the word "shall" throughout all its regulations to mean "must," or when something is required. It is used correctly throughout this regulation. Further clarification was made for the word "documentation" in reference to the results of the lead screening, where needed throughout the regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 815 Health Examinations and Screening in order to (1) clarify that children enrolling in first grade that have not provided documentation of lead screening when enrolled in kindergarten must provide such documentation within sixty calendar days of the date of enrollment, or they can be excluded from school until the documentation is presented, (2) update and expand definitions regarding the health examinations and screenings, and (3) add language referencing homeless, foster care, military family youth. Grammatical changes were also made to comply 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** 815 Health Examinations and Screening. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 815 Health Examinations and Screening attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 815 Health Examinations and Screening 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** 815 Health Examinations and Screening amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 815 Health Examinations and Screening 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 September 14, 2021. 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 14th day of September 2021.
Department of Education

Susan S. Bunting, Ed.D., Secretary of Education
Approved this 14th day of September 2021

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~~ 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, nurse practitioner, nurse~~ or physician's assistant.

~~**"Health Examination or Health Evaluation"** means the medical or nursing examination or evaluation and assessment of the body by a healthcare provider to determine health status and conditions.~~

"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 [~~, and lead~~] screening performed by the school nurse or other qualified healthcare professional.

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

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. ~~The first health examination shall have been done within the two years prior to entry into school. Beginning in school year 2012-2013, the second health examination shall be strongly recommended and not required for entering grade 9 students. Beginning in school year 2013-2014, the second health examination shall be required for entering grade 9 students. The required health examination shall be done within the two years prior to entry into grade 9. Within thirty calendar days after entry, new enterers and grade 9 students who have not complied with the second health examination requirement shall have received the health examination or shall have a documented appointment with a licensed health care provider for the health examination. For purposes of this regulation only, students entering grades 10, 11 or 12 in the 2013-2014 school year shall not be required to have the second health examination or evaluation.~~

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.

~~2.1.42.1.4~~ The requirement for the health examination may be waived for students whose parent, guardian or ~~Relative Caregiver~~ 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.

~~2.1.22.1.5~~ Notwithstanding the above, a second health examination shall not be required if the first health examination is within two years of entering Grade 9.

~~2.1.32.1.6~~ 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 ~~or of~~ of medical ~~testings~~ tests and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.

~~2.1.42.1.7~~ The school nurse shall record all findings within the student's electronic ~~medical~~ 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)

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 ~~new school~~ 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~~ in-car driving hours.

3.1.2 The school nurse shall record the results within the student's electronic ~~medical~~ health record (see 14 DE Admin. Code 811) and shall notify the parent, guardian or ~~Relative Caregiver~~ 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 ~~medical~~ health record (see 14 DE Admin. Code 811) and shall notify the parents, guardian or ~~Relative Caregiver~~ 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 ~~on-site~~ onsite follow up evaluation or a referral to the student's ~~health-care~~ healthcare provider.

3.3 Lead Screening

3.3.1 ~~Children who enter school~~ 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 ~~children enrolling~~ 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 ~~health-care~~ 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)

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.

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.

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) (Final)