

# 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

#### 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 adopting 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. Also, 14 **Del. C.** §3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** §3002A(1).

#### 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.

The August 12, 2021 Emergency Order contained language that was inadvertently broad and resulted in requirements that were not intended. For that reason, the Emergency Order dated August 12, 2021 is hereby repealed in its entirety and replaced with this Emergency Order.

#### 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:

4.0 Reserved.

5.0 Reserved.

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.

6.1.2.4 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 shall take effect on August 16, 2021 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**

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](mailto:DOEregulations.comment@doe.k12.de.us).

## **ORDER**

It is hereby ordered, this 13th day of August, 2021, that the above referenced amendment to 14 DE Admin. C. § 815 Health Examinations and Screening, a copy of which is hereby attached, is adopted, pursuant to 14 Del.C. § 122(b)(2), 14 Del.C. § 3003A, and 29 Del.C. § 10119, as referenced above, and supported by the evidence contained herein.

**IT IS SO ORDERED** the 13th day of August, 2021.

**Department of Education**

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

**815 Health Examinations and Screening**

## **1.0 Definitions**

**"Delaware School Health Examination Form"** means the age appropriate form developed by the Delaware Department of Education 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.

**"Healthcare Provider"** means a currently licensed physician, advanced practice nurse, nurse practitioner, 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.

**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 requirement for the health examination may be waived for students whose parent, guardian or Relative Caregiver, 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.
- 2.1.2 Notwithstanding the above, a second health examination shall not be required if the first health examination is within two years of entering Grade 9.
- 2.1.3 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 on medical testings and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.
- 2.1.4 The school nurse shall record all findings within the student's electronic medical 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 3.1.1, screening shall also be provided to new 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 medical record and shall notify the parent, guardian or Relative Caregiver 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 record (see 14 **DE Admin. Code** 811) and shall notify the parents, guardian or Relative Caregiver, 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 follow up evaluation or a referral to the student's health care provider.

### 3.3 Lead Screening

- 3.3.1 Children who enter school at kindergarten or at age 5 or prior, shall be required to provide documentation of lead screening as per 16 **Del.C.** Ch. 26.
  - 3.3.1.1 For children enrolling 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 providers to order lead screening for children at or around the age of 12 months of age.
- 3.3.2 The school nurse shall document the lead screening within the student's electronic medical record. See 14 **DE Admin. Code** 811.

### **4.0 Reserved.**

### **5.0 Reserved.**

## **6.0 COVID-19 Mitigation and Prevention**

### 6.1 Schools

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  - 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.
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  - 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.

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. 229 (09/01/21) (Emer.)