

# DEPARTMENT OF EDUCATION

## 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

### FINAL

#### 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  
Audrey J. Noble, Ph.D., Vice President  
Candace Fifer (absent)  
Vincent Lofink

Nina Lou Bunting (absent)  
Wali W. Rushdan, II  
Provey Powell, Jr. (voted against the motion)

### **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**

**4.12.1** 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 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:

- ~~4.1.3.12.1.3.1~~ 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.

3 DE Reg. 1073 (02/01/00)

8 DE Reg. 1012 (01/01/05)

13 DE Reg. 935 (01/01/10)

17 DE Reg. 425 (10/01/13)

18 DE Reg. 369 (11/01/14)

23 DE Reg. 756 (03/01/20) (Final)