

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 716

FINAL

REGULATORY IMPLEMENTING ORDER

716 Maintenance of Local School District and Charter School Personnel Records

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records. The Department of Education reviewed this and other regulations which were four years or older as part of the 2016 Regulation Review as required by 29 **Del.C.** §10407. An internal review of this regulation was done to confirm it procedurally aligns with guidance from the Division of Public Archives relative to school personnel records. Therefore, only a few minor edits were made for clarity and continuity with other regulations.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on February 1, 2017, in the form hereto attached as *Exhibit "A"*. No comments were received. The Department did add language in the Definitions section for clarification and to align with other regulations, as well as made minor punctuation corrections.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records in order to make a few minor edits for clarity and continuity with other regulations.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records 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** 716 Maintenance of Local School District and Charter School Personnel Records amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records 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 March 23, 2017. 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 23rd day of March 2017.

Department of Education

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

Approved this 23rd day of March 2017

716 Maintenance of Local School District and Charter School Personnel Records

1.0 Definitions

[The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:]

“**Delaware Public Archives (DPA)**” means the division within the Department of State that is charged with administering, implementing and enforcing all provisions of the Delaware Public Records Law.

"Employee" ~~shall in this case mean~~ means any person whose terms of employment are adequate to qualify the employee for the earning of credit toward pension.

"Termination" ~~in this case does~~ means, not ~~refer~~ only to retirement, but to any reason for the employee to ~~leave~~ leaves the district.

2.0 Records Retention

2.1 Records for all school district and charter school employees shall be kept up to date including:

- 2.1.1 Salary data records for each year of employment in the school district or charter school. (Total salary paid identified as fiscal or calendar year); and
- 2.1.2 Records that show sick leave days earned and used and the number of days available at any time; and
- 2.1.3 The record of vacation time for those employees whose terms of employment provide for earned vacation.
- 2.1.4 All forms and documents that become part of the Delaware Performance Appraisal System II (DPAS II) shall be retained in the individual's personnel file until there are at least five (5) complete summatives. The oldest complete set of evaluation forms and documents may be purged from the personnel file once the sixth set is complete.

9 DE Reg. 395 (09/01/05)

12 DE Reg. 443 (10/01/08)

3.0 Records Retention

3.1 Each school district and charter school shall keep the records referred to in ~~s~~Section 2.0 above for all employees' inactive personnel files for at least fifty (50) years following termination of employment.

3.42 For the security of records and the protection of the personnel for whom the information is recorded, it is recommended that original records are to be maintained at the school district or charter school for three (3) years after termination of an employee and a successful audit of such records. Records shall be purged in accordance with the *Delaware Public Archives School Districts General Records Retention Schedule* and prepared for storage according to the ~~["Delaware Public Archives Records Management Handbook Preparation of Records for Short-Term Storage"]~~². Records shall remain in their original format and shall then be transferred to DPA and retained in storage for the balance of the fifty (50) required years. Local District and charter school records officers and authorized agents may request files from storage in accordance with DPA's procedures for requesting files. At the end of the retention period, the documents will be destroyed in accordance with DPA's destruction procedures.

3.23 The style and form of the records shall be at the discretion of the local school districts or charter schools, except that records transferred to the Delaware Public Archives for storage shall be in a format acceptable to DPA. Individual local school districts and charter schools may elect to have their records recorded onto a different type of media at district expense, in accordance with DPA guidelines.

3.23.1 The information referred to above shall be maintained and available for any employee or former employee seeking information concerning their own employment records for a period of fifty (50) years after termination of employment. ~~["It is recommended that for the convenience of employees and former employees that school districts and charter schools develop an alphabetically arranged file showing the name of each employee and the disposition of his or her records."]~~

3 DE Reg. 1077 (02/01/00)

4 DE Reg. 989 (12/01/00)

9 DE Reg. 395 (09/01/05)

12 DE Reg. 443 (10/01/08)

20 DE Reg. 801 (04/01/17) (Final)