

DEPARTMENT OF EDUCATION
Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 742

REGULATORY IMPLEMENTATION ORDER

FINAL

742 Compensation of District Personnel Under Specific Project Proposals

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 742 Compensation of District Personnel Under Specific Project Proposals in order to add a reference to charter schools and change the title and the regulation so the regulation refers only to federal projects.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 23, 2004, in the form hereto attached as *Exhibit "A"*. Comments were received from The Governor's Advisory Council for Exceptional Citizens. The following are the Department's responses to the Advisory Council's concerns.

The Advisory Council was concerned that the rationale for deleting the authorization for "locally supported projects" was not provided. The Department's response is that the existing regulation is redundant because local school districts have the discretion to use their local funds to hire additional personnel or supplement existing salaries and to develop their own local compensation plans.

The Council also commented that although the proposed regulations apply only to districts and charter schools, section 3.1 anomalously refers to "a nonpublic school institution". The Department's response is that the requirement for "equitable compensation" is applicable to individuals compensated through federal funds. It applies to charters as well as districts and non-public school institutions. It also applies to the Department of Education.

Lastly, the Council suggested that section 3.2 literally disallows an employee whose compensation is derived 1% from federal funds to enjoy the due process protections in Title 14.

The Department's response is that federally supported positions are excluded from the provisions of Chapter 14 because employment is also conditioned on the receipt of federal funds. Local districts have additional provisions contained in their collective bargaining agreements related to termination, seniority, etc.

The Department upon review of the concerns will retain the wording as amended.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** in order to add a reference to charter schools and change the title and the regulation so the regulation refers only to federal projects.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 742. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 742 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 742 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** 742 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 742 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 November 17, 2004. 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 17th day of November 2004.

DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

742 Compensation of School District and Charter School Personnel Under Specific Project Proposals Federal Projects

1.0 A school district or charter school may use ~~Federal or local~~ federal funds to:

1.1 Employ additional administrative, supervisory and teaching personnel, or other necessary personnel beyond those allocated in **Delaware Code**, Title 14, in order to implement a federally ~~or locally~~ supported project.

1.2 Extend the employment of a ten or eleven month employee through the eleventh and twelfth month for purposes of conducting a federally ~~or locally~~ supported program. Part-time assignments shall be paid a pro-rata share.

1.3 Employ teachers of the school district or charter school during the school year for additional hours each week to support such ~~activities as extra-time instruction~~ federally supported programs.

1.4 Employ full-time instructional personnel who are qualified for administrative or supervisory positions to carry on administrative or supervisory activities of a federally supported program beyond the regular school day or school week.

1.5 Pay a salary equal to the combined ~~State~~ and local salary of other persons in similar assignments at the same rank.

1.6 Pay an hourly rate for a part-time assignment as an amount pro-rated against the annual salary for the same rank and assignment and in accordance with the qualifications of the individual so assigned and in accordance with previous sections of this statement.

~~2.0 A district shall:~~

~~2.1 Where applicable include a description of the position in the project proposal as presented to the Department of Education for approval.~~

~~2.2 In describing any new or additional position, align it with a recognized rank as described in **Delaware Code**, Title 14; or in the case of a nonpublic school institution describe the position in terms of a rank already existing in the institution and assigned to comparable work.~~

~~2.3 Include in the benefits of the employee all of those benefits that accrue to an employee of the State or the local school district except that the benefit of the provisions of 14 **Del.C.** Ch. 14 shall not apply to any person whose salary is paid from Federal funds in whole or in part.~~

~~2.4 Seek and obtain approval of a Federally funded project through the office of the appropriate coordinator in the Department of Education prior to the assignment of personnel for the assumption of duties and payment of wages or salary.~~

~~2.5 Comply with the maximum hourly compensation rates as published by the Department of Education unless there is authorization to pay at a per diem rate.~~

~~See 3 DE Reg. 755 (12/1/99)~~

2.0 A school district or charter school shall not:

2.1 Supplant funds for a local or state position by substituting federal funds for payment of that position.

2.2 Pay a salary to cover paid vacation days during intended federal employment when that federal employment is an extension of a ten or eleven-month school year as assigned and paid by the state.

3 DE Reg. 755 (12/1/99)

~~3.0 A district shall not:~~

~~3.1 Supplant funds for a local or State position by substituting Federal funds for payment of that position.~~

~~3.2 Pay a salary to cover paid vacation days during intended Federal employment when that Federal employment is an extension of a ten or eleven-month school year as assigned and paid by the State.~~

3.0 For federal project proposals that require the approval of the Department of Education, the applicant

shall:

3.1 Describe any new or additional position, align it with a recognized rank as described in Delaware Code Title 14 or in the case of a nonpublic school institution describe the position in terms of a rank already existing in the institution and assigned to comparable work.

3.2 Include in the benefits of the employee all of those benefits that accrue to an employee of the state or the local school district or charter school except that the benefit of the provisions of 14 Del.C. Ch. 14 shall not apply to any person whose salary is paid from federal funds in whole or in part.

3.3 Seek and obtain approval of the project through the Department of Education prior to the assignment of personnel for the assumption of duties and payment of wages or salary.

4.0 Local school districts shall comply with the maximum hourly compensation rates as published by the Department of Education.

8 DE Reg. 884 (12/01/04)