

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 121, 122 and 4111 (14 **Del.C.** §§121, 122 & 4111)  
14 **DE Admin. Code** 294

### PROPOSED

### PUBLIC NOTICE

#### Educational Impact Analysis Pursuant to 14 **Del.C.** §122(d)

#### 294 Data Governance

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §§121, 122 and 4111, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 294 Data Governance. The Department reviewed this regulation in compliance with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. There are no content changes needed, but the regulation was amended to comply with the Delaware Administrative Code Drafting and Style Manual.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before December 31, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? No.
2. Will the amended regulation help ensure that all students receive an equitable education? Yes.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? Yes.
4. Will the amended regulation help to ensure that all students' legal rights are respected? Yes.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? No.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? No.
7. Will the decision-making authority and accountability for addressing the subject to be regulated be placed in the same entity? No.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? Yes.
9. Is there a less burdensome method for addressing the purpose of the regulation? No.
10. What is the cost to the State and to the local school boards of compliance with the regulation? Not applicable.

#### 294 Data Governance

##### 1.0 Purpose

The purpose of this regulation is to outline the criteria and process for interagency data governance and the conduction of evaluation, ~~audits~~ audits, and studies pursuant to 14 **Del.C.** §§121, 122 and 4111.

##### 2.0 Definitions

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

"**Department**" means the Delaware Department of Education.

**"Educational Record"** shall mean personally identifiable student information, maintained by an education agency or institution, as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations, and other applicable federal and state privacy and confidentiality laws.

**"Longitudinal Data System" data system** means a structure and mechanism for the storage, description, management and reporting of discrete data elements and bodies of information over time.

**"Personally Identifiable Information" identifiable information** means information which, alone or in combination with other information, can be used to distinguish or trace an individual's identity and shall include, ~~but not be limited to,~~ the names and addresses of students, parents or other family members, and personal identifiers such as social security or student numbers.

**"P-20 Council"** means the council established by 14 ~~Del.C.~~, Del.C. §107 to coordinate educational efforts of publicly-funded programs from early care through higher education and to foster partnerships among groups concerned with public education.

**"Research Agenda" agenda** means a roster of research questions that require shared data elements and subject to periodic review and revision. Research questions may reflect federal and state reporting requirements or may be discretionary.

### 3.0 Longitudinal Data System Governance

The ~~Longitudinal Data System~~ longitudinal data system developed and administered by the Department is governed by the Delaware P-20 Council Data Governance Handbook, initially approved by the P-20 Council on January 10, 2012, and as may be amended from time to time.

### 4.0 Acquisition, ~~Use~~ Use, and Disposal of Data

4.1 The Department shall collect and maintain data, including ~~Personally Identifiable Information~~ personally identifiable information, in compliance with its rights and obligations under federal and state laws.

4.2 The Department shall provide data, including ~~Personally Identifiable Information~~ personally identifiable information, to implement applicable ~~Research Agendas~~ research agendas established by the P-20 Council.

4.3 When a ~~Research Agenda~~ research agenda is established by the P-20 Council which requires the use of ~~Personally Identifiable Information~~ personally identifiable information from data collected and maintained or to be collected and maintained by the Department, a written agreement in the form prescribed by the Department shall be entered into.

4.3.1 If the ~~Research Agenda~~ research agenda is to conduct a study for or on behalf of school, school district or postsecondary institutions it must be for the purpose of: improving instruction; developing, validating, or administering predictive tests; or administering student aid programs. In the case of such a study, the written agreement shall, at a minimum, do the following:

4.3.1.1 Specify the purpose, scope and duration of the study and the information to be disclosed; and

4.3.1.2 Require the organization to: use ~~Personally Identifiable Information~~ personally identifiable information only to meet the ~~purpose(s)~~ purpose of the study; limit access to ~~Personally Identifiable Information~~ personally identifiable information to those with legitimate interests; and destroy any ~~Personally Identifiable Information~~ personally identifiable information upon completion of the study and specify the time period in which the information must be destroyed.

4.3.2 If the ~~Research Agenda~~ research agenda is to conduct an audit or evaluation of a Federal or State supported education program or to enforce or comply with Federal legal requirements that relate to those education programs, as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) and its implementing regulations at 34 CFR part 99, the written agreement shall, at a minimum, do the following:

4.3.2.1 Designate an authorized representative; and

4.3.2.2 Specify what ~~Personally Identifiable Information~~ personally identifiable information will be disclosed and for what purpose, which purpose shall be one allowable under the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) and its implementing regulations at 34 CFR part 99; and

4.3.2.3 Describe the activity to make clear it falls within an allowable purpose; and

4.3.2.4 Require the authorized representative to destroy ~~Personally Identifiable Information~~ personally identifiable information upon completion of the evaluation and specify the time period in which the information must be destroyed; and

4.3.2.5 Include policies and procedures to protect ~~Personally Identifiable Information~~ personally identifiable information from further disclosure and unauthorized use.

4.4 Any written agreement entered ~~into~~ under this regulation shall prohibit modification or amendment except by written agreement duly executed by the parties to that agreement.

**16 DE Reg. 67 (07/01/12)**

**28 DE Reg. 419 (12/01/24) (Prop.)**