

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 252

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 252 Required Educational Records and Transfer and Maintenance of Educational Records

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. This regulation is being amended to clarify the maintenance and transfer of student records as it pertains to private and public schools and educational programs operated by the Department of Services for Children, Youth and Their Families. It also clarifies when the student's records should be maintained as an original Cumulative Record File and when they are permitted to be copied and transferred.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on November 1, 2015, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities regarding: (1) concerns that there is no definition of "public school" in the regulation, which may cause a problem if a student transfers to an out of state school; (2) suggestion that Delaware public schools should keep a copy of the cumulative file sent to an out of state public school so that there is a Delaware record. The Department added the definition of public school into the regulation for clarification. The Delaware Public Records Law controls as to whether copies of records sent to out of state public schools should be kept; therefore no changes were made regarding this issue.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records in order to clarify the maintenance and transfer of student records as it pertains to private and public schools and educational programs operated by the Department of Services for Children, Youth and Their Families. It also clarifies when the student's records should be maintained as an original Cumulative Record File and when they are permitted to be copied and transferred.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational 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** 252 Required Educational Records and Transfer and Maintenance of Educational Records amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational 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 December 17, 2015. 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 17<sup>th</sup> day of December 2015.

Approved this 17<sup>th</sup> day of December 2015

## 252 Required Educational Records and Transfer and Maintenance of Educational 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:

“**Court Orders**” shall mean any written direction from a court of competent jurisdiction directed to the student or affecting the student’s care or custody.

“**Delaware School Health Record**” shall mean the form required by 14 DE Admin Code 811 for Delaware public school students.

“**Discipline Record**” shall mean information about any and all periods of suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district’s code of conduct or other rules.

“**Emergency/Nursing Treatment Card**” shall mean the card containing the general emergency information and procedures for the care of a student when the student becomes sick or injured in school as required in 14 DE Admin. Code 811.

“**Identifying Data**” shall mean the name of the student, date of birth, sex, race and ethnicity, address, telephone number, Delaware student identification number and the name of the parent(s), guardian(s) or Relative Caregiver.

“**Progress Report**” shall mean a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized test(s) scores such as the DSTP or successor state student assessment; and attendance data for each year of the student’s attendance.

[“**Public School**” means a school or charter school having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators.]

“**Student Transcript**” shall mean a single record maintained for each student in grades 9 and above that contains the following: end of year and up to date grades; credits earned; class rank; Grade Point Average (GPA); withdrawal or graduation date; standardized test(s) scores such as the DSTP or successor state student assessment, SAT, PSAT, ACT; attendance data and school activities. If applicable, a list of the career technical competencies achieved by a student enrolled in a specific career technical program shall also be included.

13 DE Reg. 1075 (02/01/10)

### 2.0 Education Records Required by Schools in Delaware

2.1 Each Delaware school shall maintain a Cumulative Record File either as an electronic or paper file for each student enrolled.

2.1.1 The student Cumulative Record File shall contain the Emergency/Nursing Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above) and Discipline Record.

2.1.2 The student Cumulative Record File shall also contain any Court Orders in the school or district’s possession, to the extent the school or district maintains such documents for an individual student, and;

2.1.3 In addition, the Cumulative Record File for a child with a disability as defined in 14 DE Admin Code 925 or for a child identified under Section 504 shall contain any records related to the identification, evaluation, placement, and provision of a free appropriate public education. Such documents may be collected and maintained separately.

13 DE Reg. 1075 (02/01/10)

### 3.0 Transfer of the Records of Public School and Private Schools Students

3.1 When a student transfers from a public school, private school or an educational program operated by the Department of Services for Children, Youth and Their Families to any other school in Delaware, the receiving school shall immediately request the Cumulative Record File from the sending school or program.

- 3.2 The Cumulative Record File shall follow each student transferred from one school to another including files for each student with disabilities transferred from one school to another.
- 3.2.1 Public schools, school districts, private schools and educational programs operated by the Department of Services for Children, Youth and Their Families shall promptly transfer a student's Cumulative Record File upon the request of a receiving school.
- 3.2.1.1 Public schools and school districts shall maintain the original Cumulative Record File and provide a copy of the file when students transfer to a private school or educational program operated by the Department of Services for Children, Youth and Their Families.
- 3.2.1.2 Public schools and school districts shall provide the original Cumulative Record File when transferring records to another public school.
- 3.2.2 Unpaid student fees or fines shall not be a basis for a public school, school district or an educational program operated by the Department of Services for Children, Youth and Their Families to deny or to delay transfer of the Cumulative Record File.
- 3.2.3 Students shall not be denied enrollment into a public school on the grounds that the student's Cumulative Record File has not been received.
- 3.3 Before transferring student records, a public school, school district or private school shall specifically confirm that the Cumulative Record File contains the student's Discipline Record.
- 3.4 When students transfer to a Delaware school from any other school including a school in a foreign country the receiving school is responsible for having the transcripts evaluated.

#### **4.0 Maintenance of the Education Records of Public Schools**

- 4.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the maintenance of education records.
- 4.2 Contracts for storage of student records of graduates, withdrawals and special education students ~~for district storage,~~ shall be initiated between the school district or charter school and the Delaware Public Archives.
- 4.3 The Cumulative Record Files for students who have graduated from or who left school prior to graduation from high school shall be stored at the school or district of last attendance or in the Delaware Public Archives.

**13 DE Reg. 1075 (02/01/10)**

#### **5.0 Destruction of Education Records of Public Schools**

- 5.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the destruction of any education records.
- 5.2 The destruction of educational records of children with disabilities shall also comply with the requirements of 14 **DE Admin. Code 927.**

**8 DE Reg. 1112 (2/1/05)**

**13 DE Reg. 1075 (02/01/10)**

**19 DE Reg. 618 (01/01/16) (Final)**