

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 294

PROPOSED

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

294 Data Governance

A. Type Of Regulatory Action Required

New Regulation

B. Synopsis Of Subject Matter Of The Regulation

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 14 DE Admin. Code 294 Data Governance. This regulation was developed in consultation with a working group designated by the members of the P-20 which includes representatives of the Interagency Resource Management Committee. The regulation is adopted pursuant to legislation passed in the 146th General Assembly and specifically 14 Del.C. §122(b)(24). This regulation provides for the criteria and process for interagency data governance and the conduction of evaluations, audits and studies. The Delaware P-20 Council Data Governance Handbook, approved by the P-20 Council in January 2012 is a companion document to this regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 5, 2012 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation and/or Delaware P-20 Council Data Governance Handbook is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? This new regulation will allow for the sharing of interagency data which may result in improved policies or interventions that support student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation does not specifically address ensuring all students receive an equitable education, but may assist to identify any issues with equity.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not specifically address ensuring all students' health and safety are adequately protected, but may assist to identify any issues with health and safety.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation does not specifically address ensuring all students' legal rights are respected, but may assist to identify any issues with legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation does preserve the necessary authority and flexibility at the local board and school level.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation should not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This is a new regulation. Data authority and accountability at the local or state level does not necessarily change because of this new regulation.

8. Will the new 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? The new regulation is consistent with and not an impediment to other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of data governance.

10. What is the cost to the State and to the local school boards of compliance with the regulation? It is anticipated that there are no additional costs to the State or to the local school boards for compliance with this regulation.

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 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" 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" refers to 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., §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" 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 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 and Disposal of Data

- 4.1 The Department shall collect and maintain data, including 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, to implement applicable Research Agendas established by the P-20 Council.
- 4.3 When a Research Agenda is established by the P-20 Council which requires the use of 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 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 only to meet the purpose(s) of the study; limit access to Personally Identifiable Information to those with legitimate interests; and destroy any 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 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 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 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 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.

15 DE Reg. 1536 (05/01/12) (Prop.)