

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 1315 (14 **Del.C.** §§122(b) & 1315)  
14 **DE Admin. Code** 729

### PROPOSED

### PUBLIC NOTICE

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

#### 729 School Custodians

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

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

Pursuant to 14 **Del.C.** §122 (b) and 14 **Del.C.** §1315, the Secretary of Education intends to amend 14 **DE Admin. Code** 729 School Custodians. This regulation is being amended to update the custodial formula and to correct grammatical and style errors in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

The Department of Education published the proposed amendments in the *Register of Regulations* on May 1, 2024 with an incorrect public comment end date of August 1, 2024. The proposed amendments are being republished in the *Register of Regulations* on June 1, 2024 with the correct public comment end date of July 1, 2024.

Any and all comments received in response to the proposed amendments published on either May 1, 2024 or June 1, 2024 will be provided in the implementing regulatory order when published.

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 July 1, 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? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation, by ensuring proper employment of school custodians, will help ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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? The amended regulation is consistent with and not an impediment to the implementation of 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 the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The revisions to the regulations could increase the number of custodial units in schools, which would lead to increased costs in salary and related categories, and salary increases included in the state budget will increase costs.

## 729 School Custodians

### 1.0 Definitions

The following words and terms shall have the following meaning:

**"Assistant Chief Custodian"** means a custodian who has completed the Assistant Chief Custodian certificate training as prescribed by the Department in subsection 5.2.2.

**"Central Heating Plant heating plant"** means all the component parts and systems used to heat, air condition and ventilate a school facility to include traditional mechanical systems and computer building automation systems.

**"Certificate of Occupancy occupancy"** means the certificate issued by code enforcement agencies certifying that a building meets all building and safety codes required by the jurisdiction of that agency.

**"Chief Custodian"** means a ~~Custodian~~ custodian who has completed the 120-class hour Chief Custodian training as prescribed by the Department in subsection ~~5.1.4~~ 5.2.1.

**"Classroom"** means an area or space within a school building that is used for student instruction.

**"Classroom Equivalent equivalent"** means areas or spaces in school buildings that are used for student instruction, but not classified as a classroom, such as, ~~but not limited to,~~ computer labs and centers, libraries, media centers, multiple intelligence rooms and areas, and athletic training rooms.

**"Custodial Unit unit"** means a formula used to determine the number of custodial positions earned by ~~an~~ a local educational facility agency.

**"Custodian"** means a ~~school district~~ local educational agency employee who is paid in accordance with 14 Del.C. §1311(a).

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

**"Firefighter and Custodian Firefighter"** means a Custodian who has completed the 90-class hour Firefighter and Custodian-Firefighter certificate training as prescribed by the Department in subsection 5.1.2. This training includes, but is not limited to, the operation of boilers and central heating plant systems.

**"Local educational agency" or "LEA"** means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district, or for a combination of school districts. The term includes an educational service agency and any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

**"Maintenance Mechanic"** means an employee filling a custodial position with specialized technical skill in a particular trade or trades as determined by the ~~school district~~ local educational agency in accordance with subsection 4.3 and paid in accordance with the pay scale identified in 14 Del.C. §1311(a).

**"Office"** means a room or area within a school building meant for continuous occupancy and typically used by 1 or more individuals for administrative and other non-instructional purposes. Areas separated by cubicles or other dividers shall be considered 1 office equivalent.

**"Office equivalent"** means areas or spaces within school buildings that are meant for continuous occupancy, but not typically used for group instruction, such as conference rooms, meeting rooms, staff break rooms, and copier rooms.

**"Skilled Craftsperson"** means an employee filling a custodial position with specialized technical certification or licensure in a particular trade or trades as determined by the ~~school district~~ local educational agency in accordance with subsection 4.4 and paid in accordance with the pay scale identified in 14 Del.C. §1311(a).

21 DE Reg. 209 (09/01/17)

24 DE Reg. 667 (01/01/21)

### 2.0 Experience

Custodians may be allowed ~~one (1)~~ 1 year of experience for each creditable year of experience in similar employment as determined by the district LEA.

24 DE Reg. 667 (01/01/21)

### 3.0 Allocation of Custodial Units

- 3.1 The custodial units allocated to a district LEA may be assigned to various locations at the discretion of the local school board and the chief school officer LEA.
- 3.2 Districts and charter schools LEAs are allocated ~~one (1)~~ 1 full-time custodial position for each ~~twelve (12)~~ 12 custodial units or for a major fraction thereof. The number of units is allocated for each school is determined in the following way:
- 3.2.1 ~~One (1) unit for each classroom or classroom equivalent.~~
  - 3.2.2 ~~One (1) unit for a small auditorium (less than 150 students).~~
  - 3.2.3 ~~Two (2) units for a large auditorium (more than 150 students).~~
  - 3.2.4 ~~One (1) unit for a cafeteria having a seating capacity up to 150. One (1) unit for each 150 capacity or major fraction thereof.~~
  - 3.2.5 ~~One (1) unit for a gymnasium.~~
  - 3.2.6 ~~One (1) unit for a combined auditorium and gymnasium (less than 150 students).~~
  - 3.2.7 ~~Two (2) units for a combined auditorium and gymnasium (more than 150 students).~~
  - 3.2.8 ~~One (1) unit for two locker rooms.~~
  - 3.2.9 ~~Seven (7) units for a swimming pool.~~
  - 3.2.10 ~~Units for a central heating plant are determined as follows:~~
  - 3.2.1 Classrooms
    - 3.2.1.1 One unit for each classroom or classroom equivalent.
    - 3.2.1.2 One and one-half units for each vocational, technical or specialized instructional room exceeding 1,000 square feet.
  - 3.2.2 Cafeteria
    - 3.2.2.1 One unit for a cafeteria with a capacity of 150 students or less.
    - 3.2.2.2 One additional unit for each additional 150 students or fraction thereof.
  - 3.2.3 Gymnasiums and Auditoriums
    - 3.2.3.1 One unit for a gymnasium or auditorium of less than 5,000 square feet.
    - 3.2.3.2 One and a half units for a gymnasium or auditorium of 5,000 to 10,000 square feet.
    - 3.2.3.3 Two units for a gymnasium or auditorium over 10,000 square feet.
  - 3.2.4 One unit for 2 locker rooms.
  - 3.2.5 Seven units for a swimming pool.
  - 3.2.6 Units for a central heating plant are determined as follows:

No. of Classrooms or equivalent	No. of Units
1 to 6	1/2
7 to 9	3/4
10 to 15 Up to 15	1
16 to 20	1 1/2
21 to 25	2
26 to 30	2 1/2
31 to 35	3
36 to 40	3 1/2
41 to 45	4
46 to 50	4 1/2
51 to 55	5
56 to 60	5 1/2
61 or more	<u>1/2 unit per 5 additional classrooms</u>

- 3.2.14 ~~One half (1/2) unit for each developed acre of the school plant site, not to exceed 48 acres or 24 units on a given site. If two schools are located on the same site of 100 acres or more, the second school shall receive credit for half of the acres for that site.~~
- 3.2.6.1 One unit for the first 15 classrooms or classroom equivalents.
- 3.2.6.2 One additional one-half units for each 5 classrooms or classroom equivalents.

- 3.2.7 One-half unit for each developed acre of the school plant site. If multiple schools are located on the same site, the acreage will be divided equally among the schools.
- 3.2.8 One-quarter unit for each office or office equivalent.
- 3.2.9 One-half unit for each gang bathroom.
- 3.2.10 One-quarter unit for each single bathroom.
- 3.3 Part-time custodians equivalent to ~~one (1)~~ 1 or more full-time custodians may be employed with the provision that proper records will be maintained at the ~~school district~~ LEA for review.
- 3.4 A full custodial staff for a new school building may be employed ~~two (2)~~ 2 months prior to the pupil occupancy of the building.
  - 3.4.4 In order to maintain building climate and secure new school buildings completed with a certificate of occupancy date further in advance of student occupancy than the ~~two (2)~~ 2 months identified in subsection 3.4, the ~~district~~ LEA is eligible to earn the custodial units provided for site maintenance and central heating plant as of the certificate of occupancy date, until eligible to employ the full custodial staff in accordance with subsection 3.4.
- 3.5 The termination date for custodial units in closed buildings shall be ~~six (6)~~ 6 weeks from the last day classes are held in the building.
- 3.6 Buildings which are closed and retained under the control of the ~~school district~~ LEA shall lose all custodial units except units provided for site maintenance and heating.
- 3.7 When the ~~school district~~ LEA signs a lease or in any way loses direct control of the building, through transfer, sale or legislation, the custodial units for site maintenance and heating shall terminate on the effective date of the lease, transfer, sale or legislation.
- 3.8 It is the ~~school district's~~ LEA's responsibility to notify the Department when the function of a building is changed. When the notification is received, a re-evaluation of the custodial units will be completed by the Department. The Department will notify the ~~district~~ LEA by letter of the results of the re-evaluation.
- 3.9 The Department shall calculate and approve all custodial unit allocation requests submitted by the ~~local school districts and charter schools~~ LEAs.

**11 DE Reg. 1462 (05/01/08)**

**21 DE Reg. 209 (09/01/17)**

**24 DE Reg. 667 (01/01/21)**

#### **4.0 Classification**

- 4.1 ~~Custodian-Firefighter~~ Assistant Chief Custodian
  - 4.1.1 When there is only ~~one (1)~~ 1 custodian in a ~~district~~ LEA building, the custodian may be classified as a ~~Custodian-Firefighter~~ an Assistant Chief Custodian.
  - 4.1.2 There shall be only ~~one (1) Custodian-Firefighter~~ employed 1 Assistant Chief Custodian position in each building.
- 4.2 ~~Chief Custodian~~ Custodian.
  - 4.2.4 A custodian may be classified as a Chief Custodian when at least ~~two (2)~~ 2 other full time custodians or the equivalent are employed in the school building or other ~~district~~ LEA facility. There shall only be ~~one (1)~~ 1 Chief Custodian ~~per~~ position in each building.
- 4.3 Maintenance Mechanic. Each ~~school district~~ LEA may classify up to ~~ten (10) percent~~ 10% of the total number of custodial personnel as maintenance mechanics. Qualifications shall be as defined by the employing ~~school district~~ LEA.
- 4.4 ~~Skilled Craftsperson~~ Craftsperson.
  - 4.4.4 Each ~~school district~~ LEA may classify an incumbent in ~~one (1)~~ 1 or more of its Maintenance Mechanic positions as a Skilled Craftsperson for purposes of this section if the incumbent:
    - 4.4.4.1 4.4.1Has received a certificate as a union journeyman or equivalent in any of the following fields: Boiler Maker, Carpenter, Electrician, HVAC Mechanic, Mill Wright, Heavy Machinery Operator, Pipe Fitter, Plumber, Roofer, or Sheet Metal Worker; or
    - 4.4.4.2 4.4.2Possesses a current state license in any of the fields listed in subsection 4.4.4.1 4.4.1; or
    - 4.4.4.3 4.4.3Is an Automobile Mechanic who possesses ~~two (2)~~ 2 or more National Institute for Automotive Service Excellence (ASE) Certifications in the Automotive, Truck or School Bus categories; or
    - 4.4.4.4 4.4.4Is a Boiler Maker who possesses either an AWS or ASME Welding Certification; or
    - 4.4.4.5 4.4.5Is a Computer Technician who possesses an A Plus Certification from CompTIA (Computing Technology Industry Association); or

- 4.4.1.6 ~~4.4.6~~ Is an HVAC Mechanic who possesses ~~two (2)~~ 2 or more certifications from manufacturers of digital control systems in use by the ~~district~~ LEA, or possesses a certification from a manufacturer of centrifugal chillers used within the ~~district~~ LEA; or
- 4.4.1.7 ~~4.4.7~~ Possesses ~~two (2)~~ 2 or more Hazardous Material Certifications from the State of Delaware, OSHA, or the United States Environmental Protection Agency; or
- 4.4.1.8 ~~4.4.8~~ Is a Pipe Fitter who possesses an AWS or ASME Welding Certification; or
- 4.4.1.9 ~~4.4.9~~ Is a Roofer who possesses Training Certifications from ~~two (2)~~ 2 or more manufacturers of Roofing Systems in use by the ~~District~~ LEA; or
- 4.4.1.10 ~~4.4.10~~ Is a Burner Mechanic who possesses a certification from a manufacturer of oil or gas burners used within the ~~District~~ LEA.

4.5 Building and Grounds Supervisor: Each ~~district with ninety five (95)~~ LEA with 95 or more custodial units may employ a school buildings and grounds supervisor according to the salary schedule. This position is included in the total number of custodial personnel allowed.

**21 DE Reg. 209 (09/01/17)**

**24 DE Reg. 667 (01/01/21)**

## **5.0 Certificates Granted by the Department for Additional Hours of Special Training**

5.1 The Department shall specify the special training needed in order for an individual to receive a certificate for ~~the additional pay stipends as custodial positions~~ outlined in 14 ~~Del.C. §1311(b)~~ §1311(a).

5.2 The following hourly requirements shall be met in order for the Department to grant the custodial certificates listed in subsections ~~5.1.1 through 5.1.3~~ 5.2.1 through 5.2.3. The certificate ~~guarantees additional pay as specified in 14 Del.C. §1311(b)~~, but only the local school district can change a custodian's classification for purposes of 14 ~~Del.C. §1311(a)~~ §1311(a) provides eligibility to qualify for positions identified in subsections 5.2.2 and 5.2.3.

~~5.1.1~~ 5.2.1 Chief Custodian Certificate (120-class hours). ~~Employees who have earned the Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Achievement of this certification requires completion of the Assistant Chief Custodian certificate and an additional 30 hours of Department-approved training. Employees hired into Chief Custodian positions who have not completed the trainings identified in subsections 5.2.1, 5.2.2 and 5.2.3 must do so within 60 days of hire, except Fire School training which should be completed on the next available training date. Employees who have earned the Chief Custodian certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for chief custodial positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).~~

~~5.1.2~~ 5.2.2 Firefighter and Custodian-Firefighter Assistant Chief Custodian Certificate (90-class ~~60-90-class~~ hours). ~~The Assistant Chief Custodian is paid in accordance with the Custodian Firefighter as referenced in 14 Del.C. §1311(a). Achievement of this certification requires the completion of the Custodian certificate and an additional 30 hours of Department-approved training. This training includes the operation of boilers and central heating plant systems. Employees hired into Assistant Chief Custodian positions who have not completed the trainings identified in subsections 5.2.1 and 5.2.2 must do so within 60 days of hire, except Fire School training which should be completed on the next available training date. Employees who have earned the Firefighter and Custodian-Firefighter Assistant Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Employees with the Firefighter and Custodian-Firefighter certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for Custodian-Firefighter positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a) eligible for training as a Chief Custodian and may apply for Assistant Chief Custodian positions as they become vacant.~~

~~5.1.3~~ 5.2.3 Custodian Certificate (60 on-the-job hours). ~~Achievement of this certification requires the completion of 60 hours of on-the-job training, Fire School training, and submission of documentation of training completion to the Department. Employees hired as custodians shall complete the 0-60 hours of training within 60 days of hire and the Fire School training on the next available training date. Custodians who have earned the Custodian Certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b) eligible for Assistant Chief Custodian training and may apply for Assistant Chief Custodian positions as they become available.~~

**2 DE Reg. 778 (11/01/98)**

**4 DE Reg. 225 (07/01/00)**

**6 DE Reg. 1349 (04/01/03)**

**11 DE Reg. 1462 (05/01/08)**

**21 DE Reg. 209 (09/01/17)**

**24 DE Reg. 667 (01/01/21)**

**27 DE Reg. 933 (06/01/24) (Prop.)**