

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 **Del.C.** §122(b)(2))
14 **DE Admin. Code** 729

FINAL

REGULATORY IMPLEMENTING ORDER

729 School Custodians

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b)(2), the Secretary of Education intends to amend 14 **DE Admin. Code** 729 School Custodians. This amendment is needed to align the regulation with common practice around operations and training opportunities for custodial staff throughout the state. Additionally, the regulation is being updated to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on November 1, 2020, in the form hereto attached as *Exhibit "A"*. No comments were received for the proposed amended regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 729 School Custodians in order to align the regulation with common practice around operations and training opportunities for custodial staff throughout the state. Additionally, the regulation is being updated to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 729 School Custodians. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 729 School Custodians attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 729 School Custodians 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** 729 School Custodians amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 729 School Custodians 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 14, 2020. 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 14th day of December 2020.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 14th day of December 2020

Exhibit B

729 School Custodians

1.0 Definitions

"Central 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" 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 who has completed the ~~120-class~~ 120-class hour Chief Custodian training as prescribed by the Department of Education in subsection 5.1.1 below. ~~Employees who have earned the Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). 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).~~

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

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

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

"Custodian" means a school district employee who is paid in accordance with 14 Del.C. §1311(a). ~~The school district employee shall be entitled to an additional pay stipend pursuant to 14 Del.C. §1311(b) upon completion of the 60 hour Custodian certificate training as prescribed in subsection 5.1.3 below.~~

"Department" means the Delaware Department of Education.

"Firefighter and Custodian-Firefighter" means a Custodian who has completed the ~~90-class~~ 90-class hour Firefighter and Custodian-Firefighter certificate training as prescribed by the Department of Education in subsection 5.1.2 below. This training ~~includes~~ includes, but is not limited to to, the operation of boilers and central heating plant systems. ~~Employees who have earned the Firefighter and Custodian-Firefighter 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 Fireman positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).~~

"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 in accordance with subsection 4.3 below and paid in accordance with the pay scale identified in 14 Del.C. §1311(a).

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

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

2.0 Experience

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

3.0 Allocation of Custodial Units

- 3.1 The custodial units allocated to a district may be assigned to various locations at the discretion of the local school board and the chief school officer.
- 3.2 Districts and charter schools are allocated one (1) full-time custodial position for each twelve (12) custodial units or for a major fraction thereof. The number of units in 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 ~~from the following table as follows:~~

No. of Classrooms or equivalent	No. of Units
1 to 6	1/2
7 to 9	3/4
10 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	

3.2.11 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.

3.3 Part-time custodians equivalent to one (1) or more full-time custodians may be employed with the provision that proper records will be maintained at the school district for review.

3.4 A full custodial staff for a new school building may be employed two (2) months prior to the pupil occupancy of the building.

3.4.1 In order to ~~maintain, heat~~ 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) months identified in subsection 3.4 ~~above~~, the district 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 ~~closed~~ shall be six (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 shall lose all custodial units except units provided for site maintenance and heating.

3.7 When the school district 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 responsibility to notify the Department of Education 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 of Education. The Department will notify the district by letter of the results of the re-evaluation.

3.9 The Department of Education shall calculate and approve all custodial unit allocation requests submitted by the local school districts and charter schools.

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

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

4.0 Classification

4.1 ~~Custodian-Fireman~~ Custodian-Firefighter

4.1.1 When there is only one (1) custodian in a district, the custodian may be classified as a ~~custodian-fireman~~ Custodian-Firefighter.

4.1.2 There shall be only one (1) ~~custodian-fireman~~ Custodian-Firefighter employed in each building.

4.2 Chief Custodian

4.2.1 A custodian may be classified as a Chief Custodian when at least two (2) other full time custodians or the equivalent are employed in the school building or other district facility. There shall only be one (1) Chief Custodian per building.

- 4.3 Maintenance ~~Mechanic~~: Mechanic. Each school district may classify up to ten (10) percent of the total number of custodial personnel as maintenance mechanics. Qualifications shall be as defined by the employing school district.
- 4.4 Skilled Craftsperson
- 4.4.1 Each school district may classify an incumbent in one (1) or more of its Maintenance Mechanic positions as a Skilled Craftsperson for purposes of this section if the incumbent:
- 4.4.1.1 Has 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
 - 4.4.1.2 Possesses a current state license in any of the fields listed in subsection 4.4.1.1 ~~above~~; or
 - 4.4.1.3 Is an Automobile Mechanic who possesses two (2) or more National Institute for Automotive Service Excellence (ASE) Certifications in the Automotive, Truck or School Bus categories; or
 - 4.4.1.4 Is a Boiler Maker who possesses either an AWS or ASME Welding Certification; or
 - 4.4.1.5 Is a Computer Technician who possesses an A Plus Certification from CompTIA (Computing Technology Industry Association); or
 - 4.4.1.6 Is an HVAC Mechanic who possesses two (2) or more certifications from manufacturers of digital control systems in use by the district, or possesses a certification from a manufacturer of centrifugal chillers used within the district; or
 - 4.4.1.7 Possesses two (2) or more Hazardous Material Certifications from the State of Delaware, OSHA, or the United States Environmental Protection Agency; or
 - 4.4.1.8 Is a Pipe Fitter who possesses an AWS or ASME Welding Certification; or
 - 4.4.1.9 Is a Roofer who possesses Training Certifications from two (2) or more manufacturers of Roofing Systems in use by the District; or
 - 4.4.1.10 Is a Burner Mechanic who possesses a certification from a manufacturer of oil or gas burners used within the District.
- 4.5 Building and Grounds Supervisor: Each district with ninety five (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)

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

- 5.1 The Department of ~~Education~~ shall specify the special training needed in order for an individual to receive a ~~certificate(s)~~ certificate for the additional pay stipends as outlined in 14 **Del.C.** §1311(b). The following hourly requirements shall be met in order for the Department of ~~Education~~ to grant the custodial certificates listed in subsections 5.1.1 through 5.1.3. The certificate guarantees additional pay as specified in 14 **Del.C.** ~~§1311(b)~~ §1311(b), but only the local school district can change a custodian's classification for purposes of 14 **Del.C.** §1311(a).
- 5.1.1 Chief Custodian Certificate (~~120 class hours~~) 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). 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 Firefighter and Custodian-Firefighter Certificate (~~90 class hours~~) 90-class hours). Employees who have earned the Firefighter and Custodian-Firefighter 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).
- 5.1.3 Custodian Certificate (~~60 on-the-job hours~~) hours). Employees who have earned the Custodian Certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b).

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) (Final)