

**§ 1602.40**

**29 CFR Ch. XIV (7-1-08 Edition)**

herein by reference and have the same force and effect as other sections of this part.<sup>1</sup> Such records and the information therefrom shall be retained at all times for a period of 3 years at the central office of the elementary or secondary school system or district, or at the individual school which is the subject of the records and the information therefrom, where more convenient, and shall be made available if requested by an officer, agent, or employee of the Commission under section 710 of title VII, as amended. It is the responsibility of every such school system or district, to obtain from the Commission or its delegate necessary instructions in order to comply with the requirements of this section.

(Approved by the Office of Management and Budget under control number 3046-0003)

[38 FR 26719, Sept. 25, 1973, as amended at 39 FR 30832, Aug. 26, 1974; 46 FR 63268, Dec. 31, 1981]

**§ 1602.40 Preservation of records made or kept.**

Any personnel or employment record made or kept by a school system, district, or individual school (including but not necessarily limited to requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff, or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by such school system, district, or school, as the case may be, for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 2 years from the date of termination. Where a charge of discrimination has been filed, or an action brought against an elementary or secondary school by the Commission or the Attorney General, the respondent elementary or secondary school system, district, or individual school shall preserve similarly

<sup>1</sup>NOTE: Instructions were published as an appendix to the proposed regulations on June 12, 1973 (38 FR 15463).

at the central office of the system or district or individual school which is the subject of the charge or action, where more convenient, all personnel records relevant to the charge or action until final disposition thereof. The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of "final disposition of the charge or the action" means the date of expiration of the statutory period within which a person claiming to be aggrieved may bring an action in a U.S. district court or, where an action is brought against a school system, district, or school either by a person claiming to be aggrieved, the Commission, or the Attorney General, the date on which such litigation is terminated.

(Approved by the Office of Management and Budget under control number 3046-0040)

[38 FR 26719, Sept. 25, 1973, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35756, July 26, 1991]

**Subpart M—Elementary-Secondary Staff Information Report**

SOURCE: 38 FR 26719, Sept. 25, 1973, unless otherwise noted.

**§ 1602.41 Requirement for filing and preserving copy of report.**

On or before November 30, 1982, and biennially thereafter, certain public elementary and secondary school systems and districts, including individually or separately administered districts within such systems, shall file with the Commission or its delegate executed copies of Elementary-Secondary Staff Information Report EEO-5 in conformity with the directions set

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forth in the form and accompanying instructions. The elementary and secondary school systems and districts covered are:

(a) Every one of those which have 100 or more employees, and

(b) Every one of those others which have 15 or more employees from whom the Commission requests the filing of reports.

Every such elementary or secondary school system or district shall retain at all times, for a period of 3 years, a copy of the most recently filed report EEO-5 at the central office of the school system or district, and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of section 710 of title VII, as amended. It is the responsibility of the school systems or districts above described in this section to obtain from the Commission or its delegate necessary supplies of the form.

[48 FR 8058, Feb. 25, 1983; as amended at 61 FR 33660, June 28, 1996]

### § 1602.42 Penalty for making of willfully false statements on report.

The making of willfully false statements on report EEO-5 is a violation of the United States Code, title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.

### § 1602.43 Commission's remedy for school systems' or districts' failure to file report.

Any school system or district failing or refusing to file report EEO-5 when required to do so may be compelled to file by order of a U.S. district court, upon application of the Commission or the Attorney General.

[61 FR 33660, June 28, 1996]

### § 1602.44 School systems' or districts' exemption from reporting requirements.

If it is claimed that the preparation or filing of the report would create undue hardship, the school system or district may apply to the Commission for an exemption from the requirements set forth in this part by submitting to the Commission or its delegate a specific proposal for an alternative

reporting system prior to the date on which the report is due.

[61 FR 33660, June 28, 1996]

### § 1602.45 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the Elementary-Secondary Information Report EEO-5, about the employment practices of private or public individual school systems, districts, or schools, or groups thereof, whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of title VII or the ADA. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of title VII or section 107 of the ADA and as otherwise prescribed by law.

[38 FR 27619, Sept. 25, 1973, as amended at 56 FR 35756, July 26, 1991]

## Subpart N—Records and Inquiries as to Race, Color, National Origin, or Sex

### § 1602.46 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts L and M of this part, supersede any provisions of State or local law which may conflict with them.

[38 FR 26720, Sept. 25, 1973]

## Subpart O—Recordkeeping for Institutions of Higher Education

### § 1602.47 Definition.

Under subparts O and P of this part, the term *institution of higher education* means an institutional system, college, university, community college, junior college, and any other educational institution which offers an associate degree, baccalaureate degree or higher degree or which offers a two year program of college level studies without degree. The term *college level studies* means a post secondary program which