

§ 1602.38

section 107 of the ADA, or section 207(a) of GINA and as otherwise prescribed by law.

[38 FR 12605, May 14, 1973, as amended at 56 FR 35756, July 26, 1991; 74 FR 63983, Dec. 7, 2009]

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

§ 1602.38 Applicability of State or local law.

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

[38 FR 12605, May 14, 1973]

Subpart L—Elementary and Secondary School Systems, Districts, and Individual Schools Recordkeeping

§ 1602.39 Records to be made or kept.

On or before November 30, 1974, and annually thereafter, every public elementary and secondary school system or district, including every individually or separately administered district within a system, with 15 or more employees and every individual school within such system or district, regardless of the size of the school shall make or keep all records and information therefrom which are or would be necessary for the completion of report EEO-5 whether or not it is required to file such a report under §1602.41. The instructions for completion of report EEO-5 are specifically incorporated herein by reference and have the same force and effect as other sections of this part.¹ 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

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

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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 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