
Category:	<u>STUDENTS</u>	Issued: 7/8/08	Number:	A-820
Subject:	CONFIDENTIALITY AND RELEASE OF STUDENT RECORDS; RECORDS RETENTION		Page:	1 of 1

SUMMARY OF CHANGES

This regulation supersedes Chancellor's Regulation A-820 dated September 5, 2000.

Changes:

- The regulation was revised to conform to amendments in the *Family Educational Rights and Privacy Act* ("FERPA") and the *Elementary and Secondary Education Act* via the *No Child Left Behind Act of 2001* and to include records disposal/retention information and updated contact information.
- It also has been revised in accordance with the changes in the DOE's organizational structure, and it has been renamed.

New Provisions:

- Update contact and other information for the reorganized Department of Education.
- Implement the 2004 FERPA amendment that allows consent for disclosure of student records to include consent in electronic format.
- Include notice of the requirement for secondary schools to disclose student contact information to military recruiters, in accordance with the *No Child Left Behind Act*, and the opportunity for the parent/student to opt out of such disclosure.
- Appeals of requests to amend records will be heard by the Community or High School Superintendent.
- Emphasize that the time frame for releasing student records to a non-custodial parent is no later than 45 days from the school's receipt of the non-custodial parent's request.
- Reminds school officials that School Safety Agents ("SSAs") and officers/members of Parent or Parent-Teacher Associations do not have access to student records.
- Give the current website address to obtain a copy of the State Education Department's ("SED") *Schedule for Records Retention and Disposition ED-1*.
- Provide consent forms for release of student records.
- Provide a link to obtain information on the Department of Education's archiving system
- Provide a retention period for special education files of students with disabilities (until the year they reach 32 years of age).

ABSTRACT

This regulation addresses the confidentiality of and access to student records and provides information about NY State records retention mandates and Department of Education requirements for disposing of or archiving records. It supersedes Chancellor's Regulation A-820, Student Records: Confidentiality, Access, Disclosure and Retention, dated September 5, 2000.

I. INTRODUCTION

This regulation incorporates pertinent provisions of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g; federal regulations at 34 C.F.R. Part 99), commonly referred to as "FERPA" or "the Buckley Amendment".

II. WHAT ARE THE RIGHTS GRANTED BY FERPA?

There are five basic rights granted to parents or eligible students:

- The right to inspect and review the student's education records maintained by the school(s) the child attends or has attended.
- The right to challenge and request that the school amend any portion of the student's education records that is inaccurate, misleading or otherwise in violation of the student's privacy rights.
- The right to require the school to obtain written consent prior to the disclosure of personally identifiable information, except in those instances specifically allowed for by law.
- The right to be informed by the school of the rights accorded parents under FERPA.
- The right to file a complaint with the Family Policy Compliance Office of the United States Department of Education alleging a denial of rights.

III. DEFINITIONS

- A. "Disclosure" means to permit access to or the release, transfer or other communication of personally identifiable information contained in the education records to any party, by any means, including oral, written or electronic means.
- B. "Education records" means records directly related to a student that are maintained by an educational agency or institution or by a party acting for the agency or institution. This term includes:
1. permanent records (i.e., the cumulative record and/or transcript; any Department of Education health records; the home language survey; the ethnic identification form; the cumulative test achievement record and the attendance record);
 2. records¹ maintained by guidance personnel and other staff providing student support services (e.g., records of guidance intervention, interview notes);
 3. anecdotal records (e.g., teacher referrals to the dean, dean's log of follow-up action taken);
 4. photographs and yearbooks; and

¹ Appropriate personnel should review such records annually and remove outdated and/or unnecessary material from the student's file.

5. records relating to the student who is employed as a result of his/her status as a student.

The following are not considered "education records":

1. Records that are kept in the sole possession of the maker of the record, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
 2. Records on a student who is 18 years of age or older that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his/her professional capacity or assisting in a paraprofessional capacity made, maintained or used solely in connection with treatment of the student; *and* disclosed only to individuals providing the treatment.² For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are a part of the program of instruction of the agency/institution.

Furthermore, records maintained by Department of Health personnel in the schools are also not considered education records. They are medical records subject to their own confidentiality requirements.
 3. Records that only contain information about an individual after he/she is no longer a student at that agency or institution.
- C. "Eligible student" means a student who has reached 18 years of age, even if he/she is unemancipated or is attending an institution of post-secondary education.
- D. "Parent" means a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian, including the representative of a foster care agency, who provides ongoing custodial care.
- E. "Personally identifiable information" means the name of the student, his/her parent or other family members; the address of the student or his/her family; a personal identifier, such as the student's social security number or student identification number; personal characteristics of the student or his/her family, or other information that would make the student's identity easily traceable.
- F. "Record" means any information recorded in any way, including but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm and microfiche.

IV. ACCESS TO AND RELEASE OF INFORMATION IN STUDENT RECORDS

- A. General Provisions Protecting Confidentiality of Student Records
1. In keeping with the individual's right to privacy, no part of a student's education record, however created, may be divulged with a personal identifier to any person, organization, or agency in any manner **unless** there is:
 - a. informed written consent³ by the parent or eligible student; sample consent forms are included as Attachment No. 1.
 - b. a valid court order or lawfully issued subpoena requesting such

² While an educational agency is not required to give an eligible student access to treatment records, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

³ Signed and dated written consent may be in electronic format if it identifies and authenticates a particular person as the source of the electronic consent and indicates such person's approval of the information contained in the electronic consent.

information (in such cases, prior to complying with such order or subpoena, the parent or eligible student shall be notified immediately in writing of the information which has been subpoenaed or which is the subject of the court order);

- c. a request for disclosure by State or local educational authorities, the Secretary of Education or the Comptroller General of the United States and the request is in accordance with an audit or evaluation of Federal or State supported education programs or for the enforcement of or compliance with Federal legal requirements which relate to those programs. Such information that is collected must be protected in a manner that does not permit personal identification of individuals (unless specifically authorized by Federal law) by anyone except the officials mentioned above and must be destroyed when no longer needed for the purposes listed;⁴ or
- d. a health and safety emergency and disclosure of personally identifiable information from an education record to appropriate parties is necessary to protect the health or safety of the student or other individuals.⁵

Questions concerning the validity of a court order or subpoena, or whether there is a health and safety emergency, should be directed to the Office of Legal Services, New York City Department of Education, 52 Chambers Street, New York, NY 10007, telephone number (212) 374-6888; fax number (212) 374-5596.

B. Access to Student Records by Parents, Legal Guardians and Eligible Students

1. When a parent or eligible student asks to inspect or review his or her child's or own education records, he/she shall be provided an expeditious opportunity to do so. A written request is not needed.
2. Access to the records shall be provided within a reasonable period of time but not more than 45 days from receipt of the request.
3. Furthermore, official(s) shall respond to reasonable requests for explanations and interpretations of the records
4. The parent or eligible student is entitled to obtain a copy of the records. The school/office may charge a fee for the copies but no more than 25 cents per page. However, if imposition of a fee effectively prevents the parent or eligible student from exercising the right to inspect and review the records, no fee shall be charged. Original records must not be removed from the school by the parent or student. No fee may be charged to search for or to retrieve the education records.
5. If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the records, the school/office shall

⁴ In accordance with § 9528 of the ESEA, as amended by the *No Child Left Behind Act of 2001* (P.L. No. 107-110), schools must give military recruiters the names, addresses and telephone numbers of secondary school students if such information is requested; however, parents/students may opt out and request that such information not be disclosed to military recruiters without their written consent.

⁵ A health or safety emergency is a situation which presents imminent danger or which requires the immediate need for information in order to avert or diffuse unusual conditions or disruptions. Imminent danger may include an active investigation of a violent crime including, but not limited to, homicide, arson, robbery, sex offenses, weapons possession or assault where there are reasonable grounds to believe that a current or former student is a suspect or has information concerning the investigation that is necessary to protect the health or safety of one or more students or others.

provide the requester with a copy of the records or make other arrangements for inspection and review.

6. If the education records of a student contain personally identifiable information about any other student(s), that information may not be released to the parent or eligible student.
7. No education record may be destroyed if it is the subject of an outstanding request for inspection and review. Furthermore, if any education records are to be destroyed, such destruction must be carried out in accordance with the State Education Department's *Records Retention and Disposition Schedule ED-1*. See Section VIII (A) below.

C. Access to Records by Non-Custodial Parents

1. If a non-custodial parent, i.e., the parent with whom the child does not reside, requests access to the child's student records, the principal will notify the custodial parent or institution where the child resides of the request. The notice will tell the custodian of the child that the request has been made, the name of the person making the request, and the date on which the request was received. Whenever practical, the notice shall be written in the primary language of the student's home. (A sample *Notice to Custodial Parent of Request for Access to Student Records by Non-Custodial Parent* is included as Attachment No. 2.)
2. The parent making the request shall be notified at the time of the request that the custodial parent is being given an opportunity to inform the school as to whether a legally binding document or court order specifically revokes the non-custodial parent's rights of access to the records and, if no such document has been produced within 45 calendar days of the school's receipt of the request, the records must be made available to the non-custodial parent no later than the 45th day. If the custodial parent consents to the release of the records, they may be released as soon as practicable.

D. Access to Records by Parents of Students 18 Years or Older

When a student attains the age of eighteen, the rights accorded to and consent required of parents is transferred from the parents to the student. The school may provide the student with a waiver which provides that, so long as the student continues to attend the school, the student authorizes his or her parents to exercise all the rights defined in this regulation. (A sample *Student's Consent for Parents to Access Student Records* form appears as Attachment No. 3.)

E. Access to Records by School Staff and Other Department of Education Employees

Indiscriminate access to student records, even by the professional staff of a school, is not permitted. A staff member or other Department of Education employee who seeks access to a particular student's records *must have a specific and legitimate educational reason for such access*. The validity of the legitimate educational reason is to be determined by the principal or head of the office.

School safety agents ("SSAs") and members or officers of the Parents Association or Parent-Teachers Association are not permitted access to student records either.

F. Recording of Request for Access

1. An educational agency/institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student unless the request was from or the disclosure was to:

- a. the parent or eligible student;
 - b. a party with the consent of either the parent or eligible student;
 - c. a school official; or
 - d. a party seeking or receiving the records in accordance with a Federal grand jury or other law enforcement subpoena and the issuing court/agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.
2. For each request or disclosure for which a record must be maintained, the record must include:
- a. the parties who have requested or obtained personally identifiable information from the education records of the student;
 - b. the legitimate interest the parties had in requesting or obtaining the information; and
 - c. the information actually disclosed.

V. REQUESTS FOR AMENDMENT OF RECORDS AND APPEAL PROCEDURES

- A. If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading or in violation of the student's right of privacy, he or she may ask that the record be amended. If the parent or eligible student is seeking to amend education records *other than special education clinical records*, the request should be directed to the school or office where the records are maintained. If special education clinical records are sought to be amended, the request should be directed to the CSE Chairperson or his/her designee. The parent/eligible student should complete a written request that contains the following information:
1. the information that is claimed to be inaccurate, misleading or in violation of the student's privacy rights;
 2. the education records in which the parent/eligible student believes the information is contained;
 3. the basis for the claim (i.e., why he/she believes the information is inaccurate, misleading, etc.); and
 4. the parent/eligible student's proposed change.
- B. The chairperson, office director or principal/designee will review the request and make a determination within fifteen (15) school days of receiving it. He/She may modify or expunge the entry from the student's record if such action is warranted. Removing, modifying or expunging an entry is not an admission that the entry was improper or that any person acted improperly by including the entry on the record.
- C. The reviewer shall provide the parent/eligible student with a written response to the request and explain the reason for his/her decision. If the reviewer denies the request in whole or in part, his/her written determination shall include notice of the parent or eligible student's right to appeal the decision and request a hearing.
- D. If the reviewer denies the request in whole or in part or fails to render a ruling within the prescribed time period, a parent or eligible student may request a formal hearing from the Community or High School Superintendent within twenty (20) school days from the adverse ruling or failure to rule.
- E. The hearing officer may be any person who does not have an interest in the outcome

of the proceeding.

- F. The hearing shall be held within a reasonable time of receipt of the request but no later than twenty (20) days thereafter, and the parent or eligible student shall be given notice of the date, place and time of the hearing with sufficient advance notice.
- G. The parent or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the appeal and may be assisted or represented by individuals of his or her own choice at his or her own expense, including an attorney. No formal record of the hearing need be maintained. However, the hearing officer must take sufficient notes of the testimony heard and evidence presented in order to prepare a written finding. The hearing officer's decision must be based solely on the evidence presented at the hearing.
- H. The hearing officer's written report shall include, at a minimum, a summary of the evidence and the reasons for the decision and shall be issued within fourteen (14) calendar days from the conclusion of the hearing.
- I. If the hearing officer determines that the information in the education record is inaccurate, misleading or in violation of the privacy rights of the student, the hearing officer shall direct the reviewer to amend the record accordingly and inform the parent or eligible student in writing of the amendment. The hearing officer's decision shall be final.
- J. If the hearing officer determines that the information in the education record is not inaccurate, misleading or otherwise in violation of the privacy rights of the student, the hearing officer's decision shall inform the parent/student of the right to place a statement in the record commenting on the contested information or stating why he/she disagrees with the decision of the hearing officer, or both. If such statement of the parent/student is placed in the education records of the student, the statement shall be maintained with the contested part of the record for as long as the record is maintained and shall be disclosed whenever the portion of the record to which the statement relates is disclosed.

VI. TRANSFER OF EDUCATION RECORDS

When school officials release student records to another school or educational agency/institution, consent of the parent or eligible student is not required. However, school officials shall make a reasonable attempt to notify the parent or eligible student of the release unless the parent or eligible student initiated the request or the school's annual notification included notice that the school forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll. A copy of the forwarded records will be given to the parent or eligible student upon request, and the parent or eligible student shall have an opportunity to challenge the records that were disclosed. Prior to transferring a guidance folder, the principal or appropriate designee must review the folder and remove any outdated and/or unnecessary information.

VII. NOTICE OF FERPA REQUIREMENTS

In accordance with FERPA, school officials are required to give parents and eligible students annual notification of their rights regarding student records. Annual dissemination of the Bill of Parent Rights and Responsibilities and the Bill of Student Rights and Responsibilities, which contain the required information concerning FERPA, will fulfill the notice requirement. Copies of the Parent Bill may be obtained on-line from the Department's web site: <http://schools.nyc.gov/RulesPolicies> or from the Office for Family Engagement and Advocacy, 49 Chambers Street, Room 503, New York, NY 10007, (212) 374-2323, OFEA@schools.nyc.gov. The Student Bill is contained in the Discipline Code document and also can be obtained at

<http://schools.nyc.gov/RulesPolicies/StudentBillOfRights/default.htm>.

VIII. **RECORDS RETENTION, STORAGE, AND DESTRUCTION**

A. State Record Retention and Disposal Schedule

The State Education Department, under the auspices of the NY State Archives, promulgates a detailed schedule for records retention and disposal. The document, *Records Retention and Disposition Schedule ED-1*, revised in 2004, may be found on the website of the State Archives at http://www.archives.nysed.gov/a/records/mr_pub_ed1.pdf in convenient PDF format. Schedule ED-1 must be consulted to determine the minimum length of time school district officials must retain certain records before the records may be disposed of legally.

All information regarding the DOE Archive System and related procedures is available at: <http://schools.nyc.gov/Offices/DFO/BusinessOperations/DoeRecordsArchiving/Default.htm>.

B. Preserving the Confidentiality of School Records

1. Schools, Integrated Service Center ("ISC") and Children First Network ("CFN") offices and other locations that retain student and other confidential records must take steps to protect the confidentiality of these records when they are retained on site, discarded or placed in storage. This applies both to student information as well as personal information concerning employees, such as Social Security numbers, file numbers, health-related information, bank account information, etc. All Department of Education personnel must use care when discarding day-to-day trash to ensure proper disposal of confidential information.
2. Each school, Committee on Special Education, and Department of Education office must ensure the proper destruction or storage of records. The principal, head of office or other designated school administrator or supervisor must ensure that records are properly handled and determine whether they are to be destroyed or sent to storage. He/She also must sign a form identifying the records that are being destroyed and certify that proper procedures to ensure confidentiality have been followed. The certification forms must be maintained on site at the school/office.
3. When records containing confidential information are to be disposed of, they must be shredded to ensure that the confidential information is destroyed. Boxes designated for disposal must be carefully labeled, and those containing student records must be labeled as such. Designated staff should contact the ISC/CFN for assistance in arranging for documents to be shredded.
4. Schools are not required to retain all student records at the school site. In order to maximize building storage space, schools should consider sending to storage permanent records for students who graduated or left the New York City school system.⁶ Boxes containing materials designated for archiving must be carefully labeled for delivery to the storage facility to ensure that confidentiality is preserved and that the documents can be retrieved easily and efficiently at a later date. Boxes containing student records must be clearly labeled on the outside that they contain student records. Indexes of documents sent to storage must be maintained at/by the school. Designated school staff should contact the ISC/CFN to arrange for pick up and/or delivery of boxes from/to storage.

⁶ Some projects to digitize student records have also been initiated.

5. Schedule ED-1 must be consulted when sending documents to storage to determine if they can be destroyed at a later date. Some records must be retained permanently. However, many school records may be destroyed six years after the student graduated or would have normally graduated from high school. For Department of Education purposes, documents should not be destroyed until the student has attained, at a minimum, age 27. If boxes sent to storage contain records that may be destroyed at a later date, the form on the outside of the box must indicate a record destruction date. A copy of the form must be maintained by the designee of the sending site.

Please note: Special Education files of students with disabilities will be retained until the year the student turns 32.

IX. RECORDS OF FORMER STUDENTS

Former students who wish to obtain copies of their school records, or individuals or agencies entitled to obtain the records on the student's behalf, should write to the school that the student last attended. The request should contain as much information as possible, e.g., the name and address of the student at the time he/she attended, his/her date of birth and social security number, and the dates of attendance. If the school has since closed or is no longer in existence, the request for records should be made to the appropriate ISC/CFN office. The requester may also contact the Office of Student Enrollment Planning and Operations ("OSEPO").

X. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

Telephone:
212-374-6888

Office of Legal Services
NYC Department of Education
52 Chambers Street – Room 308
New York, NY 10007

Fax:
212-374-5596

PARENT'S CONSENT TO RELEASE OF STUDENT RECORDS

I, _____, am the parent/guardian of
print name

_____, _____,
print name of student date of birth

_____, who attends/attended the New York City
student ID #

Public Schools in _____ . The last school he/she attended
year/time period

was/is _____ in
name and address of school

_____. The student is under the age of 18.
borough

(Please provide any additional information that might be helpful in locating the student records
(e.g., address or name, if different when he/she attended)):

I give consent to the New York City Department of Education to release my child's student records
including _____
specify records

to _____
provide name and address of person, agency, or company

Purpose of disclosure: _____

signature of parent/guardian

date

STUDENT'S CONSENT TO RELEASE OF RECORDS

I, _____, _____,
print name date of birth
_____ attended the New York City Public Schools
student ID #
in _____ . The last school I attended was
year/time period
_____ in _____ .
name and address of school borough

I am at least 18 years old.

(Please provide any additional information that might be helpful in locating your records (e.g., former address, name, if different when you attended)):

I give consent to the New York City Department of Education to release my student records, including

_____ specify records

to _____
provide name and address of person, agency or company

Purpose of disclosure: _____

signature of former student

date

**NOTICE TO CUSTODIAL PARENT OF REQUEST FOR ACCESS TO STUDENT RECORDS BY
NON-CUSTODIAL PARENT**

Dear _____:
custodial parent

On _____ we received a request for access to student records from
date

_____ who said he/she is the non-custodial
name of requester

parent of _____. He/She wants to:
name of student

obtain (or)

examine the educational records of your child.

Unless the school is provided with a legally binding instrument or court order providing that the parent making the request is not permitted to have access to the child's education records, those records will be made available to the requester by no later than the 45th day from the date we received the request, which is _____.
date

Please contact _____ at _____
name phone number

if you have any questions.

Sincerely,

principal, etc.

STUDENT'S CONSENT FOR PARENTS TO ACCESS STUDENT RECORDS

_____ name of student _____ grade/class

_____ student ID # _____ date of birth

I am a student attending _____ and I
name/number of school

am 18 years of age or older. As long as I continue to attend school, I authorize my parent(s) or guardian,

_____ name(s)

to exercise all the rights defined in the regulation governing access to and confidentiality of student records, *Chancellor's Regulation A-820*.

All the information released to the persons named above should be considered to have been released to me.

_____ student's signature _____ date