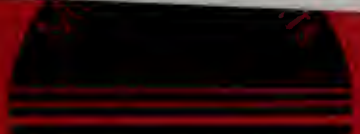
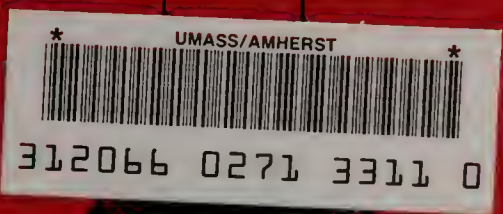


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Department of
Education

Student Records:
Questions,
Answers and
Guidelines

STUDENT RECORDS
COLLECTION
1995
UNIVERSITY OF MASSACHUSETTS
DEPARTMENT OF



September 1995

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Robert V. Antonucci
Commissioner

September 1, 1995

Dear Colleagues:

This updated edition of the Massachusetts Student Record Regulations contains the amendments that were adopted by the Board of Education in June 1995, as well as a revised and expanded Questions and Answers section.

As part of the Board's regulatory reform initiative, our focus in amending the regulations was to simplify and clarify them, and assure that they are consistent with the Education Reform Act and with the federal law on student records. Three sections of the prior regulations that were unnecessary have been eliminated. In addition, we have reduced paperwork by deleting 3 provisions that required schools to send notices and other documents to the Department of Education. Other sections of the regulations have been clarified in response either to changes in state and federal law, or to recommendations that we received from educators and others.

The amended regulations make it clear that while schools are responsible for protecting the confidentiality of student records, a school may release relevant student record information to appropriate authorities without prior consent when the release is necessary to protect health and safety. The regulations are intended to assist school officials in providing a secure learning environment.

Specific changes in the regulations include the following:

- the definition of "authorized school personnel" now includes employees of educational collaboratives and other professional staff who are working with students under an agreement between the school district and a service provider [§§ 23.02 (9) and 23.07 (3)]
- personal files of school employees may now be shared with a temporary substitute, without making the file part of the student record [§ 23.04]
- in line with the federal regulations, a school may now release "directory information" about a student to third parties without prior consent, as long as the school gives public notice of the information it may release and permits an eligible student or parent to object [§ 23.07 (4)(a)]
- the procedure for a school to respond to a subpoena for student records has been clarified [§ 23.07 (4)(b)]
- the school's authority to release relevant student record information without prior consent has been clarified, regarding the release of information to:
 - the Department of Social Services in cases of suspected child abuse or neglect [§ 23.07 (4)(c)]
 - federal, state and local education officials whose duties require access [§ 23.07 (4)(d)]
 - appropriate parties in connection with a health or safety emergency, including weapons reports under G.L. c. 71, § 37L [§ 23.07 (4)(e)]

- the regulations now incorporate the state law requiring schools to “flag” the student records of a child who has been reported missing [§ 23.07 (4)(f)]
- consistent with the Education Reform Act, schools now have authority to transfer a student’s complete record to the student’s new school, without prior consent [§ 23.07 (4)(g)]

We believe the amended Student Record Regulations will assist school officials in carrying out their responsibilities under state and federal law. The amendments increase administrative flexibility, while preserving important confidentiality protections and rights of parents and students. All persons who have access to student records should understand their responsibility to maintain the privacy of student record information in accordance with the regulations. Any disclosure of information in or from a student record should be consistent with the regulations and have a legitimate educational purpose.

The Questions and Answers included in this booklet address questions that the Department receives frequently about student records. If you have additional questions or suggestions, please contact the Department of Education.

Sincerely,



Robert V. Antonucci
Commissioner of Education

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Questions Often Asked About the Student Record Regulations

The following information is intended to clarify Department policy in those areas of the Student Record Regulations in which the Department most often receives questions.

A. Access to Student Record

1. Do guardians or divorced/separated, foster, or unmarried parents have access to the student record?

A. Yes, according to 603 CMR 23.02, unless a contrary written agreement between parents or a court order governing the rights of such parents is brought to the attention of the principal.

2. May a staff member accompany a parent or eligible student who is inspecting the student's record?

A. Yes. 603 CMR 23.07(2)(c) allows the eligible student or parent, upon request, to meet with school personnel and have the record interpreted. The regulations neither specifically allow nor specifically prohibit the school from requiring persons inspecting student records to do so in the presence of school personnel. In view of the school official's duty to assure the security of all students records, it is reasonable for the school to impose such a requirement, since parents and eligible students have the right to receive a copy of any information in the student record, which they may then inspect in privacy

3. May a school withhold a report card or diploma from a student who has outstanding school fees or unreturned property?

A. No. Any information that identifies a student individually - including a report card or a diploma - is considered part of the student record, as defined in the regulations. Under 603 CMR 23.07(2), the eligible student or parent is entitled to have access to the student record (including receiving a copy of it) within two consecutive days, unless the requesting party consents to a delay. The regulation does not authorize a school to withhold access to a student record for disciplinary reasons. School districts have other remedies for dealing with students who have outstanding fees or unreturned property.

4. Must a school give the parent or eligible student the original transcript?

A. No. Under 603 CMR 23.07(2)(a) a parent or eligible student is entitled only to a copy of a student record. Therefore a school is not required to give the eligible student or the parent an original record.

5. May employees of educational collaboratives providing services to students with special needs gain access to student record information without prior parental consent?

A. Administrators, teachers and counselors employed by an educational collaborative who are working directly with students in an administrative, teaching, counseling or diagnostic capacity are considered authorized school personnel and thus may obtain access to the records of the students they work with pursuant to 603 CMR 23.02.

6. May a speech therapist who the school district contracts on a consultant basis to provide services to students obtain access to student record information without prior parental consent?

A. Yes. Professionals who are not employed by the school district but who work directly with a student in an administrative, teaching, counseling and/or diagnostic capacity under an agreement between the school committee and a service provider may obtain access without prior parental consent. Pursuant to 603 CMR 23.02 access is limited to information that is required for them to perform their duties.

B. Access of Third Parties

7. What "directory" information may a school release to third parties without prior consent?

A. Under 603 CMR 23.07(4)(a) a school may release the following information without prior consent: "a student's name, address, telephone listing, date and place of birth, major field of study, dates of attendance, weight and height of members of athletic teams, class, participation in officially recognized activities and sports, degrees, honors and awards, and post- high school plans." However, before the school releases this information it must give public notice that it releases these types of information and it must inform parents and eligible students that they have the right to request that this information not be released without prior consent. This notice may be included in the routine information letter the school publishes under 603 CMR 23.10(1).

8. May a school release student names and addresses to regional vocational schools, county agricultural schools, or other schools or organizations?

A. Yes. 603 CMR 23.07(4)(a) allows, but does not require, a school to release student names and addresses without consent, provided that the school has followed the public notice procedure in that regulation. The regulation would permit the school to release student names and addresses to schools and organizations such as:

- regional vocational schools
- county agricultural schools
- post-secondary schools, colleges and universities
- recruiters for the Armed Forces
- school alumni organizations

Please note that when the school publishes notice of the types of information it may release under 603 CMR 23.07(4)(a), it must allow eligible students and parents a reasonable time after such notice to request that this information not be released without their prior consent.

9. May lists of students in a particular class or on a specific bus be released to a third party, such as a parent organization?

A. Yes. A school may, but is not required, to release the names of students in a particular class, etc., provided that the school has followed the public notice procedure in 603 CMR 23.07(4)(a).

10. May a school district's attorney have access to student records?

A. Yes. A school district's attorney, acting as an authorized agent of the school district, may obtain access to student records without parental consent when access is necessary in connection with the enforcement of federal and state education laws or programs (for example, in relation to legal proceedings in which the school district and the student are parties). 603 CMR 23.07(4)(d) requires that the attorney protect the confidentiality of any information that personally identifies students or their parents, and destroy it when no longer needed.

11. May independent auditors conducting audits pursuant to the Single Audit Act obtain access to student records?

- A. Yes. 603 CMR 23.07(4)(d) permits school districts to designate independent auditors, conducting audits under the Federal Single Audit Act, as their authorized agents in connection with the audit or enforcement of federal and state education laws or programs. The designation should be made in writing, should include a statement designating the particular auditor as an authorized agent of the school district for the purpose of conducting the audit, and should incorporate the requirement that any data collected must be protected in a manner that does not permit personal identification of individuals by anyone except those designated, and must be destroyed when no longer needed.

12. May a school release student record information to the Department of Social Services (DSS) in cases of suspected child abuse?

- A. Section 51A of G.L. c.119 requires mandated reporters (including teachers and other school personnel) to report cases of suspected child abuse or neglect to DSS. Section 51B requires mandated reporters to disclose to DSS, upon request, any information that may be relevant to an investigation of a case of suspected abuse or neglect. See 603 CMR 23.07(4)(c) and (e).

13. May school officials notify the police if a student brings a gun or other dangerous weapon to school?

- A. Yes. In fact section 37L of G.L. c. 71 requires school department personnel to report any incidents involving a dangerous weapon to the chief of police and the Department of Social Services. 603 CMR 23.07(e) allows school officials to disclose information about a student to appropriate parties without consent, in connection with a health or safety emergency.

14. What should school officials do when student records are subpoenaed?

- A. 603 CMR 23.07(4)(b) requires school officials to make a reasonable effort to notify the eligible student or parent before they comply with a lawfully issued subpoena or court order to produce student records.

15. What information may a school provide to the Department of Public Safety's Bureau of Special Investigations (Bureau) in cases of welfare fraud investigations?

- A. Under G.L. c. 22, s. 15D(9) the Bureau may inspect enrollment and attendance records of any student who is being investigated for welfare fraud or any student who is the child, ward or dependent of someone who is being investigated for welfare fraud. The law prohibits the Bureau from obtaining access to academic, medical and evaluative records.

16. May a school release a student's attendance records to the Department of Transitional Assistance?

- A. Yes. Under the Welfare Reform Law, in order to receive benefits under the Transitional Aid to Families with Dependent Children Program, children under the age of 14 must meet specific school attendance requirements. The school may release attendance records to DTA under 603 CMR 23.07(4)(a).

17. What should school officials do when they are notified by the police that a former student has been reported missing?

- A. The student record of the missing student should be marked to indicate that the student has been reported missing, and the school should notify the police whenever there is an inquiry regarding the records. See 603 CMR 23.07(4)(f).

C. Amending the Student Record

18. May an eligible student or parent request that an individual course grade or grades be withheld when the student's transcript is released to a third party?

- A. Yes. The eligible student or parent may make such a request, but the school is not required to honor it, if the third party receiving the transcript would reasonably assume that the transcript is complete. On the other hand, the school should honor a request to release or withhold a certain category or categories of courses or grades if the third party would not reasonably assume that the transcript is complete. For example, the eligible student or parent may request that only the student's math and science grades, or only the student's grades since ninth or tenth grade, be released.

D. Destruction of Student Records

19. How long should schools keep the records of students who graduated many years before the Student Record Regulations went into effect?

- A. The records of students enrolled before February 1975 are not subject to the regulations. Therefore, it is in the school district's discretion to decide how long to keep such records. In keeping with the intent of 603 CMR 23.06, however, the time limit for destruction of the record should probably be not less than sixty years for a transcript and not more than five years for the temporary record.

20. May a school district "destroy" a student's temporary record within five years of the student's graduation, transfer or withdrawal by handing over the only copy to the eligible student and/or parent?

- A. Yes, as long as the eligible student or parent is notified in writing that this is the only copy and that this is the school's method of disposing of the record, in accordance with 603 CMR 23.06(3).

21. Is an announcement in the local newspaper of the destruction of the temporary records of students who have left the system adequate notification to the former students and parents?

- A. Generally, no. 603 CMR 23.06(3) requires written notice to the student and parent, which is not satisfied by publication in a local newspaper unless the paper is sent to all parents and students. A preferable method of notification would be an announcement included in whatever information packets go out to graduating students. Students who leave the system at other times should receive the notice at those times.

22. Are there any situations in which a school should maintain copies of a student's temporary record for more than five years after the student has left the school system?

- A. Yes. The School Finance Regulations require school districts to maintain school registers, pupil census, IEPs, and other documentation to support data reported to the Department of Education on the annual End of Year Pupil and Financial Report for seven years after its submission. See 603 CMR 10.21(9). Any records that are the subject of an audit or investigation should be maintained until the audit or investigation is complete. In addition, where school health personnel administer immunizations to students, Federal law requires that documentation of immunizations be retained at least 10 years following the end of the calendar year in which the vaccine was administered.

E. Confidentiality

23. Is the process of determining selections for the National Honor Society and other awards subject to the confidentiality requirements of the Student Records Regulations?

- A. Under 603 CMR 23.07(3), authorized school personnel may obtain access to student records without consent when they need access to perform their duties. Any written material produced or introduced (even from the personal files of school employees) during the selection process becomes part of the student record if it individually identifies the student and is kept by the school. The material is then subject to the regulations, including the right of an eligible student and parent to obtain access and the prohibition against releasing the information to third parties without consent.

24. What procedures must be taken to ensure confidentiality if the student record is computerized?

- A. Computerized records are subject to the same restrictions regarding confidentiality and access as any other form of student records.

F. Tests and Test Scores

25. Are tests, completed by a student and containing his/her name, protected under these regulations?

- A. Yes. Any information that is organized on the basis of the student's name or in a way that such student may be individually identified, and that is kept by the public schools of the Commonwealth, is part of the student record. If the school system plans to administer the exact same test to these students or their peers in the future, or if the same test is used in neighboring school systems, the test questions should appear on a separate sheet that does not contain the student's name.

26. Must schools release average or mean S.A.T. scores?

- A. Yes. Anonymous statistical information or anonymous data that do not individually identify students are not considered part of the student record and may be released under the Student Records Regulations. Moreover, an advisory by the Supervisor of Public Records determined that average S.A.T. scores fall under the definition of public records and are subject to the Public Records Law.

27. Are test protocols considered part of the student's special education record?

- A. The answer depends on the circumstances. The protocol of a test, usually administered by a school psychologist (most frequently as part of a student's evaluation for special education) may include standardized test scoring forms; student answers, drawings and verbal responses noted by the tester; and the tester's written observations of student behavior. If the test protocol individually identifies the student, and is accessible to other authorized school personnel or third parties, then it is considered part of the student record, and the eligible student or parent has access to it under 603 CMR 23.07(2). However, if the protocol does not individually identify the student, it is not considered part of the student record. Furthermore, it is not considered part of the student record even if it does identify the student, provided that it is kept in the tester's personal files and is not released, in whole or in part, to authorized school personnel or any third party. In those cases, it is permissible but not required to share the protocol with the parent or eligible student.

G. Student Health Records

28. What record keeping procedures should be followed by school nurses with respect to student health records?

- A. Student health records are part of a student's temporary record and as such are protected from disclosure to third parties without the written consent of the eligible student or parent. These records are accessible to the eligible student, the student's parents or guardians and authorized school personnel.

Massachusetts public health laws provide special confidentiality protections for certain health records. For example, under G. L. c.111, s.70F, a health care provider cannot disclose information about an individual's AIDS/HIV status without specific, informed, written consent of the individual. Therefore, it is recommended that school nurses keep this information in a separate confidential part of the health record, as personal nursing notes. Under 603 CMR 23.04, information that is maintained in the personal files of a school employee is not part of the student record if it is not accessible to or revealed (written or orally) to authorized school personnel or third parties. The information may be shared with the student and with a substitute or replacement nurse without becoming a part of the student's temporary record.

For further information on procedures regarding AIDS/HIV status please see Updated Medical Policy Guidelines: Children and Adolescents with HIV Infection/AIDS in School Settings, Massachusetts Department of Public Health, August 1991.

29. Should special record keeping procedures be followed with respect to student health records that are maintained by the school physician, or in a health clinic that is affiliated with or based in a school?

- A. A physician's records, including a school physician's records, regarding treatment are confidential and may not be released to anyone without either the written consent of the parent (or the student in instances where the student consents to treatment), or a proper judicial order. Records kept by a school-based health clinic operating as a satellite health center are considered medical records of that health center and are subject to medical records regulations, not Student Record Regulations.

H. Transfer of Records

30. Must the school obtain consent from the eligible student or parent before forwarding a student's record to a new school?

- A. No. Under 603 CMR 23.07(4)(g) consent is not required to forward a transferring student's records to the new school if the school the student is leaving provides notice that it forwards student records to the new school when a student transfers. This notice may be included in the routine information letter required in 603 CMR 23.10.

31. When a student transfers from one school to another, what records must be provided to the new school?

- A. Under section 37L of G.L. c.71, any student transferring into a new school district must provide the new district with "a complete school record," including but not limited to, "any incidents involving suspension or violation of criminal acts or any incident reports in which such student was charged with any suspended act." 603 CMR 23.07(4)(g) allows a school district to release the entire student record of a transferring student to the new school without prior consent, provided that it gives notice that it forwards student records to other school in which the student seeks or intends to transfer. This notice may be included in the routine information letter required under 603 CMR 23.10(1).

32. Should a student's health record be sent to the new school when a student transfers?

- A. Yes. However, because student health records may contain information that is particularly confidential, the health records of a transferring student should be sent by the school nurse of the school the student is leaving directly to the school nurse of the new school.

I. 18 Year Olds

33. May a student who is eighteen years of age limit his/her parents' rights under these regulations?

- A. Yes, except that a parent always retains the right to inspect the student records pursuant to G.L. c. 71, s. 34E. A student who is eighteen years of age or older, may exercise the rights referred to in the regulations, without restriction. The student's parent may continue to exercise the rights, until expressly limited by the adult student under 603 CMR 23.01(3).

J. Teacher Notes

34. Does an eligible student or parent have access to information about the student that is contained in the teacher's grade book?

- A. Perhaps. The school system may determine whether a teacher's grade book is part of the student record or part of the teacher's personal files. If the grade book is part of the teacher's personal files, the book cannot be accessible or revealed to other school personnel or third parties, except for substitute or replacement teachers during the school year. The teacher may share information in the teacher's personal files with the student or parent, but the regulations do not require the teacher to do so.

K. Teacher Recommendations

35. Are recommendations by teachers and counselors part of the student record? May access by the parent and eligible student be waived?

- A. Yes, to both questions. A recommendation that is released to a third party becomes part of the student record and is subject to all the provisions of these regulations, including the right of access by eligible students and parents. However, the parent and eligible student may waive their right of access to the letter of recommendation. To be valid, a waiver of the right of access must be in writing, freely given and not coerced. The school may not require the waiver as a condition for providing the necessary recommendations for college application.

L. Fees

36. May schools charge a fee for providing copies of student records to parents or eligible students?

- A. 603 CMR 23.07(2)(a) allows schools to charge a reasonable fee, not to exceed the cost of reproduction. However, schools cannot charge a fee if charging a fee would prevent the parent or eligible student from exercising their right to inspect and review the records.

37. What “reasonable fee” may schools charge to cover the cost of reproducing student records?

- A. The Student Record Regulations do not mandate a maximum fee per page as photocopying rates may vary from town to town, depending on local facilities. However, the cost of reproduction cannot include the cost of secretarial time spent locating, copying, and refileing a record. Although the maximum allowable fee of \$.20 per page for providing copies of public records is not applicable to student records, it is useful as a guideline as to what constitutes a reasonable fee.

M. Closed Schools

38. What procedures should be followed to maintain student records when private or public schools close permanently?

- A. Pursuant to G.L. c. 71, s. 34G, when a private school closes, the records of students shall be transferred to the school the students will be attending. The transcripts of all other students, including those of former students, shall be transferred to the Department of Education. Notification should be sent to students regarding the new location. In the case of a public school, the records should be transferred to the school department’s central administrative offices and maintained in accordance with 603 CMR 23.06.

N. Private Schools

39. Are private schools subject to any of these regulations?

- A. Generally, no, since the regulations apply to student records maintained by public elementary and secondary schools in Massachusetts. However, private day and residential programs that provide publicly-funded special education services are required to comply with the Student Record Regulations. See 603 CMR 18.05(11). In addition, a separate statute, General Law, c. 71, s. 34A, requires any educational institution (public or private) in Massachusetts to provide to any student or former student a written transcript of his/her record as a student.

Summary of Regulations Pertaining to Student Records

The Student Record Regulations adopted by the Board of Education apply to all public elementary and secondary schools in Massachusetts. (They also apply to private day and residential schools that have state approval to provide publicly-funded special education services.) The regulations are designed to insure parents' and students' rights of confidentiality, inspection, amendment, and destruction of student records, and to assist school authorities in carrying out their responsibilities under state and federal law.

The regulations apply to all information kept by a school or school district on a student in a way that the student may be individually identified. The regulations divide the record into two parts: the transcript and the temporary record. The transcript includes only the minimum information necessary to reflect the student's educational progress. This information includes name, address, course titles, grades, credits, and grade level completed. The transcript is kept by the school district for at least sixty years after the student leaves the system.

The temporary record contains the majority of the information maintained by the school about the student. This may include such things as standardized test results; class rank; school-sponsored extracurricular activities; evaluations and comments by teachers, counselors, and other persons; disciplinary records; and other information. The temporary record is destroyed within five years after the student leaves the school system.

The following is a summary of the major provisions of the Student Record Regulations concerning the rights of parents and eligible students. Under the regulations, "eligible students" are at least 14 years old or have entered the ninth grade; they may exercise these rights just as their parents may:

Inspection of Record

A parent or an eligible student has the right to inspect all portions of the student record upon request. The record must be made available within two days after the request, unless the parent or student consents to a delay.

The parent and eligible student have the right to receive a copy of any part of the record, although the school may charge a reasonable fee for the cost of duplicating the materials.

The parent and eligible student may request to have parts of the record interpreted by a qualified professional from the school, or may invite anyone else of their choice to inspect or interpret the record with them.

Confidentiality of Record

Except where the regulations specifically authorize access by third parties, no individuals or organizations other than the parent, eligible student and school personnel working directly with the student are allowed to have access to information in the student record without the specific, informed, written consent of the parent or eligible student.

Amendment of Record

The parent and eligible student have the right to add relevant comments, information, or other written materials to the student record. In addition, the parent and eligible student have a right to request that information in the record be amended or deleted. They are entitled to meet with the principal (or the principal's designee) to discuss their objection to information that is in the record, and to receive a written decision. A parent or eligible student who is not satisfied with the principal's decision may appeal to higher authorities in the school district.

Destruction of Records

The regulations require school authorities to destroy a student's temporary record within five years after the student transfers, graduates or withdraws from the school system. School authorities are also allowed to destroy misleading, outdated, or irrelevant information in the record from time to time while the student is enrolled in the school system. In each case, the school must first notify the parent and eligible student and give them the opportunity to receive a copy of any of the information before it is destroyed.

The above is only a summary of some of the more important provisions of the Student Record Regulations that relate to the rights of parents and eligible students. The Student Record Regulations are included in the Code of Massachusetts Regulations at 603 CMR 23.00. For more detailed information, please review the regulations (copies of which should be available in every public school) and the Questions and Answers guide published by the Massachusetts Department of Education in 1995.

603 CMR: Department of Education

603 CMR 23.00: STUDENT RECORDS

SECTION	23.01:	Application of Rights
	23.02:	Definition of Terms
	23.03:	Collection of Data: Limitations and Requirements
	23.04:	Personal Files of School Employees
	23.05:	Privacy and Security of Student Records
	23.06:	Destruction of Student Records
	23.07:	Access to Student Records
	23.08:	Amending the Student Record
	23.09:	Appeals
	23.10:	Notification
	23.11:	Monitoring
	23.12:	Severance Clause

603 CMR 23.00 is promulgated by the Board of Education pursuant to its powers under M.G.L. c. 71, § 34D which directs that “the board of education shall adopt regulations relative to the maintenance of student records by the public elementary and secondary schools of the commonwealth,” and under M.G.L. c. 71, § 34F which directs that “the board of education shall adopt regulations relative to the retention, duplication and storage of records under the control of school committees, and except as otherwise required by law may authorize the periodic destruction of any such records at reasonable times.” 603 CMR 23.00 was originally promulgated on February 10, 1975, and was reviewed and amended in June, 1995. 603 CMR 23.00 is in conformity with federal and state statutes regarding maintenance of and access to student records, and is to be construed harmoniously with such statutes.

23.01: *Application of Rights*

603 CMR 23.00 is promulgated to insure parents' and students' rights of confidentiality, inspection, amendment, and destruction of student records and to assist local school systems in adhering to the law. 603 CMR 23.00 should be liberally construed for these purposes.

- (1) These rights shall be the rights of the student upon reaching 14 years of age or upon entering the ninth grade, whichever comes first. If a student is under the age of 14 and has not yet entered the ninth grade, these rights shall belong to the student's parent.
- (2) If a student is from 14 through 17 years of age or has entered the ninth grade, both the student and his/her parent, or either one acting alone, shall exercise these rights.
- (3) If a student is 18 years of age or older, he/she alone shall exercise these rights, subject to the following. The parent may continue to exercise the rights until expressly limited by such student. Such student may limit the rights and provisions of 603 CMR 23.00 which extend to his/her parent, except the right to inspect the student record, by making such request in writing to the school principal or superintendent of schools who shall honor such request and retain a copy of it in the student record. Pursuant to M.G.L. c. 71, § 34E, the parent of a student may inspect the student record regardless of the student's age.
- (4) Notwithstanding 603 CMR 23.01(1) and 23.01(2), nothing shall be construed to mean that a school committee cannot extend the provisions of 603 CMR 23.00 to students under the age of 14 or to students who have not yet entered the ninth grade.

23.02: *Definition of Terms*

The various terms as used in 603 CMR 23.00 are defined below:

Access shall mean inspection or copying of a student record, in whole or in part.

Authorized school personnel shall consist of three groups:

- (a) School administrators, teachers, counselors and other professionals who are employed by the school committee or who are providing services to the student under an agreement between the school committee and a service provider, and who are working directly with the student in an administrative, teaching counseling, and/or diagnostic capacity. Any such personnel who are not employed directly by the school committee shall have access only to the student record information that is required for them to perform their duties.
- (b) Administrative office staff and clerical personnel, including operators of data processing equipment or equipment that produces microfilm/microfiche, who are either employed by the school committee or are employed under a school committee service contract, and whose duties require them to have access to student records for purposes of processing information for the student record. Such personnel shall have access only to the student record information that is required for them to perform their duties.
- (c) The Evaluation Team which evaluates a student.

Eligible student shall mean any student who is 14 years of age or older or who has entered 9th grade, unless the school committee acting pursuant to 603 CMR 23.01(4) extends the rights and provisions of 603 CMR 23.00 to students under the age of 14 or to students who have not yet entered 9th grade.

Evaluation Team shall mean the team which evaluates school-age children pursuant to M.G.L. c. 71B (St. 1972, c. 766) and 603 CMR 28.00.

Parent shall mean a student's father or mother, or guardian, or person or agency legally authorized to act on behalf of the child in place of or in conjunction with the father, mother, or guardian. The term as used in 603 CMR 23.00 shall include a divorced or separated parent, subject to any written agreement between parents or court order governing the rights of such a parent that is brought to the attention of the school principal.

Release shall mean the oral or written disclosure, in whole or in part, of information in a student record.

School-age child with special needs shall have the same definition as that given in M.G.L. c. 71B (St. 1972, c. 766) and 603 CMR 28.00.

School committee shall include a school committee, a board of trustees of a charter school, a board of trustees of a vocational-technical school, a board of directors of an educational collaborative and the governing body of an M.G.L. c. 71B (Chapter 766) approved private school.

Student shall mean any person enrolled or formerly enrolled in a public elementary or secondary school or any person age three or older about whom a school committee maintains information. The term as used in 603 CMR 23.00 shall not include a person about whom a school committee maintains information relative only to that person's employment by the school committee.

The student record shall consist of the transcript and the temporary record, including all information – recording and computer tapes, microfilm, microfiche, or any other materials – regardless of physical form or characteristics concerning a student that is organized on the basis of the student's name or in a way that such student may be individually identified, and that is kept by the public schools of the Commonwealth. The term as used in 603 CMR 23.00 shall mean all such information and materials regardless of where they are located, except for the information and materials specifically exempted by 603 CMR 23.04.

The temporary record shall consist of all the information in the student record which is not contained in the transcript. This information clearly shall be of importance to the educational process. Such information may include standardized test results, class rank (when applicable), extracurricular activities, and evaluations by teachers, counselors, and other school staff.

Third party shall mean any person or private or public agency, authority, or organization other than the eligible student, his/her parent, or authorized school personnel.

The transcript shall contain administrative records that constitute the minimum data necessary to reflect the student's educational progress and to operate the educational system. These data shall be limited to the name, address, and phone number of the student; his/ her birthdate; name, address, and phone number of the parent or guardian; course titles, grades (or the equivalent when grades are not applicable), course credit, grade level completed, and the year completed.

23.03: *Collection of Data: Limitations and Requirements*

All information and data contained in or added to the student record shall be limited to information relevant to the educational needs of the student. Information and data added to the temporary record shall include the name, signature, and position of the person who is the source of the information, and the date of entry into the record. Standardized group test results that are added to the temporary record need only include the name of the test and/or publisher, and date of testing.

23.04: *Personal Files of School Employees*

The term student record does not include notes, memory aids and other similar information that is maintained in the personal files of a school employee and is not accessible or revealed to authorized school personnel or any third party. Such information may be shared with the student, parent or a temporary substitute of the maker of the record, but if it is released to authorized school personnel it becomes part of the student record subject to all the provisions of 603 CMR 23.00.

23.05: *Privacy and Security of Student Records*

- (1) The school principal or his/her designee shall be responsible for the privacy and security of all student records maintained in the school.
- (2) The superintendent of schools or his/her designee shall be responsible for the privacy and security of all student records that are not under the supervision of a school principal, for example, former students' transcripts stored in the school department's central administrative offices or student records of school-age children with special needs who have not been enrolled in a public school.
- (3) The principal and superintendent of schools shall insure that student records under their supervision are kept physically secure, that authorized school personnel are informed of the provisions of 603 CMR 23.00 and are educated as to the importance of information privacy and confidentiality; and that any computerized systems employed are electronically secure.

23.06: *Destruction of Student Records*

- (1) The student's transcript shall be maintained by the school department and may only be destroyed 60 years following his/her graduation, transfer, or withdrawal from the school system.
- (2) During the time a student is enrolled in a school, the principal or his/her designee shall periodically review and destroy misleading, outdated, or irrelevant information contained in the temporary record provided that the eligible student and his/her parent are notified in writing and are given opportunity to receive the information or a copy of it prior to its destruction. A copy of such notice shall be placed in the temporary record.
- (3) The temporary record of any student enrolled on or after the effective date of 603 CMR 23.00 shall be destroyed no later than five years after the student transfers, graduates, or withdraws from the school system. Written notice to the eligible student and his/her parent of the approximate date of destruction of the record and their right to receive the information in whole or in part, shall be made at the time of such transfer, graduation, or withdrawal. Such notice shall be in addition to the routine information letter required by 603 CMR 23.10.
- (4) In accordance with M.G.L. c. 71, § 87, the score of any group intelligence test administered to a student enrolled in a public school shall be removed from the record of said student at the end of the school year in which such test was so administered.

23.07: *Access to Student Records*

- (1) **Log of Access.** A log shall be kept as part of each student's record. If parts of the student record are separately located, a separate log shall be kept with each part. The log shall indicate all persons who have obtained access to the student record, stating: the name, position and signature of the person releasing the information; the name, position and, if a third party, the affiliation if any, of the person who is to receive the information; the date of access; the parts of the record to which access was obtained; and the purpose of such access. Unless student record information is to be deleted or released, this log requirement shall not apply to:
 - (a) authorized school personnel under 603 CMR 23.02(9)(a) who inspect the student record;
 - (b) administrative office staff and clerical personnel under 603 CMR 23.02(9)(b), who add information to or obtain access to the student record; and
 - (c) school nurses who inspect the student health record.
- (2) **Access of Eligible Students and Parents.** The eligible student or the parent shall have access to the student record. In no event shall such access be delayed more than two consecutive weekdays after the initial request, unless the requesting party consents to a delay. Upon such request for access, the entire student record regardless of the physical location of its parts shall be made available.
 - (a) Upon request, copies of any information contained in the student record shall be furnished to the eligible student or the parent. A reasonable fee, not to exceed the cost of reproduction, may be charged. However, a fee may not be charged if to do so would effectively prevent the parents or eligible student from exercising their right, under federal law, to inspect and review the records.
 - (b) Any student, regardless of age, shall have the right pursuant to M.G.L. c. 71, § 34A to receive a copy of his/her transcript.
 - (c) The eligible student or the parent shall have the right upon request to meet with professionally qualified school personnel and to have any of the contents of the student record interpreted.

- (d) The eligible student or the parent may have the student record inspected or interpreted by a third party of their choice. Such third party shall present specific written consent of the eligible student or parent, prior to gaining access to the student record.
- (3) **Access of Authorized School Personnel.** Subject to 603 CMR 23.00, authorized school personnel shall have access to the student records of students to whom they are providing services, when such access is required in the performance of their official duties. The consent of the eligible student or parent shall not be necessary.
- (4) **Access of Third Parties.** Except for the provisions of 603 CMR 23.07(4)(a) through 23.07(4)(h), no third party shall have access to information in or from a student record without the specific, informed written consent of the eligible student or the parent. When granting consent, the eligible student or parent shall have the right to designate which parts of the student record shall be released to the third party. A copy of such consent shall be retained by the eligible student or parent and a duplicate placed in the temporary record. Except for information described in 603 CMR 23.07(4)(a), personally identifiable information from a student record shall only be released to a third party on the condition that he/she will not permit any other third party to have access to such information without the written consent of the eligible student or parent.
- (a) A school may release a student's name, address, telephone listing, date and place of birth, major field of study, dates of attendance, weight and height of members of athletic teams, class, participation in officially recognized activities and sports, degrees, honors and awards, and post-high school plans without the consent of the eligible student or parent; provided that the school gives public notice of the types of information it may release under 603 CMR 23.07 and allows eligible students and parents a reasonable time after such notice to request that this information not be released without the prior consent of the eligible student or parent. Such notice may be included in the routine information letter required under 603 CMR 23.10.
- (b) Upon receipt of a court order or lawfully issued subpoena the school shall comply, provided that the school makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.
- (c) A school may release information regarding a student upon receipt of a request from the Department of Social Services, a probation officer, a justice of any court, or the Department of Youth Services under the provisions of M.G.L. c. 119, §§ 51B, 57, 69 and 69A respectively.
- (d) Federal, state and local education officials, and their authorized agents shall have access to student records as necessary in connection with the audit, evaluation or enforcement of federal and state education laws, or programs; provided that except when collection of personally identifiable data is specifically authorized by law, any data collected by such officials shall be protected so that parties other than such officials and their authorized agents cannot personally identify such students and their parents; and such personally identifiable data shall be destroyed when no longer needed for the audit, evaluation or enforcement of federal and state education laws.
- (e) A school may disclose information regarding a student to appropriate parties in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. This includes, but is not limited to, disclosures to the local police department and the Department of Social Services under the provisions of M.G.L. c. 71, § 37L and M.G.L. c. 119, § 51A.
- (f) Upon notification by law enforcement authorities that a student, or former student, has been reported missing, a mark shall be placed in the student record of such student. The school shall report any request concerning the records of the such child to the appropriate law enforcement authority pursuant to the provisions of M.G.L. c. 22A, § 9.

- (g) Authorized school personnel of the school to which a student seeks or intends to transfer may have access to such student's record without the consent of the eligible student or parent, provided that the school the student is leaving, or has left, gives notice that it forwards student records to schools in which the student seeks or intends to enroll. Such notice may be included in the routine information letter required under 603 CMR 23.10.
- (h) School health personnel and local and state health department personnel shall have access to student health records, including but not limited to immunization records, when such access is required in the performance of official duties, without the consent of the eligible student or parent.

23.08: *Amending the Student Record*

- (1) The eligible student or the parent shall have the right to add information, comments, data, or any other relevant written material to the student record.
- (2) The eligible student or the parent shall have the right to request in writing deletion or amendment of any information contained in the student record, except for information which was inserted into that record by an Evaluation Team. Such information inserted by an Evaluation Team shall not be subject to such a request until after the acceptance of the Evaluation Team Educational Plan, or, if the Evaluation Team Educational Plan is rejected, after the completion of the special education appeal process. Any deletion or amendment shall be made in accordance with the procedure described below:
 - (a) If such student or parent is of the opinion that adding information is not sufficient to explain, clarify or correct objectionable material in the student record, either student or parent shall present the objection in writing and/or have the right to have a conference with the principal or his/her designee to make the objections known.
 - (b) The principal or his/her designee shall within one week after the conference or receipt of the objection, if no conference was requested, render to such student or parent a decision in writing, stating the reason or reasons for the decision. If the decision is in favor of the student or parent, the principal or his/her designee shall promptly take such steps as may be necessary to put the decision into effect.

23.09: *Appeals*

- (1) In the event that any decision of a principal or his/her designee regarding any of the provisions contained in 603 CMR 23.00 is not satisfactory in whole or in part to the eligible student or parent, they shall have the right of appeal to the superintendent of schools. Request for such appeal shall be in writing to the superintendent of schools.
- (2) The superintendent of schools or his/her designee shall within two weeks after being notified of such appeal (longer should the appellant request a delay) review the issues presented and render a written decision to the appellant, stating the reason or reasons for the decision. If the decision is in favor of the appellant, the superintendent of schools or his/her designee shall promptly take such steps as may be necessary to put the decision into effect.
- (3) In the event that the decision of the superintendent of schools or his/her designee is not satisfactory to the appellant in whole or in part, the appellant shall have the right of appeal to the school committee. Request for such appeal shall be in writing to the chairperson of the school committee.
- (4) The school committee shall within four weeks after being notified of such appeal (longer should the appellant request a delay) conduct a fair hearing to decide the issues presented by the appellant.
 - (a) School officials shall have the burden of proof on issues presented by the appellant.
 - (b) The appellant shall have the right to be represented by an advocate of his/her choosing, to cross-examine witnesses, to present evidence, to make a tape or other recording of the proceedings, and to receive a written decision within two weeks after the hearing.

- (c) If the appeal concerns statements by an employee of the school committee, such person(s) shall have the right to be present and to have an advocate of his/her own choosing.
- (5) Nothing in 603 CMR 23.00 shall abridge or limit any right of an eligible student or parent to seek enforcement of 603 CMR 23.00 or the statutes regarding student records, in any court or administrative agency of competent jurisdiction.

23.10: Notification

- (1) At least once during every school year, the school shall publish and distribute to students and their parents in their primary language a routine information letter informing them of the following:
 - (a) The standardized testing programs and research studies to be conducted during the year and other routine information to be collected or solicited from the student during the year.
 - (b) The general provisions of 603 CMR 23.00 regarding parent and student rights, and that copies of 603 CMR 23.00 are available to them from the school.
- (2) In those school systems required under M.G.L. c. 71A to conduct a bilingual program, all forms, regulations, or other documents regarding 603 CMR 23.00 that a parent receives or is required to receive shall be in the language spoken in the home of the student, provided that it is a language for which the school system is required to provide a bilingual program.

23.11: Monitoring

The Department of Education may, pursuant to a request by an eligible student or parent or on its own initiative, conduct reviews to insure compliance with 603 CMR 23.00. The school committee and the specific school(s) involved shall cooperate to the fullest extent with such review.

23.12: Severance Clause

The provisions of 603 CMR 23.00 are severable and should any section be found upon judicial review to exceed the authority of the State Board of Education, the remaining sections shall not be affected.

REGULATORY AUTHORITY

603 CMR 23.00: M.G.L. c. 71, §§ 34D, 34F.

Other Laws Relevant to Student Records

State Statutes

Four sections of the Massachusetts General Laws deal specifically with public school student records. They read as follows:

G.L. CHAPTER 71, SECTION 34D.

The Board of Education shall adopt regulations relative to the maintenance, retention, duplication, storage and periodic destruction of student records by the public elementary and secondary schools of the Commonwealth. Such rules and regulations shall provide that a parent or guardian of any pupil shall be allowed to inspect academic, scholastic, or any other records concerning such pupil which are kept or are required to be kept.

G.L. CHAPTER 71, SECTION 34E.

Each school committee shall, at the request of a parent or guardian of a student, allow such parent or guardian to inspect academic, scholastic, or any other records concerning such student that are kept or are required to be kept, regardless of the age of such student. Each school committee shall, at the request of a student eighteen years of age or older, allow such student complete access to all school records relative to him or her.

G.L. CHAPTER 71, SECTION 37L.

. . . A student transferring into a local system must provide the new school system with a complete school record of the entering student. Said record shall include, but not be limited to, any incidents involving suspension or violation of criminal acts or any incident reports in which such student was charged with any suspended act.

G.L. CHAPTER 71, SECTION 87.

The score of any group intelligence test administered to a student enrolled in a public school shall be removed from the record of said student at the end of the school year in which such test was so administered.

Note: Several other sections of the General Laws also mention student records. For example, G.L. c. 22A, s. 9 requires schools to "flag" the student records of a child who has been reported as missing. These other statutes are not reproduced here, but are referenced in the Student Record Regulations.

Federal Statute and Regulations

The federal **Family Educational Rights and Privacy Act** (FERPA, sometimes called the "Buckley Amendment") applies to schools that receive federal education funds. FERPA requires schools to protect the privacy of student records, and gives parents and students rights including inspection and review of student records. The FERPA statute is found at **20 U.S.C. sec. 1232g**. The FERPA regulations are found at **34 CFR Part 99**. The Massachusetts Student Record Regulations are consistent with the FERPA statute and regulations.

