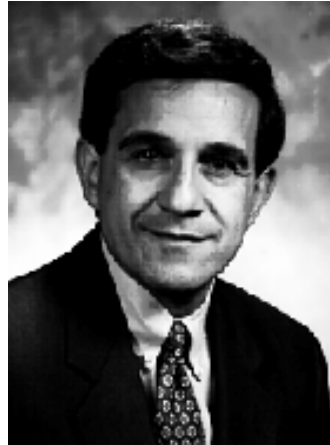




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Commissioner's Update

September 6, 1995

Dear Superintendents and Charter School Leaders:

This has been a busy summer for you in planning for the opening of schools. Now that the students are in class, I hope the energy and excitement levels are at new highs. The daily job you and your staff do for students is so critically important, and that is why I think we are all excited and even a bit nervous when the new school year begins.

Because September is one of the two busiest months of the school year, I have made a concentrated effort to ensure that the Department has not scheduled conferences, professional development, technical assistance sessions or other meetings where key school personnel would be pulled out of your district this month. I will do this again in June, and hope that this is helpful to you.

This coordinated mailing includes a major item with good news for school districts:

1. The FY 1996 Unified Grants Application for competitive grants.
[No longer available]

In this package you will find opportunities for 21 grants totalling nearly \$10 million. The package is somewhat daunting on first inspection, but I recommend that you look through it, bring together a team of key people, and coordinate your decisions and approach.

Also in the package are the following:

2. [Student Records: Questions, Answers and Guidelines](#).

Many school principals have been asking about the new guidelines, which eliminate some of the current filing requirements.

3. Two matters concerning Special Education Appeals issues Executive Summary of Special Education Appeals.

[No longer available]

I have provided a draft of new guidelines and procedures for the Office of

Special Education Appeals, for your review and comment, and a summary of the past year's actions by the office. These documents show that we are continuing our commitment to keep this process streamlined, effective and open.

I have not included in hard copy the [1993-1994 school year dropout report](#). This report's information is old, and results have already been released in the press. We have copies at the Department if you need them, but the entire report is available for reading and downloading at the Department's site on the World Wide Web. I am trying to streamline the coordinated mailings I send you twice each month, and will increasingly be putting memoranda, documents and reports in electronic form and not in hard copy form.

Also, later this month you will be receiving a packet containing requests for information on your foundation enrollment, staff demographic data, and the like. All of the information that is being requested is required by federal statutes or state law and regulations. I am committed to requesting only the minimum amount of information needed to fulfill our current federal and state mandates, and am equally committed to continuing to reduce the paperwork burdens wherever and whenever I can. A number of these forms will also be available through the Internet as well.

I wish you all the best.

Sincerely,

Robert V. Antonucci
Commissioner of Education

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Education Laws and Regulations

Disclaimer: Some of the information in this document may be outdated because of recent amendments to the Student Records Regulations. The Department is currently working on updating these documents. Please see the [amended regulations](#) for the current language.

603 CMR 23.00: Student Records

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 Records](#)
- B. [Access of Third Parties](#)
- C. [Amending the Student Record](#)
- D. [Destruction of Student Records](#)
- E. [Confidentiality](#)
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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 refiling 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.