

## **603 CMR 23.00**

### **Student Records**

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#### **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, section 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 student in place of or in conjunction with the father, mother, or guardian. Any parent who by court order does not have physical custody of the student, is considered a non-custodial parent for purposes of M.G.L. c. 71, § 34H and 603 CMR 23.00. This includes parents who by court order do not reside with or supervise the student, even for short periods of time.

**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 M.G.L. c. 71, § 34H 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 seven 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, 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.

### **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, subject to the provisions of 603 CMR 23.07 (5), shall have access to the student record. Access shall be provided as soon as practicable and within ten days after the initial request, except in the case of non-custodial parents as provided in 603 CMR 23.07 (5). Upon 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, section 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 the following directory information: 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, sections 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, section 37L and M.G.L. c. 119, section 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, section 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.

(5) Access Procedures for Non-Custodial Parents. As required by M.G.L. c. 71, § 34H, a non-custodial parent may have access to the student record in accordance with the following provisions.

(a) A non-custodial parent is eligible to obtain access to the student record unless:

1. the parent has been denied legal custody or has been ordered to supervised visitation, based on a threat to the safety of the student and the threat is specifically noted in the order pertaining to custody or supervised visitation, or
2. the parent has been denied visitation, or
3. the parent's access to the student has been restricted by a temporary or permanent protective order, unless the protective order (or any subsequent order modifying the protective order) specifically allows access to the information contained in the student record, or
4. there is an order of a probate and family court judge which prohibits the distribution of student records to the parent.

(b) The school shall place in the student's record documents indicating that a non-custodial parent's access to the student's record is limited or restricted pursuant to 603 CMR 23.07(5)(a).

(c) In order to obtain access, the non-custodial parent must submit a written request for the student record to the school principal.

(d) Upon receipt of the request the school must immediately notify the custodial parent by certified and first class mail, in English and the primary language of the custodial parent, that it will provide the non-custodial parent with access after 21 days, unless the custodial parent provides the principal with documentation that the non-custodial parent is not eligible to obtain access as set forth in 603 CMR 23.07 (5)(a).

(e) The school must delete all electronic and postal address and telephone number information relating to either work or home locations of the custodial parent from student records provided to non-custodial parents. In addition, such records must be marked to indicate that they shall not be used to enroll the student in another school.

(f) Upon receipt of a court order that prohibits the distribution of information pursuant to G.L. c. 71, §34H, the school shall notify the non-custodial parent that it shall cease to provide access to the student record to the non-custodial 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 Elementary and Secondary 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, 34E.