

**PROPOSED REGULATION OF THE STATE BOARD OF
EDUCATION**

LCB File No. R064-97

September 30, 1997

EXPLANATION – Matter in *italics* is new; matter in brackets [] is material to be omitted.

AUTHORITY: §§ 2-15, § 1 of chapter 532, Statutes of Nevada 1997.

Section 1. Chapter 392 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. *As used in sections 3 to 13, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Directory information” has the meaning ascribed to it in 34 C.F.R. § 99.3.*

Sec. 4. *“Disclose” or “disclosure” has the meaning ascribed to it in 34 C.F.R. § 99.3.*

Sec. 5. *“Education record” has the meaning ascribed to it in section 1 of chapter 532, Statutes of Nevada 1997. The term includes, without limitation:*

- 1. Academic work completed by a pupil.*
- 2. Records indicating a pupil’s level of achievement, including, without limitation, his grades.*
- 3. Records of a pupil’s attendance at school.*
- 4. A pupil’s results on standardized intelligence, aptitude and psychological tests.*
- 5. Results from interest inventories completed by a pupil.*

6. *A pupil's health records.*
7. *Information concerning a pupil's family and residence.*
8. *Records concerning a pupil's participation in activities sponsored by the school, special programs and support services.*
9. *Ratings and observations of a pupil by teachers, counselors and employees of a school district who transport pupils.*
10. *Reports of serious or recurrent behavior patterns of a pupil which have been verified.*
11. *Records, ratings and observations recorded by a counselor that are accessible by or revealed to any other person except for a substitute for the counselor.*
12. *The records of a child who is home schooled that are maintained by a school district or a person acting for the school district.*

Sec. 6. *“Parent” has the meaning ascribed to it in 34 C.F.R. § 99.3.*

Sec. 7. *“Personally identifiable information” has the meaning ascribed to it in 34 C.F.R. § 99.3.*

Sec. 8. *“Record” has the meaning ascribed to it in 34 C.F.R. § 99.3.*

Sec. 9. *The provisions of sections 3 to 13, inclusive, of this regulation apply to all education records, including, without limitation, those that a school which is no longer operating has deposited with the superintendent of the school district for the county in which the school was located.*

Sec. 10. *1. The parents of a pupil may:*

(a) Make reasonable requests for a school district to explain or interpret the education records relating to their child;

(b) Have their representative inspect and review the records; and

(c) Request that the school district provide them with copies of the records.

2. A school district may presume that the parent has authority to inspect and review education records relating to the pupil unless the school district has been provided with satisfactory evidence that the parent does not have the authority under applicable state law governing such matters as guardianship, separation or divorce.

3. Each school district shall maintain a list of the types and locations of the education records it collects, maintains or uses relating to pupils.

4. This section does not abrogate a copyright.

Sec. 11. *1. Each school district shall:*

(a) Protect the confidentiality of personally identifiable information at its collection, storage, disclosure and destruction;

(b) Appoint one person to assume responsibility for ensuring the confidentiality of all personally identifiable information;

(c) Train or instruct all persons collecting or using personally identifiable information regarding the policies and procedures to be followed concerning such information; and

(d) Maintain a current listing for public inspection of the names and positions of those employees of the district who have access to personally identifiable information.

2. Each school district shall:

(a) Inform the parents when the personally identifiable information is no longer needed to provide educational services to the pupil; and

(b) Maintain a permanent record of the pupil's name, address, telephone number, grades, attendance, classes he attended, grades he completed and the year he completed them.

3. *Subject to the limitations provided by 34 C.F.R. §§ 99.33 to 99.36, inclusive, personally identifiable information may be disclosed to a court of competent jurisdiction or a person or entity pursuant to an order entered by a court of competent jurisdiction or pursuant to a lawfully issued subpoena, if the school district makes a reasonable effort to notify the parents before complying with such an order or subpoena.*

Sec. 12. 1. *A school district wishing to disclose directory information shall allow a reasonable time after giving notice of the school district's intent to disclose that information for parents to inform the school district in writing that any or all of the information designated should not be released.*

2. *If a parent informs the school district in writing that any or all of the information should not be released with respect to his child, the school district shall not disclose such information concerning that pupil.*

3. *If a parent does not object, the school district may disclose such information.*

Sec. 13. *Each school district shall adopt policies and procedures so that parents may exercise the rights set forth in 20 U.S.C. §1232g(a), 34 C.F.R. Part 99 and sections 2 to 12, inclusive, of this regulation.*

Sec. 14. NAC 385.700, 385.705, 385.710, 385.715, 385.720, 385.725, 385.730, 385.740, 385.750, 385.760, 385.770 and 385.780 are hereby repealed.

TEXT OF REPEALED SECTIONS

385.700 Applicability. The provisions of NAC 385.700 to 385.780, inclusive, apply to all educational records, including, without limitation, those that a school which is no longer operating has deposited with the superintendent of the school district for the county in which the school was located.

385.705 Purposes.

1. NAC 385.700 to 385.780, inclusive, must be construed to:
 - (a) Protect the rights of pupils and parents with respect to educational records created, maintained or used by school districts in this state;
 - (b) Ensure the protection of the confidentiality of educational records which are maintained by the department as part of its statewide information system; and
 - (c) Ensure that each school district affords parents and pupils the rights of access, challenge and privacy consistent with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §§ 1221 note, 1232g), and adopts policies and procedures for the exercise of those rights.
2. The provisions of NAC 385.700 to 385.780, inclusive, must not be construed to prohibit an institution of postsecondary education from disclosing to an alleged victim of a crime of violence, as that term is defined in 18 U.S.C. § 16, the results of any disciplinary proceeding

conducted by the institution against the alleged perpetrator of such crime with respect to the crime.

385.710 Definitions. As used in NAC 385.700 to 385.780, inclusive, unless the context otherwise requires, the words and terms defined in NAC 385.715, 385.720 and 385.725 have the meanings ascribed to them in those sections.

385.715 “Educational record” defined.

1. “Educational record” means a record, file, document or other material which contains information directly related to a pupil and which is created or maintained by a school district, including, without limitation:

- (a) Academic work completed by the pupil.
- (b) Records indicating the pupil’s level of achievement, including grades.
- (c) Records of the pupil’s attendance at school.
- (d) The pupil’s scores on standardized intelligence, aptitude and psychological tests.
- (e) Results from interest inventories completed by the pupil.
- (f) The pupil’s health records.
- (g) Information concerning the pupil’s family and residence.
- (h) Records concerning the pupil’s participation in activities sponsored by the school, special programs and support services.
- (i) Ratings and observations of the pupil by teachers, counselors and employees of the school district who transport pupils.
- (j) Reports of serious or recurrent behavior patterns of the pupil which have been verified.
- (k) Other information recorded in any medium including handwriting, typewriting, print, magnetic tapes, film, microfilm and microfiche.

(l) Records relating to a student who is at least 18 years of age or is attending a postsecondary school, and who is employed by the school he is attending as a result of his status as a student.

2. The term does not include:

(a) Records of instructional, supervisory and administrative personnel, which are in the sole possession of the maker and are not accessible or revealed to any other person except a substitute for the maker.

(b) Records created or maintained by a law enforcement unit of a school district for the purpose of law enforcement.

(c) Except as otherwise provided in paragraph (l) of subsection 1, records created or maintained by a school district in the normal course of business which relate exclusively to a pupil or student in his capacity as an employee and which are not available to be used for any other purpose.

(d) Records concerning a pupil which are:

(1) Created or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in his professional capacity;

(2) Used only in connection with the provision of treatment to the pupil; and

(3) Not available to anyone other than persons providing the treatment and other physicians or professionals of the pupil's choice.

As used in this paragraph, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the school.

(e) Letters of recommendation or evaluation which are confidential under the laws of this state or which are given with an expectation of confidentiality, whether or not included in a pupil's file.

385.720 “Parents” defined. “Parents” means either the singular or plural of the word “parent” and includes a legal guardian.

385.725 “Pupil” defined. “Pupil” means a person who has not yet attained the age of 18 years, who has been admitted to a public school to attend a schedule of classes and whose name appears on the master register of enrollment and attendance.

385.730 Rights of child who attains age of majority.

1. Except as otherwise provided in subsection 2, any right accorded a parent under NAC 385.700 to 385.780, inclusive, devolves upon his child on the date that the child attains the age of 18 years or begins attending an institution of postsecondary education.

2. If the child is adjudged incompetent and a guardian is appointed for him by a court of competent jurisdiction, any right which would otherwise devolve upon him pursuant to subsection 1 devolves upon his guardian.

385.740 Request for review, interpretation and copies of educational records; record of persons given access.

1. The parents of a pupil may make a request to inspect and review any educational records relating to their child which are created, maintained or used by a school district. The school district shall comply with such a request without unnecessary delay and in any event not later than 45 days after the date on which the request was made.

2. The parents may:

(a) Make reasonable requests for the school district to explain or interpret the records;

(b) Have their representative inspect and review the records; and

(c) Request that the school district provide them with copies of the records.

3. A school district may presume that the parent has authority to inspect and review records relating to the pupil unless the school district has been provided with satisfactory evidence that the parent does not have the authority under applicable state law governing such matters as guardianship, separation or divorce.

4. Each school district shall keep a record of all persons other than parents and authorized employees who have been given access to educational records. This record must be made available only to parents and authorized school personnel. The record must include:

(a) The name of the person to whom access was given;

(b) The date access was given;

(c) The purpose for which the person was authorized to use the records; and

(d) A copy of the list required by subsection 6.

5. If any educational record contains information on more than one pupil, the parents may inspect and review only the information relating to their child or be informed of that specific information.

6. Each school district shall maintain a list of the types and locations of educational records it collects, maintains or uses relating to pupils. A copy of this list must be made available to parents upon their written request.

7. If the school district charges a fee for copies of records which are made for parents, the amount of the fee must not effectively prevent the parents from exercising their right to inspect and review those records. No fee may be charged for the search or retrieval of the information.

8. A school district shall not refuse to provide copies of records to parents because of outstanding fees, fines or other charges incurred by the pupil other than the fee for copying records.

385.750 Request for amendment of educational records; hearing to review decision of school district.

1. A parent who believes that information in the educational records of his child is inaccurate, misleading or violates the privacy or other rights of the pupil may request an amendment of the information. The school district shall determine whether to amend the information in accordance with the request within a reasonable period of time after the receipt of the request. If the decision is to refuse to amend the information, the school district shall inform the parent of the refusal and advise him of his right to a hearing pursuant to subsection 2.

2. The school district shall, upon request, provide an opportunity for a hearing as required by the July 1, 1991, edition of 39 C.F.R. §§ 99.21 to 99.22, inclusive, to challenge information in educational records to ensure that the information is not inaccurate, misleading or otherwise in violation of the rights of the pupil. If, as a result of the hearing, the information is determined to be:

(a) Inaccurate, misleading or otherwise in violation of the rights of the pupil, the school district shall amend the information accordingly and so inform the parents in writing.

(b) Not inaccurate, misleading or otherwise in violation of the rights of the pupil, the parent may place in the records a statement concerning the information or setting forth any reasons for disagreeing with the decision. The school district shall retain any such explanation placed in the records of the pupil as part of the records of the pupil as long as the contested portion of the

record is maintained. If the contested portion of the records of the pupil is disclosed to any person, the statement of the parents must also be disclosed.

385.760 Confidentiality of personally identifiable information; authorized disclosure of personally identifiable educational records without consent of parents.

1. Each school district shall:

(a) Protect the confidentiality of personally identifiable information at its collection, storage, disclosure and destruction;

(b) Appoint one person to assume responsibility for ensuring the confidentiality of all personally identifiable information;

(c) Train or instruct all persons collecting or using personally identifiable information regarding the policies and procedures to be followed concerning such information; and

(d) Maintain a current listing for public inspection of the names and positions of those employees within the district who have access to personally identifiable information.

2. Each school district shall:

(a) Inform the parents when the personally identifiable information is no longer needed to provide educational services to the pupil; and

(b) Maintain a permanent record of the pupil's name, address, telephone number, grades, attendance, classes he attended, grades he completed and the year he completed them.

3. Except as otherwise provided in subsection 4 and NAC 385.770, a school district shall not disclose any personally identifiable information contained in educational records of a pupil to any person who is not employed by the school district, department or other authorized agency without first obtaining the consent of the parents in writing.

4. Subject to the limitations provided by the July 1, 1991, edition of 34 C.F.R. §§ 99.33 to 99.36, inclusive, personally identifiable educational records of a pupil may be disclosed to the following persons without the consent of the parents:

(a) Authorized personnel of a school, school district, community college or institution of higher learning in which the pupil seeks to enroll.

(b) Other school personnel, including teachers within the school district, who have a legitimate educational interest in the information contained in the educational records.

(c) The Comptroller General of the United States, United States Secretary of Education, Commissioner of the National Center for Education Statistics, the superintendent of public instruction and other state and local educational authorities who are authorized to receive such information by a federal or state law.

(d) Other school personnel or a loan officer of a credit bureau in connection with an application by a pupil for financial aid if the information is necessary for the purpose of determining the eligibility, amount or conditions for such aid or to enforce the conditions of such aid.

(e) Persons conducting studies or planning, research or evaluative activities related to education on behalf of a school district or the state board of education, if:

(1) The studies are conducted in a manner that will not permit the personal identification of pupils and their parents by persons other than representatives of such organizations; and

(2) The information will be destroyed when it is no longer needed for the purpose for which the study was conducted.

(f) Accrediting agencies for the purpose of carrying out functions related to accreditation.

(g) Appropriate persons in connection with an emergency, if knowledge of the information in a pupil's educational records is necessary to protect the health or safety of the pupil or other persons.

(h) A court of competent jurisdiction or a person or entity pursuant to an order entered by a court of competent jurisdiction or pursuant to a lawfully issued subpoena, provided that the school district makes a reasonable effort to notify the parents before complying with such an order or subpoena.

5. Personally identifiable educational records may only be transferred to a third person pursuant to subsection 4 on the condition that such person will not permit any other person to have access to the information without the prior written consent of the parents.

385.770 Publication and release of information concerning pupils; public notice by school district of intent to publish; right of parent to object.

1. A school district may publish in a directory for release to the general public the following information relating to a pupil:

- (a) Name;
- (b) Address;
- (c) Telephone number;
- (d) Date and place of birth;
- (e) Major field of study;
- (f) Participation in activities and sports sponsored by the school;
- (g) Weight and height of the pupil if he is a member of an athletic team;
- (h) Dates of attendance at a school within the school district;
- (i) Degrees and awards received; and

(j) The previous school most recently attended by the pupil.

2. A school district wishing to publish and release information pursuant to subsection 1 shall:

(a) First give public notice of the categories of information it wishes to publish and release with respect to all pupils attending school in the school district; and

(b) Allow a reasonable period of time after such notice has been given for parents to inform the school district in writing that any or all of the information designated should not be released.

3. If a parent informs the school district in writing that any or all of the information should not be released with respect to his child, the school district shall not publish or release such information concerning that pupil.

4. If a parent does not object and the school district does publish and release such information, the information as published is no longer confidential with respect to that pupil.

385.780 Duties of school district. Each school district shall:

1. Adopt policies and procedures so that parents may exercise the rights set forth in NAC 385.700 to 385.780, inclusive; and

2. Annually notify in writing each parent entitled to rights relating to educational records:

(a) Of their rights pursuant to NAC 385.700 to 385.780, inclusive;

(b) Of the types of information generally entered in the educational records created, maintained or used by the school district;

(c) The procedures to be followed to exercise such rights; and

(d) That the school district has a policy of supporting the law.

The notification may be incorporated with other printed materials distributed to pupils.