

HAWAII ADMINISTRATIVE RULES

TITLE 8 DEPARTMENT OF EDUCATION

SUBTITLE 2 EDUCATION

PART 1 PUBLIC SCHOOLS

CHAPTER 34

PROTECTION OF EDUCATIONAL RIGHTS

AND PRIVACY OF STUDENTS AND PARENTS

Historical Note: This chapter is based substantially upon Department of Education "Rule 50, Relating to the Protection of Educational Rights and Privacy of Students and Parents." [Eff. 3/25/76; R AUG 23, 1984]

§8-34-1 Philosophy. Schools maintain extensive information about students for legitimate educational use as instruction, guidance, counseling and research. However, if released or used improperly, the information may intrude upon the privacy of students and their families. Therefore, it is imperative that there be recognition of the school's needs for relevant data for the student's benefit and the protection of an individual's rights of privacy. In the event of a conflict regarding confidentiality of education records specifically relating to children who are handicapped or are suspected of being handicapped, section 8-36-7 shall prevail. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112)

§8-34-2 Purpose. This chapter sets forth requirements to ensure the protection of the educational rights and privacy of students and parents in conformance with federal laws. If any change occurs in the federal laws, those changes in the federal law shall control. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1232g, 34 C.F.R. 99.2)

§8-34-3 Definitions. As used in this chapter:

"Days" means working or school days.

"Department" means the department of education.

"Directory information" means the student's name, date and place of birth, address, telephone, dates of attendance, class level, major field of study, participation in officially recognized activities, and sports, weight and height if member of an athletic team, awards received, graduation date, and the most recent previous educational agency or institution attended.

"Education records" means all records, files, documents, and other materials maintained by the department, which contain information directly related to an individual student. Excluded are the following:

(1) Private notes and records in the possession of instructional, supervisory, administrative, and support personnel of the department, which are not accessible or divulged to anyone except to the person who substitutes in a particular job;

(2) Confidential communication protected by law;

(3) Records maintained by law enforcement units on a school campus used only for law enforcement purposes and which are kept apart from the education records and are available only to law enforcement officials of the same jurisdiction;

(4) Department personnel employment records;

(5) Records of a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional maintained for the treatment of a student eighteen years or older and which may be reviewed by a physician or other professional designed by the student.

"Eligible student" means a person at least eighteen years of age who is or was a student.

"Parent" means the natural or legal parent, guardian or other legal custodian of the student.

"Right to inspect" means the right of a parent, eligible student, or a designated representative to inspect under the supervision of personnel of the department information concerning the student in question.

"Student" means a person who is or has been in attendance in school and whose education records are maintained by the department. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1232g, 34 C.F.R. 99.3)

§8-34-4 Rights of parents and students.

(a) Parents shall have the following rights with respect to the education records of their children:

- (1) Inspect, review, challenge or obtain copies thereof;
- (2) Allow others to review them; and
- (3) Grant permission for their release.

(b) The rights of parents shall be transferred to the student who has attained eighteen years of age.

(c) Students under eighteen years of age shall have the right to receive all educational data pertinent to facilitating instruction, guidance and counseling. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1232g, 34 C.F.R. 99.4, 99.5, 99.6)

§8-34-5 Applicability. This chapter shall apply to the education records of all students who are or have been enrolled in Hawaii's public schools. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 2A-1112)

§8-34-6 Access rights to education records. An eligible student or parent shall have the right to:

- (1) Obtain a list of that student's education records maintained by the department;

- (2) Inspect or review them;
- (3) Receive from the department, when requested, an explanation or interpretation of those records pursuant to section 8-34-9(a);
- (4) Challenge the contents of the records at a hearing;
- (5) Inspect, review, or obtain information that pertains only to the student in question, if any material or files contain data on more than one person;
- (6) Secure copies of records at one's own expense, provided the charge shall not exceed the actual reproduction cost. In case of financial hardship, the department may waive the reproduction cost; and
- (7) Other access rights as are provided in section 8-36-7(1).
[Eff. AUG 23, 1984] (Auth: HRS 302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1232g, 34 C.F.R. 99.5, 99.6)

§8-34-7 Destruction of records. The department may destroy or expunge any records of a student when they no longer are appropriate, relevant, or required under department rules. However, when an eligible student or parent requests access to the records, access shall be granted prior to the destruction of records. Additional provisions relating to destruction of records shall be complied with in conformance of section 8-36-7(2). [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C 1232g, 34 C.F.R. 99.13)

§8-34-8 Notification.

(a) The department shall inform eligible students or parents annually of:

- (1) Kinds of education records that are maintained by the department;
- (2) Name and position of official responsible for maintenance of each type of records, who has access to each type and why they are needed;

- (3) Department rules and policies governing review and expunging of records;
- (4) Procedures for challenging their contents;
- (5) Charge to be made for reproducing copies;
- (6) Categories of data designated as directory information; and
- (7) Other rights and requirements under this chapter.

(b) The notice provided to a parent or eligible student under this section shall be in the language of the parent or eligible student. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-8-34-10 1112; 20 U.S.C. 1232g, 34 C.F.R. 99.5, 99.6)

§8-34-9 Procedure for granting access.

(a) When an eligible student or parent requests access to the student's education records, they shall be made available within a reasonable period of time but in no event more than thirty days after the request.

(b) The department shall comply with parent requests under section 8-36-73).

(c) The department shall notify the eligible student or parent in writing of the time, date, and place for the review of the records. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1232g, 34 C.F.R. 99.11)

§8-34-10 Review and challenge of record contents. An eligible student or parent may request:

- (1) A meeting with school personnel to review the student's education records. Every effort shall be made to resolve differences through informal meetings and discussions;
- (2) The right to file a written explanation on points in question if the school disagrees on expunging or changing the contents. Additional requirements shall be as set forth in section 8-36-7(4); and

(3) The right to a hearing to challenge, correct, or delete data considered inaccurate, inappropriate, or misleading, if agreement is not reached. The hearing shall not be conducted unless specifically requested orally or in writing within ten days after the conference. [Eff. AUG 23, 1984] (Auth: HRSS302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1232g, 34 C.F.R. 99.20)

§8-34-11 Hearing. After receiving the request, the district superintendent shall schedule a hearing within ten days. The district superintendent shall notify all interested parties of its date, time and place. The district superintendent or a disinterested designee, who may be an official of the department, shall conduct the hearing under the following conditions:

- (1) It shall be private unless requested otherwise by the eligible student or parent;
- (2) All parties shall have the right to present evidence, cross-examine witnesses and submit rebuttal testimony;
- (3) The district superintendent or designee need not follow the formal rules of evidence. The district superintendent or designee shall weigh the data impartially, may request and consider any additional information relevant to the education records, provided the material first has been made available to the eligible student, parent, or representative;
- (4) The department shall make a transcript or tape recording of the hearing. The eligible student or parent may record or obtain a copy of the proceedings at that person's own expense;
- (5) The district superintendent shall render a decision in writing not later than five days after the close of the hearing. This decision, based on the hearing record and supportive evidence, shall state clearly the action to be taken and the reasons therefor. It shall be mailed return receipt requested or personally delivered to the eligible student or parent; and
- (6) If the hearing is conducted by a person other than the district superintendent, the district superintendent shall review the recommended decision and proceedings. The district superintendent may accept, reject, or modify the decision. In the event of any change, the district superintendent shall state

the reasons in writing. In reviewing the recommended decision, the district superintendent shall not consider matters outside the case record except with the consensus of both the student and parent. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1232g, 34 C.F.R. 99.21, 99.22)

§8-34-12 Appeal to the superintendent.

(a) The eligible student or parent may appeal to the superintendent of education within ten days of the receipt date of the district superintendent's notification of action. The superintendent shall render a final determination within five days.

(b) The superintendent's determination of each act or law at issue shall be sent to the eligible student or parent by certified mail return receipt requested. The notification shall inform the party of the right to file exceptions to the decision and to present argument to the superintendent at a specified date, time, and place.

(c) Additional civil remedies are available under state law. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112)(Imp: HRS §§92F, 302A-1101, 302A-1112; 20 U.S.C. 1232g, 34 C.F.R. 99.21, 99.22)

§8-34-13 Review board. Federal law permits an appeal to the review board. The final decision is rendered by the Secretary of the Department of Education. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1232g, 34-C.F.R. 99.60)

§8-34-14 Consent to release records.

(a) The department shall not make accessible nor release any education records or personally identifiable information without the written consent of the eligible student or parent. Exceptions to this shall be:

(1) Department officials who have a legitimate educational interest in the records;

(2) Officials of other schools where the student intends to matriculate, provided the eligible student or parent has prior notification of a request for that information. The eligible

student or parent may request a copy of the records for review or request an appointment for a hearing to challenge the contents thereof;

(3) Authorized representatives including contractors of:

(A) The Comptroller General of the United States; and

(B) The United States Secretary of Education;

(4) Department staff including contractors who by the nature of their responsibilities must have access to education and other records for audit and evaluation purposes or for the enforcement of certain federal regulations. The data collected shall protect the personal identity of students or their parents and shall be destroyed when the particular project needs or requirements are met;

(5) Organizations of educational agencies or institutions for the purpose of developing, validating, and administering predictive tests, if that information will not permit the identification of any person by the organization receiving the information;

(6) Department approved accrediting organizations to facilitate the accreditation process;

(7) The department may release information from the education records to appropriate persons in connection with an emergency if the knowledge of that information is necessary to protect the health or safety of a student or other persons. The factors which shall be taken into account in determining whether records may be released under this section include:

(A) Seriousness of the threat to the health or safety of the student or other persons;

(B) Need for the records to meet the emergency;

(C) Whether the persons to whom the records are released are in a position to deal with the emergency; and

(D) Extent to which time is of the essence in dealing with the situation;

(8) Those authorized by state statutes either to receive or to disclose the information before November 19, 1974 which is the effective date of the Family Educational Rights and Privacy Act;

(9) Parents of a dependent student as defined in section 152 of the Internal Revenue Code of 1954;

(10) Appropriate authorities when the information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents or the eligible student are notified of all orders or subpoena in advance of the compliance therewith by the department.

(b) Authorization for written consent shall contain the following:

(1) Date and signature of person authorizing release of the record;

(2) Kinds of records to be released;

(3) Reasons for release; and

(4) Name of person to receive or examine the records.

(c) Where parents are separated or divorced, a written parental consent may be obtained from either parent, subject to any agreement between the parents or court order governing the rights of the parents.

(d) In the case of a student, except as provided in subsection (e), a party independent of the institution shall be appointed pursuant to state and local law to give written parental consent.

(e) In the case of an exceptional student, as defined chapter 8-36, whose legal guardian is not known, unavailable, or is an institution, a party appointed pursuant to state law and independent of the institution and the department of education shall have authority to give a written parental consent.

(f) Personal information shall be transferred to a third party only on condition it will not be shared without the written consent of the eligible student or parent.

(g) The department shall give public notice of the kinds of directory information on students that are available. Within ten days after the notice, a parent may request that certain data be withheld except with prior consent.

(h) Additional consent procedures shall be as provided in section 8-36-7(6). [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1232g, 34 C.F.R. 99.30, 99.31, 99.33, 99.34, 99.35, 99.36, 99.37)

§8-34-15 Recording of requests. The department shall maintain with each student's education records a log of all persons requesting access to the data and the reasons therefor. Exceptions to this shall be as provided in section 8-34-14. [Eff. AUG 23, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1232g, 34 C.F.R. 99.32)