

HAWAII ADMINISTRATIVE RULES

TITLE 8 DEPARTMENT OF EDUCATION

SUBTITLE I RULES OF PRACTICE AND PROCEDURE

CHAPTER 6

CONFIDENTIALITY OF PERSONAL RECORDS

§8-6-1 Definitions. As used in this chapter:

"Days" means working or school days.

"Employee" means any individual employed by the department of education.

"Library patron" means any individual who utilizes the state public library services.

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

"Personal record" means any item, collection, or grouping of information about an employee, student, parent, or library patron that is maintained by the department. It includes but is not limited to the employee's, student's, parent's, or library patron's educational, financial, medical, or employment history, or items that contain or make reference to the employee's, student's, parent's, or library patron's name, identifying number, symbol, or other identifying particular assigned to the employee, student, parent, or library patron, such as a finger or voice print or a photograph.

"Student" means any individual who is or has been enrolled and is or has been in attendance at any public school or private school licensed by the department. [Eff. AUG 22, 1983] (Auth: HRS §302A-1112) (Imp: HRS §§92E, 302A-1112)

§8-6-2 Employee, student, parent, or library patron access to own personal record.

(a) All accessible personal records shall be made available for inspection to the employee, student, parent, or library patron to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form. Where necessary the department shall provide a translation into common terms of any machine readable code, or any code or abbreviation employed for internal department use.

(b) Upon the request of an employee, student, parent, or library patron to gain access to personal records, the department shall permit the employee, student, parent, or library patron to review the record and have a copy made within ten days following the date of the request unless the personal record requested is exempted under section 8-6-5. The ten-day period may be extended for an additional twenty days if the department provides to the employee, student, parent, or library patron, within the initial ten working days, a written explanation of unusual circumstances causing the delay.

(c) The department may charge the employee, student, parent, or library patron for any copies and for the certification of any copies; provided that the charges or fees shall not exceed the actual cost of duplication or of transcription into readable or intelligible form and duplication and shall not include any costs of searching for the record. [Eff. AUG 22, 1983] (Auth: HRS §302A-1112) (Imp: HRS §§92E, 302A-1112)

§8-6-3 Right to correct personal record.

(a) An employee, student, parent, or library patron has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by submitting a written request to the custodian of the personal record.

(b) Within twenty days after receipt of a written request to correct or amend a personal record the custodian of the personal record shall acknowledge the request in writing and promptly:

(1) Make the requested correction or amendment; or

(2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the department's procedures for review of the refusal. [Eff. AUG 22, 1983] (Auth: HRS §302A-1112) (Imp: HRS §§92E, 302A-1112)

§8-6-4 Review procedures concerning access and correction.

(a) An employee, student, parent, or library patron who has been refused access to, or correction or amendment of, a personal record may submit a written request to the superintendent of education or the state librarian for a review of the refusal to allow access to, or correction or amendment of, a personal record.

(b) Not later than thirty days after receiving a request for a review of a refusal to allow access to, or correction or amendment of, a personal record, the superintendent of education or the state librarian, or their respective designee, shall make a final determination.

(c) If the superintendent of education or the state librarian, or their respective designee, refuses upon final determination to allow access to, or correction or amendment of, a personal record, the superintendent of education or the state librarian, or their respective designee, shall so state in writing, and:

(1) Permit, whenever appropriate, the employee, student, parent, or library patron to file in the record a concise statement setting forth the reasons for disagreement with the refusal of the department to allow access to, or to correct or amend it; and

(2) Notify the employee, student, parent, or library patron of the applicable procedures for obtaining appropriate judicial remedy. [Eff. AUG 22, 1983] (Auth: HRS §302A-1112) (Imp: HRS §§92E, 302A-1112)

§8-6-5 Exemptions and limitations on employee, student, parent, or library patron access. The department is not required to grant an employee, student, parent, or library patron access to personal records or information when:

(1) The disclosure would reveal the identity of a source who furnished information to the department under an expressed or implied promise of confidentiality.

(2) Records consist of testing or examination material or scoring keys solely to determine qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure

of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.

(3) Records include investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the employee, student, parent, or library patron.

(4) Required to be withheld from the employee, student, parent, or library patron to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege. [Eff. AUG 22, 1983] (Auth: HRS §302A-1112) (Imp: HRS §§92E, 302A-1112)

§8-6-6 Limitation on public access to personal record. The Department may not disclose or authorize disclosure of personal records by any means of communication to any person other than the employee, student, parent, or library patron to whom the record pertains unless the disclosure is:

(1) To a duly authorized agent of the employee, student, parent, or library patron to whom it pertains;

(2) Of information collected and maintained specifically for the purpose of creating a record available to the general public;

(3) Pursuant to a statute of this state or the federal government that expressly authorized the disclosure;

(4) Pursuant to a showing of compelling circumstances, affecting the health or safety of any employee, student, parent, or library patron; and

(5) Properly authorized for release by the employee, student, parent, or library patron to the authorized agency or person specified. [Eff. AUG 22, 1983] (Auth: HRS §302A-1112) (Imp: HRS §§92E, 302A-1112)

§8-6-7 Limitations on disclosure of personal record to other agencies. The department may not disclose or authorize disclosure of personal records to any other agency unless the disclosure is:

- (1) Compatible with the purpose of which the information was collected or obtained;
- (2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;
- (4) To the state archives for purposes of historical preservation, administrative maintenance, or destruction;
- (5) To any agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign government if specifically authorized by treaty or statute, or for a civil or criminal law enforcement investigation;
- (6) To the legislature or any committee or subcommittee thereof;
- (7) Pursuant to an order of a court of competent jurisdiction; and
- (8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that receives federal moneys.

[Eff. AUG 22, 1983] (Auth: HRS §302A-1112) (Imp: HRS §§92E, 302A-1112)

§8-6-8 Access to personal record by order in judicial or administrative proceedings or as required by other law.

Nothing in this chapter shall be construed to permit or require the department to withhold or deny access to a personal record, or any information in a personal record:

(1) When the department is ordered to produce, disclose, or allow access to the record or information in the record, or when the discovery of the record or information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or

(2) Where any statute, administrative rule, rule of court, judicial decision, or other law authorizes or allows an employee, student, parent, or library patron to gain access to a personal record or to any information in a personal record or requires that the employee, student, parent, or library patron

be given such access. [Eff. AUG 22, 1983] (Auth: HRS §302A-1112)
(Imp: HRS §§92E, 302A-1112)

§8-6-9 Violations. A knowing or intentional violation of any provision of this chapter by any employee of the department shall be cause for disciplinary action, including suspension or discharge. Any person may file a complaint with the department alleging such a violation. [Eff. AUG 22, 1983] (Auth: HRS §302A-1112) (Imp: HRS §§92E, 302A-1112)

§8-6-10 Conflict of law. In the event of a conflict specifically regarding student education records, the provisions of chapter 8-34 shall prevail. [Eff. AUG 22, 1983] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)