

Regulatory Analysis Form		This space for use by IRRC 2004 OCT 21 PM 2: 02 PENNSYLVANIA REGULATORY REVIEW COMMISSION IRRC Number: 2367	
(1) Agency State Board of Education			
(2) I.D. Number (Governor's Office Use) #006-280			
(3) Short Title Students and Student Services			
(4) PA Code Cite 22 Pa. Code Chapters 7 and 12		(5) Agency Contacts & Telephone Numbers Primary Contact: Jim Buckheit (jbuckheit@state.pa.us) 717-787-3787	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. <p>The proposed Chapter 12 regulations address Student Rights and Responsibilities, in particular in the areas of Free Education and Attendance, Student Responsibilities, Discrimination, Corporal Punishment, Exclusions from School, Hearings, Hair and Dress, and Searches. The proposed regulations also address Student Records and Student Services, and provisions relevant to student services that are to be deleted from the text of the existing version of Chapter 7. A new regulatory requirement is added that requires schools to operate Student Assistance Programs. This incorporates into regulation a long-standing Commonwealth policy established through 24 P.S. § 15-1547(g) of the Pennsylvania School Code. Due to recent changes made by provisions of both the federal <i>No Child Left Behind Act of 2001</i> (20 U.S.C. § 6311 et.seq.) and the Commonwealth Act 153 of 2002 (P.L. 30, No. 14), both relative to student records, the Board also proposes to remove the Annex from Chapter 12 which contains detailed, but outdated, guidelines on student records.</p>			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. Act of March 10, 1949, P.L. 30, No. 14, § 26-2603-B, added by the Act of March 30, 1988, P.L. 321, No.43.			

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

These regulations are not mandated by law, court order or regulation. The enabling statute for the State Board of Education requires it to: "adopt broad policies and principles, and establish standards governing the education program of the Commonwealth." (24 P.S. § 26-2603-B (a)).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Many provisions of these regulations are outdated as a result of state or federal law or judicial rulings. In addition, the proposed regulations also reflect the practices of the State Board of Education regarding consolidation of its regulations. In addition, the descriptions of pupil services functions outlined in Chapter 7 are not being retained, in order to provide schools additional flexibility in providing support services to students. The Board believes the quality of student services will increase by providing increased options to schools for the provision of student services. In the proposed regulations, schools will be required to describe their comprehensive program of student services in a written plan. The program of services is to be based on the needs of students.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

These regulations address critical issues affecting the management of the school environment of the Commonwealth's public schools. Without these regulations, schools and students would not have clear direction about policies and procedures regarding student discipline issues, due process obligations and other issues related to student rights and responsibilities.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

1.8 million school age students enrolled in school districts, charter schools, vocational schools and alternative schools will directly benefit from these regulations.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Board received many comments throughout the development of the proposed regulations from school psychologists, school nurses, guidance counselors and home and school visitors advocating that the Board retain the detailed descriptions of each program of student services included in Chapter 7 subsection titled "Pupil Personnel Services Program" (§§7.11—7.14). The Board believes the descriptors currently used in Chapter 7 are antiquated, unnecessary and can actually limit the ability of school districts to efficiently operate schools. This is the only area of school operations in which detailed regulations describe standards for the delivery of services to students. All other areas of school operations, such as the delivery of instruction, are at the discretion of locally elected school boards. However, in recognition of the concerns, the Board has expanded upon the proposed language to more fully describe required student support services in the final form regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All public school districts, area vocational-technical schools, alternative schools and charter schools will be required to comply with the regulations. The regulations directly impact the 1.8 million school age students enrolled in school districts, charter schools, vocational schools and alternative schools in the Commonwealth.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Over the course of nearly two years a committee of the Council of Basic Education held open public meetings, a public hearing, transmitted copies of the draft regulations to interested parties and posted draft copies on the State Board of Education web pages to solicit public comment. Groups providing input include: Pennsylvania School Press Association, Pennsylvania Association of Pupil Services Administrators, Pennsylvania School Boards Association, Pennsylvania State Education Association, Pennsylvania Psychological Association, Education Law Center, Pennsylvania School Counselors Association, Pennsylvania Association of School Administrators, School District of the City of York, Dover Area School District, National Coalition to Abolish Corporal Punishment, National Center for the Study of Corporal Punishment, Pennsylvania Parent Teacher Association, Colonial School District, Goehring Rutter & Boehm - attorneys at law, Behavioral Health Training and Education Network, Center for Safe Schools, School District of Philadelphia and four private citizens: Terry Hasenauer, Harold Smith, Hosla Carter and Eloise Stoehr.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The actual one-time cost incurred by each school entity for compliance with these requirements will vary from school entity to school entity depending upon the approach they use to develop and update policies on student discipline, student records and student services. This includes, if it does not already exist, a plan that outlines the school entity's program of student services. In addition, based on guidelines to be issued by the Department of Education, each school entity will need to update its student records policy. Compliance with these requirements is estimated average approximately \$20,000. School entities that have updated student records policies based on federal laws and court decisions will already meet these new requirements. Schools that already describe student services in their strategic plan required by § 4.13, or in other documents, may already meet this requirement as well.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

These regulations require the Department of Education to develop guidelines for the collection, maintenance and dissemination of student records in addition to guidelines and technical assistance to school entities in planning student services. Existing staff and advisory groups to the Department will be used in the development of the guidelines and in the delivery of technical assistance. Therefore the one-time cost to the Department of Education, which can be covered with existing resources, is estimated at less than \$5,000. This would include travel costs for advisory groups, purchase of research and technical assistance materials and incidental costs associated with conducting meetings.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$20,000	0	0	0	0	0
Local Government						
State Government	\$5,000	0	0	0	0	0
Total Costs	\$25,000					
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

One-time costs to the regulated community are based on estimated staff time, meeting costs and incidental costs copier, phone, etc. calculated on an estimated 350 staff hours of work at \$50 per hour plus, local travel, meeting, copy, phone and other incidental costs. This includes updating student disciplinary policies, student record policies and development of a comprehensive plan of student support services.

One-time costs to state government include staff costs associated with consulting with stakeholders in the development of guidelines for maintenance of student records and for student support services. This is based on approximately 100 staff hours work at \$40 per hour plus incidental costs (copier, phone, materials).

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
None				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits of eliminating the text of Chapter 7 and placing it in Chapter 12 include:

- Provides greater flexibility to school districts to design a comprehensive strategy and program of services to address the specific unique needs of its student body and community.
 - The new provisions reflect a more generic approach to student services by devising a program of services rather than separate job responsibilities for each specialty
 - The proposed regulations will allow schools more flexibility to use a broad band of services.
- The costs of this regulation include:
- In order to comport with the new provisions of the regulations, school districts may have to change their disciplinary policies and procedures, as well as their expulsion hearing policies. School districts also may have to revise their records policy to comply with the guidelines regarding records that will be issued by the Department. As outlined in (20) above, there will be minor costs associated with all of these changes.
 - The Student Assistance Program, which is currently mandated through Department of Education guidelines, is mandated by the proposed regulations. As a result of the regulations, the Department also would be required to compile k-12 program guidelines for student services, and school districts are required to develop a comprehensive written plan for student services. There may be limited costs associated with implementation of both of these programs/ procedures.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Many revisions included in the final form regulations incorporate policies already long-established through non-regulatory alternatives. Since many of these have been in place for more than 10 years and these policies are limited in terms of enforcement the Board believes it is appropriate to incorporate these into regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The Board considered retaining Chapter 7 as a separate chapter, however, the Board believes there are advantages to consolidating its regulations and in providing school entities with additional flexibility in planning and implementing comprehensive programs of student services.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

§ 12.9, Freedom of Expression, provides procedural rights to students that are broader than those required by federal case law. Pennsylvania has a long and honored tradition of providing broad free speech rights to students. These regulations attempt to balance the interests of protecting the school and community from inappropriate student speech while also providing learning opportunities for students to learn from a structured but open learning environment.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

These regulations will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No additional public hearings on Chapter 12 are planned during the public comment period, as public meetings have already taken place on this regulation. A committee of the Council of Basic Education developed these regulations. The committee held several public meetings over a two-year period to develop these regulations. Meeting dates were: January, 2001; May, 2001; January, 2002; May, 2002; July, 2002; November, 2002. In addition, a public hearing was held on June 12, 2002 in Harrisburg. Eight individuals provided testimony to the committee.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. The proposed regulations will eliminate detailed regulations that outline student record keeping requirements. In place of the regulations the Board instructs the Department of Education to provide guidelines that provide guidance for maintenance of student records to schools. This is done to allow for regular updates due to statutory changes, court rulings and technological advances. In addition, as in current regulations, the proposed regulations require schools to develop a plan for the collection, maintenance and dissemination of student records. The proposed regulations also require schools to develop a plan of comprehensive K-12 student services.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Effective upon final publication in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The effectiveness of Chapter 12 will be reviewed by the State Board of Education every 4 years, in accordance with the Board's policy and practice respecting all regulations promulgated by the Board.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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LEGISLATIVE REGULATORY
REVIEW COMMISSION

#2367

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

State Board of Education
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 006-280

DATE OF ADOPTION: March 18, 2004

BY: J. Burkheit

TITLE: Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

BY: Tanya C. [Signature]

10/20/04
DATE OF APPROVAL

Asst. [Signature]
(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

Final-Form
Title 22 - Education
State Board of Education
Chapter 7 (Pupil Personnel Services)
and
Chapter 12 (Students)

FINAL REGULATIONS
PREAMBLE

TITLE 22--EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE--CH. 7 & 12]

Students and Student Services

The State Board of Education (Board) deletes Chapter 7 (relating to pupil personnel services) and amends Chapter 12 (relating to students and student services) to read as set forth in Annex A. Notice of proposed rulemaking was published at 33 Pa.B. 5735 (November 22, 2003), with an invitation to submit written comments.

Chapter 12 addresses student rights and responsibilities and student services. The final regulations would both make changes to Chapter 12 and replace the existing Chapter 7 by adding new sections to Chapter 12. The overarching purposes of the proposed changes are to update and align the regulations with current statutory provisions and relevant case law. In addition, the revisions would add a new subchapter regarding student services and update the same subject matter now included in Chapter 7.

Statutory Authority

The Board takes this action under the authority granted to it by section 2603-B of the Public School Code of 1949 (24 P.S. § 26-2603-B) and other sections of the Public School Code.

Background

Chapter 7 sets forth the requirements for pupil services in public schools. Chapter 12 sets forth the requirements for students' rights and responsibilities. The amendments to the regulations consolidate the two chapters and generally reflect statutory changes that have been made and court decisions that have been rendered since Chapter 12 was last amended in 1984, as well as existing Department of Education policies and practices. In addition, the Board is amending some provisions to afford public schools with additional flexibility.

Summary of Amendments

- Title. The title of Chapter 12 has been changed from "Students" to "Students and Student Services." In all of its regulations under Title 22, the Board is using the term students, rather than pupils, to conform to common usage. The addition of student services to the title reflects the consolidation of Chapter 7 into Chapter 12.
- Chapter 7. The Board believes the current Chapter 7 regulations, titled "Pupil Personnel Services," are too prescriptive in today's educational environment. The regulations are inconsistent with other Board regulations in that they limit flexibility provided to school entities in the planning, implementation and administration of cost effective, comprehensive student services programs.
- Section 12.1(a) (free education and attendance). The Board has reinserted the term "full" into this section. In addition, in subsection (b)(3), the term "handicapping condition" has been replaced with the term "disability" to reflect current usage.

- Section 12.2(a) (student responsibilities). The Board has added homework to the student responsibilities listed in this section.
- Section 12.3 (school rules). The Board has revised this section to provide that school policies shall not be discriminatory.
- Section 12.4 (discrimination). The Board has reinserted the term “full” to state that students shall not be denied access to a “free and full public education.” The Board also has added new language to provide that students shall not be subject to disciplinary action because of race, sex, color, religion, sexual orientation, national origin or disability.
- Section 12.5 (corporal punishment). The Board has revised this section to prohibit use of corporal punishment as a form of student discipline. The regulation permits use of reasonable force to quell a disturbance, take possession of weapons or dangerous objects and to protect persons or property.
- Section 12.6(a) has been revised to update references in Chapter 14 (Special Education and Related Services) and Federal regulations under the Individuals With Disabilities Education Act.
- Section 12.6(d) replaces current language that permits time extensions for conducting a formal disciplinary hearing if the hearing would not be unreasonably delayed. New language limits the extension to 15 days unless mutually agreed upon by both parties.
- Section 12.6(e)(2) has been revised to clarify the obligation of parents of expelled students to notify their board of school directors within 30 days if they are unable to provide for the education of their child. The school entity is then obligated to

provide for the student's education. New language has also been added to clarify that a student with a disability must be provided educational services as required by the federal Individuals With Disabilities Education Act.

- Section 12.8(b)(1)(ii) provides that students must be given at least three days' notice of the time and place of a formal disciplinary hearing. This section also provides that students may be represented by counsel at their parents' expense and that parents or guardians may attend the hearing.
- Section 12.8(b)(1)(viii) has been updated to reflect current technology used to record and maintain a record of the formal hearing. The Board also has added a requirement that a copy of the hearing record be provided to a student who is indigent at no cost.
- Section 12.8(b)(1)(ix) requires a formal hearing to be held within 15 school days of notification of the charges except when one of the following is needed: laboratory reports from law enforcement; evaluations, court or administrative proceedings regarding rights under IDEA are pending; or it is in the best interests of the victim of a sexual assault or victim of serious bodily injury. The section also provides that notice of appeal rights must be provided with the expulsion decision.
- Section 12.8(c) has been revised to add a subsection entitled, "informal hearings," to clarify the meaning and application of the subsection.
- Section 12.9(a) has been revised to update the legal references to the decisions of the United States Supreme Court that establish and explain the free speech rights of public school students. This section is intended to outline the legal free speech

rights of public school students as defined by the United States Supreme Court. The Board does not intend to restrict or limit the long-held tradition of the Commonwealth providing broader free speech rights than are guaranteed by the United States Constitution. Except for one revision made in § 12.9(b), the Board has maintained regulations that provide Pennsylvania's public school students with free speech rights that extend beyond those guaranteed under the U.S. Constitution. The Board intends to maintain this tradition.

- Section 12.9(b) has been revised to provide that students may express themselves unless such expression materially and substantially interferes with the educational process, threatens immediate *or serious* harm to the welfare of the school or community. The term "serious" has been inserted to assure that student speech that presents a serious threat, regardless of whether the threat is immediate, is not speech protected by the regulation. The Board believes this change is appropriate given the large number of serious acts of violence in schools both in Pennsylvania and across the nation.
- Section 12.11 has been revised to reflect recent statutory authority that provides school boards authority to adopt dress codes or to require that students wear school uniforms. The section also has been revised to indicate when the length or style of hair presents a health or safety hazard, the hair shall be covered.
- Section 12.14 has been revised to update language pertaining to searches of student lockers to make it consistent with current case law.
- Section 12.16 has been added to include definitions of the following terms: governing board; school entity; student assistance program; and student services.

- Section 12.31 has been revised to provide that copies of the student record plan be submitted to the Department of Education only upon request of the Secretary of Education.
- Section 12.32 has been revised to require that student records plans conform to applicable State and Federal laws, regulations and directives.
- Section 12.41(a) requires that school entities prepare a written plan for the implementation of a comprehensive and integrated K-12 program of student services. The plan must be prepared and revised consistent with strategic planning requirements outlined in Chapter 4 (relating to Academic Standards and Assessment).
- Section 12.41(b) describes the developmental services; diagnostic, intervention and referral services; and consultation and coordination services that must be provided by each school entity.
- Section 12.41(c) describes additional requirements for student services programs.
- Section 12.41(d) addresses the rights of students and parents to refuse to participate in surveys covered under the federal Protection of Pupil Rights amendment (20 U.S.C. § 1232h).
- Section 12.42 has been added to require school entities to plan and provide for a student assistance program.

Summary of Public Comments and Changes

The proposed regulations were published as proposed in the November 22, 2003, issue of the *Pennsylvania Bulletin* (33 Pa.B. 5735). The proposed regulations were also

published on the Department of Education website located at www.pde.state.pa.us. The Board accepted formal written comments within a 30-day public comment period after publication of the proposed amendments.

The Board received comments from members and staff of the Education Committee of the Pennsylvania House of Representatives and the Independent Regulatory Review Commission (IRRC). In addition, comments were received from 14 commentators during the 30-day public comment period. These included comments submitted by: the Education Law Center; the Pennsylvania School Boards Association (PSBA); the Pennsylvania Parent Teacher Association; the Pennsylvania Psychological Association; the Colonial School District; Goehring Rutter & Boehm - Attorneys at Law; the Behavioral Health Training and Education Network; the National Coalition to Abolish Corporal Punishment in Schools; the National Center for the Study of Corporal Punishment and Alternatives at Temple University; the Center for Safe Schools; and four private citizens: Terry Hasenauer, Harold Smith, Hosla Carter, and Eloise C. Stoehr. Comments were also received after the official comment period but before the Board adopted the final form regulations from the School District of Philadelphia, the Pennsylvania State Education Association and scores of private citizens.

Following is a summary of the comments and the Board's response to those comments:

Section 12.1. Free education and attendance.

Comment: The Education Law Center supports the revision.

Section 12.4. Discrimination.

Comment: The Education Law Center and IRRC suggested replacing the term *handicaps* with *disabilities*.

Response: The Board revised the term as suggested.

Section 12.5. Corporal punishment.

Comment: Letters in support of the Board's action to ban corporal punishment were received from: the Democratic Chair of the House Education Committee; the Education Law Center; the Pennsylvania PTA; the Pennsylvania Psychological Association; the National Coalition to Abolish Corporal Punishment in Schools; the National Center for the Study of Corporal Punishment and Alternatives at Temple University, Center for Safe Schools; the Colonial School District; and two private citizens.

A letter opposing the ban and recommending that use of corporal punishment be permitted was received from a private citizen. PSBA suggested the issue was one that should be addressed by the General Assembly, not the Board. The House Education Committee also provided comments from several of its members who expressed concern that corporal punishment can be an effective method of improving student behavior and should not be eliminated. The letter suggested language that would permit continued use of corporal punishment under carefully defined circumstances.

Response: The Board believes the use of corporal punishment, as a method of student discipline in public schools, is ineffective and unsupported by research. Research shows that corporal punishment is used more often on poor children and minorities. Schools where corporal punishment is used generally have poorer academic achievement, higher truancy, greater school violence, and higher dropout rates. Research also shows

that corporal punishment is frequently used as the first method of discipline for minor misbehaviors rather than a form of discipline of the last resort. Corporal punishment is a risk factor for a number of negative outcomes. It also does not model good adult behavior as it teaches children that it is permissible to hit someone smaller and weaker when they are not compliant.

Section 12.6. Exclusions from school.

Comment: In subsection (a), IRRC suggested changing the term *exceptional students* to *students with disabilities*.

Response: The Board revised the regulation as suggested.

Comment: The Education Law Center supports the revision to subsection (d).

Comment: PSBA suggested retaining the current language in subsection (d), and suggested there are situations when the 15-day timeframe to hold a hearing is problematic.

Response: The Board believes a 15-day timeframe is reasonable and appropriate. Sufficient flexibility is provided to school entities while also ensuring that students are not excluded from school for long periods without appropriate due process.

Comment: The Education Law Center commented that it believes the language in subsection (e), while an improvement over current regulation, is too weak to ensure that an expelled child receives sufficient educational program. It also suggested including a statement that students with a disability are entitled to a Free Appropriate Public Education (FAPE) as provided by IDEA.

Response: The Board believes standards established by court rulings have addressed this matter and does not believe it should prescribe additional requirements

beyond those established by the courts. The Board has added language stating that students with a disability are entitled to FAPE.

Section 12.8. Hearings.

Comment: IRRC suggested identifying the minimum time period that qualifies as sufficient notice.

Response: The Board established three days as sufficient notice.

Comment: The Education Law Center suggested the notice of a right to appeal the expulsion decision should be provided with notification of expulsion decision, not with the notification of charges as proposed. It also suggested that a copy of the hearing transcript be provided at no cost to a student cannot afford it.

Response: The Board agrees and made both changes.

Comment: The School District of Philadelphia expressed concerns about the 15-day timeframe and noted situations where the timeframe is not practical. It suggested exceptions to the timeframe, such as when laboratory tests are needed from law enforcement; an administrative hearing or judicial proceeding is pending resulting from the student invoking their rights under IDEA; or a victim of a sexual assault or serious bodily injury is not available due to their physical or emotional condition.

Response: The Board agrees and incorporated the exceptions to the regulation.

Comment: PSBA expressed a number of concerns and raised questions about the regulation. It recommended that the Board maintain the existing language. Goehring, Rutter and Boehm also expressed concerns that providing a copy of the expulsion policy to students together with notification of charges would provide a small but additional paperwork burden on schools.

Response: The Board believes expulsion hearings are serious matters in which students should be entitled to information relevant to the rules and procedures followed by the school entity. The Board believes the additional paperwork requirement is minimal and justified given the serious action contemplated by the governing board. Except for the changes to this section previously noted, the Board has retained the regulation as proposed.

Section 12.9. Freedom of expression.

Comment: IRRC recommended that in subsection (a), the *Tinker* citation be replaced with the *Bethel School District* citation. PSBA also expressed its concerns that the *Bethel School District* and *Hazelwood School District* cases are relevant to this section and are needed to reflect accurately the rulings of the United States Supreme Court on this matter.

Response: The Board revised the regulation to reflect that the United States Supreme Court established the right of public school students to freedom of speech in *Tinker v. Des Moines Community School District*, 393 U.S. 503 (1969), which was reaffirmed and further explained by the Court in *Bethel School District v. Fraser*, 478 U.S. 675 (1986), and *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). This change is necessary to make the regulation accurate.

Comment: PSBA expressed a concern that in subsection (b) the term “immediate harm” might suggest that there must be an immediacy of harm before a threat falls outside the protection of the First Amendment. It suggested deletion of the word “immediate.”

Response: The Board agrees in concept but inserted the term “or serious” to clarify that any threat, whether immediate or otherwise, is not protected speech under this regulation.

Comment: PSBA expressed concern that the regulation is contrary to a 1989 court decision that ruled the hallways of a public school during the school day are not considered public forums. In addition, PSBA stated the regulations encroach upon authority declared by the United States Supreme Court in its *Hazelwood* decision.

Response: The regulation provides sufficient authority to school officials to regulate the distribution of materials in public schools buildings.

Section 12.14. Searches.

Comment: PSBA expressed concern that the regulation provides a more stringent standard for locker searches than is constitutionally required.

Response: The Board chose to maintain the long-standing standard as outlined in the regulation.

Section 12.16. Definitions.

Comment: A private citizen commented that the definition for “Student Assistance Program” should be revised to state that the program is designed to assist students who are experiencing a barrier to learning consistent with language contained in a Department of Education Basic Education Circular.

Response: The Board believes that it is the purpose and function of all student services to address barriers to learning. It is not solely the purview of the Student Assistance Program, which was first established to address substance abuse issues in schools.

Section 12.32. Elements of the plan.

Comment: IRRC expressed concerns to the Board about the requirement for the Department of Education to issue guidelines on student services because guidelines are not binding. PSBA recommended that the Board create regulations since delegating issuance of guidelines to the Department of Education would not allow for public input.

Response: The Board revised this section using language suggested by IRRC.

Section 12.41. Student services.

Comment: Several members of the House Education Committee, the Pennsylvania Psychological Association and a private citizen recommended that the descriptors for educational specialists outlined in Chapter 7 be retained, or that Chapter 7 itself be retained. These commentators share a concern that the quality and effectiveness of student services would be reduced as a consequence of the proposed regulation.

Response: The Board believes that the current Chapter 7 regulations, titled “Pupil Personnel Services,” are too prescriptive in today’s educational environment. The regulations are inconsistent with other Board regulations in that they limit flexibility provided to school entities in the planning, implementation and administration of cost effective, comprehensive student services programs. The Board believes that the final form regulation provides an appropriate balance between defining what services school entities must provide while providing them flexibility in delivery of the services.

Comment: PSBA, the Education Law Center, the Pennsylvania Psychological Association, a private citizen, and IRRC commented that subsection (d) was unclear and needed additional work, or may even be unnecessary.

Response: The Board agrees and has rewritten subsection (d) to address parental and student rights under the federal Protection of Pupil Rights amendment.

Comment: IRRC suggested clarity would be improved in subsection (a) by defining developmental, diagnostic, intervention, referral, consultation and coordination services. The Pennsylvania State Education Association and a private citizen also commented that the proposed language suffers from a lack of specificity and suggested that the Board restore the descriptors contained in Chapter 7.

Response: The Board concurs that the regulation required additional clarity and has described the activities more fully in the final form regulation. However, the Board believes that the descriptors in Chapter 7 are too detailed and limit the flexibility of school entities in the design of a comprehensive system of student support services.

Comment: A private citizen commented that the Board should clarify who may administer medications in schools.

Response: School health regulations and guidance generally fall under the authority of the Department of Health. Therefore, it would not be appropriate for the State Board of Education to issue regulations on this issue.

Comment: PSBA commented that subsection (e), which states that student services staff must be specifically licensed or certified, is unnecessary since Chapter 49 provides for certification and that the proposed language can only restrict staffing decisions by school officials.

Response: The Board believes that it is important that personnel, both those employed by the school entity and those employed by community agencies, be properly licensed or certified. Chapter 49 and Department of Education policies describe the

qualifications and scope of responsibilities for professional school employees. With staff from community agencies now providing services to students in schools on a routine basis, the Board believes that all individuals providing services to students should be properly credentialed.

Comment: The Pennsylvania Psychological Association and the Colonial School District support the addition of language to clarify that outside agencies providing services in schools are to be coordinated by and under the general direction of the school entity.

Additional Comments.

Comment: IRRC suggests clarity would be improved through consistent use of a single term when referring to a school board, board of school directors, governing board, etc. The Education Law Center also suggests that it be made clear that charter schools must follow Chapter 12 regulations.

Response: The Board concurs and is using the term “governing board” throughout the regulation and has included it in the definitions in § 12.16. The definition includes charter schools so as to clearly indicate these regulations apply to charter schools.

Comment: IRRC suggests using the term parents or guardians consistently throughout the regulation.

Response: The Board has revised the regulations to reflect this suggestion.

Comment: A private citizen suggested that the Board address school policies regarding off-campus student conduct, as many school entities now have such policies. These policies principally address acceptable off-campus student conduct as a condition

of student participation in extracurricular activities, such as intramural and interscholastic sports, clubs and related activities that are considered privileges, not entitlements.

Response: The General Assembly has delegated broad authority to school boards to “prescribe, adopt, and enforce such reasonable rules and regulations as it may deem proper regarding extracurricular activities.” Therefore, the Board has chosen not to regulate on this issue.

Application of Education Empowerment Act

In consolidating the regulations that were organized as Chapter 7 of Title 22 into Chapter 12 of the same title, the question arises: How does the State Board’s reorganization of Title 22 affect those chapters under the Mandate Waiver Program established by the Education Empowerment Act (EEA) (22 P.S. § 17-1714-B)?

Under the Mandate Waiver Program, the Department of Education is empowered to waive certain statutory and regulatory mandates in response to applications of a school district, intermediate unit or area vocational-technical school. The EEA expressly exempts from the Department’s waiver authority certain specified statutes and regulations. Among those regulations exempted from the waiver program is Chapter 12. *See* 24 P.S. § 17-1714-B(h).

The Board previously considered the effect of moving regulatory language from one chapter to another and its impact on the Mandate Waiver Program. The Board established Chapter 16 (Special Education for Gifted Students) after having previously addressed gifted education as part of its Chapter 14 regulations. In that case, the Secretary of Education asked the Department’s Office of Chief Counsel to render an

opinion on the issue. The Office of Chief Counsel advised the Secretary that because the General Assembly clearly intended to exempt from the Mandate Waiver Program all of Chapter 14, including the provisions governing gifted education, a new Chapter 16 governing gifted education would also be exempt from the Mandate Waiver Program under section 1714-B(h) of the EEA. The change in numbering of the regulations by the Board would not alter the clear legislative intent to exempt from the program all Board regulations contained in Chapter 14 at the time the EEA went into effect.

The Board believes this principle also applies to the consolidation of Chapters 7 and Chapter 12. The General Assembly clearly intended to include Chapter 7 in the Mandate Waiver Program, including all of the provisions governing pupil personnel services -- titled student services in the final-form regulations. The change in numbering or title of the regulations by the Board would not alter the clear legislative intent to permit inclusion in the program all Board regulations contained in Chapter 7 at the time the EEA went into effect. Therefore, the Board submits its final-form regulations with its statement of intent that 22 Pa. Code § 12.41 (relating to student services) is eligible for waiver under the Mandate Waiver Program established by the EEA, on application of a school district, intermediate unit or area vocational-technical school to the Department of Education.

Fiscal Impact and Paperwork Requirements

Because these regulations largely reflect changes in Federal and State statutes, Federal regulations and court decisions, any costs associated with compliance with the regulation should be negligible. The regulations are aligned with current statutory provisions and relevant case law. To comport with the new provisions of the regulations,

school districts might have to change their disciplinary policies and procedures, as well as their expulsion hearing policies. School districts also might have to revise their student records policies to comply with the guidance provided by the Department. There may be limited costs associated with each of these changes.

The Student Assistance Program, which is currently operated under Department of Education guidelines, is mandated by the regulations. This change should not result in additional costs. The regulations require the Department to issue program guidelines for student services programs. This includes the development of a comprehensive written plan for student services. Since school entity strategic planning requirements outlined in the Board's Chapter 4 regulations (related to academic standards and assessment) already require school entities to address student support services as part of the overall strategic plan, costs associated with this regulations should be minimal.

School entities may need to revise and update school district policies regarding student discipline and the maintenance of student records due to these regulations. Based on guidance to be provided by the Department of Education, each school entity would need to update its student records policy. Compliance with these requirements is estimated to be less than \$20,000. Actual costs incurred by each school entity for compliance with these requirements would vary from school entity to school entity. However, school entities that have updated student records policies based on Federal laws and court decisions would already meet these new requirements. Schools that currently describe student services in their strategic plans, as required by § 4.13, or in other documents, may currently meet this requirement as well.

By consolidating the regulations into the student services section (Chapter 12), previously addressed in Chapter 7, schools would be provided additional flexibility to deliver a comprehensive program of student services to their students. Depending upon implementation on the local level, this might lead to improving the scope and quality of services provided to students while also providing cost savings.

Effective Date

The regulations will be effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

In accordance with its policy and practice respecting all regulations promulgated by it, the Board will review the effectiveness of Chapter 12 after four years. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 30, 2003, the Board submitted a copy of this proposed rulemaking (published at 33 Pa.B. 5735) for review and comment by IRRC and the House and Senate Committees on Education.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation. In preparing the final-form rulemaking, the Board considered the comments received from IRRC, the Committees and the public.

In accordance with section 5.1(a) of the Regulatory Review Act (71 P.S. § 745a(a)), the Board submitted the final-form rulemaking to IRRC and the Committees for review as provided by section 5.1 of the Regulatory Review Act.

In accordance with section 5.1 of the Regulatory Review Act, these final-form regulations were approved/deemed approved by the Committees on _____, and were approved/deemed approved by IRRC on _____.

Contact Person

The official responsible for information on these final-form regulations is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, telephone (717) 787-3787 or TDD (717) 787-7367.

Findings

The State Board of Education finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of the Public School Code of 1949.

Order

The State Board of Education, acting under authorizing statute, orders that:

- (a) The regulations of the Board, 22 Pa. Code Chapters 7 and 12, are amended to read as set forth in Annex A.
- (b) The Executive Director will submit this Order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.
- (c) The Executive Director of the Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order is effective upon final publication in the *Pennsylvania Bulletin*.

By the State Board of Education:

Jim Buckheit
Executive Director
State Board of Education

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 7. [PUPIL PERSONNEL SERVICES] (Reserved)

CHAPTER 12. STUDENTS AND STUDENT SERVICES

STUDENT RIGHTS AND RESPONSIBILITIES

§ 12.1. Free education and attendance.

(a) All persons residing in this Commonwealth between the ages of 6 and 21 years are entitled to a free **[and full] AND FULL** education in the Commonwealth's public schools.

(b) Parents or guardians of all children between the ages of 8 and 17 are required by the compulsory attendance law to ensure that their children attend an approved educational institution, unless legally excused. Students who have not graduated may not be asked to leave school merely because they have reached 17 years of age if they are fulfilling their responsibilities as students. A student may not be excluded from the public schools **[nor] or** from extracurricular activities because **[of being]:**

(1) The student is married [or].

(2) The student is pregnant.

(3) The student has a ~~handicapping condition~~ DISABILITY as identified by Chapter 15 (relating to protected handicapped students).

(4) The student is an eligible student identified under Chapter 14 (relating to special education services and programs).

§ 12.2. Student responsibilities.

(a) Student responsibilities include regular school attendance, conscientious effort in classroom work **and homework**, and conformance to school rules and regulations. Most of all, students **are responsible to** share with the administration and faculty a responsibility to develop a climate within the school that is conducive to wholesome learning and living.

(d) It is the responsibility of the students to conform **[with] to** the following:

(3) Dress and groom so as to meet **[fair]** standards of safety and health, and not to cause substantial disruption to the educational processes.

(9) Pursue and attempt to complete satisfactorily the courses of study prescribed by **[Commonwealth and]** local school authorities.

(10) Report accurately **[and not] in student media.**

(11) Not use [indecent or] obscene language in student [newspapers or publications] media or on school premises.

§ 12.3. School rules.

(a) The ~~school board~~ **GOVERNING BOARD** has the authority to make reasonable and necessary rules governing the conduct of students in school. The rulemaking power, however, is not unlimited; it must operate within statutory and constitutional restraints. A ~~school board~~ **GOVERNING BOARD** has only those powers ~~which~~ **THAT** are enumerated in the statutes of this Commonwealth, or ~~which~~ **THAT** may reasonably be implied or necessary for the orderly operation of the school.

(b) ~~School boards~~ **GOVERNING BOARDS** may not make rules [~~which~~] that are arbitrary, capricious, **DISCRIMINATORY** or outside their grant of authority from the General Assembly. [~~Their rules must stand the test of fairness and reasonableness.~~] A rule is generally considered reasonable if it uses a rational means of accomplishing some legitimate school purpose.

(c) Each ~~board of school directors~~ **GOVERNING BOARD** shall adopt a code of student conduct [~~which~~] that shall include policies governing student discipline and a listing of ~~students~~ **STUDENTS'** rights and responsibilities as outlined in this chapter. This conduct code shall be published and distributed to students and parents **OR GUARDIANS**. Copies of the code shall also be available in each school library.

§ 12.4. Discrimination.

Consistent with the Pennsylvania Human Relations Act (43 P.S. §§ 951-963), [~~no~~] **NO** a student [~~shall~~] **SHALL** ~~may not~~ be denied access to a free [~~and full~~] **AND FULL** public education ~~on account of race, religion, sex, national origin, or~~

handicaps, NOR SHALL A STUDENT BE SUBJECT TO DISCIPLINARY ACTION ON ACCOUNT OF RACE, SEX, COLOR, RELIGION, SEXUAL ORIENTATION, NATIONAL ORIGIN OR DISABILITY.

§ 12.5. Corporal punishment.

(a) Corporal punishment[, namely] is defined as physically punishing a student for an [offense, may be administered by teachers and school officials to discipline students when authorized by, and in accordance with policies and guidelines established by, the board of school directors] infraction of the discipline policy. Use of corporal punishment is prohibited.

(b) [Reasonable force may be used but under no circumstances shall a student be punished in such a manner as to cause bodily injury.

(c) Where corporal punishment is authorized, school authorities shall notify all parents of this policy. Corporal punishment may not be administered to a child whose parents have notified school authorities that such disciplinary method is prohibited.

(d) In situations where a parent or school board prohibits corporal punishment, reasonable force may be used by teachers.] Teachers and school authorities may use force under the following circumstances:

[(e) Corporal punishment should never be administered in the heat of anger. It should be recognized that corporal punishment always contains the danger of

excessiveness. No disciplinary action should exceed in degree the seriousness of the offense. Students shall not be required to remove clothing when being punished.]

§ 12.6. Exclusions from school.

(a) The ~~board of school directors~~ **GOVERNING BOARD** shall define and publish the types of offenses that would lead to exclusion from school. Exclusions affecting certain ~~exceptional~~ **students WITH DISABILITIES** shall be governed by [**§ 14.35 (reserved)] § 14.143 (relating to disciplinary placements) and 34 CFR 300.519 – 300.529 (relating to discipline procedures).**

(b) Exclusion from school may take the form of suspension or expulsion.

(1) Suspension is exclusion from school for a period of from 1 to 10 consecutive school days.

(iii) The parents **OR GUARDIANS** and the superintendent of the district shall be notified immediately in writing when the student is suspended.

(iv) When the suspension exceeds 3 school days, the student and parent shall be given the opportunity for an informal hearing consistent with the requirements set forth in § 12.8(c) (relating to **INFORMAL** hearings).

(vi) Students shall have the responsibility to make up exams and work missed while being disciplined by suspension and shall be permitted to complete these assignments within guidelines established by the ~~board of school directors~~ **GOVERNING BOARD.**

(2) Expulsion is exclusion from school by the ~~board of education~~ **GOVERNING BOARD** for a period exceeding 10 school days and may be permanent expulsion from the school rolls. All expulsions require a prior formal hearing under § 12.8 (RELATING TO HEARINGS).

(c) During the period prior to the hearing and decision of the ~~board of school directors~~ **GOVERNING BOARD** in an expulsion case, the student shall be placed in his normal class except as set forth in subsection (d).

(d) If it is determined after an informal hearing that a student's presence in his normal class would constitute a threat to the health, safety[, morals] or welfare of others and it is not possible to hold a formal hearing within the period of a suspension, the student may be excluded from school for more than 10 school days[, if the formal hearing is not unreasonably delayed]. A student may not be excluded from school for longer than 15 school days without a formal hearing unless mutually agreed upon by both parties. Any student so excluded shall be provided with alternative education, which may include home study.

(e) Students who are [~~less than~~] under 17 years of age are still subject to the compulsory school attendance law even though expelled[,] and [~~they~~] must be provided an education.

(1) The initial responsibility for providing the required education rests with the student's parents or guardian, through placement in another school, [~~through~~] tutorial or correspondence study, or [~~through~~] another educational program approved by the district's superintendent.

(2) **[If the parents or guardian are unable to provide for the required education, they must within] Within 30 days of action by the GOVERNING board of school directors, the parents or guardian GUARDIANS shall submit to the school district written evidence [so stating] that the required education is being provided as described in paragraph (1) or that they are unable to do so. [The] If the parents or guardian GUARDIANS are unable to provide the required education, the district SCHOOL ENTITY then [has the responsibility to] shall, WITHIN TEN DAYS OF RECEIPT OF THE NOTIFICATION, make [some] provision for the student's education. A STUDENT WITH A DISABILITY MUST BE PROVIDED EDUCATIONAL SERVICES AS REQUIRED BY THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (20 U.S.C. §§ 1400-19). [If 30 days pass without the district receiving satisfactory evidence that the required education is being provided to the student, it must recontact the parent and, pending the parents' or guardian's provision of such education, the district must make some provision for the student's education or proceed under paragraph (3) or do both.]**

(3) If the approved educational program is not complied with, the school ~~district~~ ENTITY may take action in accordance with 42 Pa.C.S. Chapter 63 [of the] (relating to the Juvenile Act) to ensure that the child will receive a proper education. *See* § 12.1(b) (relating to free education and attendance).

§ 12.7. Exclusion from classes—in-school suspension.

(d) The student's school ~~district~~ ENTITY has the responsibility to make **[some]** provision for the student's education during the period of the in-school suspension.

§ 12.8. Hearings.

(a) **General.** Education is a statutory right, and students **[must] shall** be afforded ~~all appropriate elements of~~ due process if they are to be excluded from school. In a case involving a possible expulsion, the student is entitled to a formal hearing, **which is a fundamental element of due process**].

(b) **Formal hearings.** A formal hearing is required in all expulsion actions. This hearing may be held before the ~~board of school directors~~ GOVERNING BOARD or a duly authorized committee of the board, or a qualified hearing examiner appointed by the board. ~~[Where] When the hearing is conducted by~~ a committee of the board or a hearing examiner CONDUCTS THE HEARING, a majority vote of the entire ~~school~~ GOVERNING board is required to expel a student.

[(1)] The following due process requirements **[are to] shall** be observed with regard to the formal hearing:

(i) Notification of the charges shall be sent to the student's parents or ~~guardian~~ GUARDIANS by certified mail.

(ii) ~~Sufficient~~ AT LEAST THREE DAYS' notice of the time and place of the hearing **[must] shall** be given. **A copy of the expulsion policy, notice that** LEGAL

COUNSEL MAY REPRESENT ~~the student may be represented by counsel~~, AND ~~hearing procedures, and notice of the right to appeal shall be included with the hearing notice~~. A student may request the rescheduling of the hearing when the student demonstrates good cause for an extension.

(iv) The student [has the right to] may be represented by counsel, at parents² THE PARENTS OR GUARDIANS' expense, and to have his parent or guardian attend the hearing.

(viii) A written or audio record [must] shall be kept of the hearing[, either by a stenographer or by tape recorder]. The student is entitled, at the student's expense, to a copy [of the transcript]. **A COPY SHALL BE PROVIDED AT NO COST TO A STUDENT WHO IS INDIGENT.**

(ix) The proceeding must be held [with all reasonable speed] within 15 school days of the notification of charges, unless mutually agreed to by both parties.
HOWEVER, A HEARING MAY BE DELAYED FOR ANY OF THE FOLLOWING REASONS, IN WHICH CASE THE HEARING SHALL BE HELD WITH AS SOON AS REASONABLY POSSIBLE:

(A) LABORATORY REPORTS ARE NEEDED FROM LAW ENFORCEMENT AGENCIES.

(B) EVALUATIONS OR OTHER COURT OR ADMINISTRATIVE PROCEEDINGS ARE PENDING DUE TO A STUDENT INVOKING HIS OR

HER RIGHTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (20 U.S.C. §§ 1400-19).

(C) IN CASES IN JUVENILE OR CRIMINAL COURT INVOLVING SEXUAL ASSAULT OR SERIOUS BODILY INJURY, DELAY IS NECESSARY DO TO THE CONDITION OR BEST INTERESTS OF THE VICTIM.

(X) NOTICE OF A RIGHT TO APPEAL THE RESULTS OF THE HEARING SHALL BE PROVIDED TO THE STUDENT WITH THE EXPULSION DECISION.

[(2) Where the student disagrees with the results of the hearing, recourse is available in the appropriate court of the Commonwealth. If it is alleged that a constitutional issue is involved, the student may file a claim for relief in the appropriate Federal district court.]

(c) **Informal hearings.** The purpose of the informal hearing is to enable the student to meet with the appropriate school official to explain the circumstances surrounding the event for which the student is being suspended or to show why the student should not be suspended.

(1) The informal hearing is **[meant to encourage the student's parents or guardian to meet with the principal to discuss ways by which future offenses can be avoided] held to bring forth all relevant information regarding the event for which the student may be suspended and for students, their parents or guardians and school officials to discuss ways by which future offenses can MIGHT be avoided.**

(2) The following due process requirements are to be observed in regard to the informal hearing:

(i) Notification of the reasons for the suspension shall be given in writing to the parents or **guardian GUARDIANS** and to the student.

(v) The **district SCHOOL ENTITY** shall offer to hold the informal hearing within the first 5 days of the suspension.

§ 12.9. Freedom of expression.

(a) The right of public school students to freedom of speech was **affirmed ESTABLISHED** by the ~~United States~~ Supreme Court **OF THE UNITED STATES** in *Tinker v. Des Moines Community School District*, 393 U.S. 503, ~~89 S.Ct. 733, 21 L.Ed 2nd 731~~ (1969); **AND REAFFIRMED AND EXPLAINED BY THE COURT IN** *BETHEL SCHOOL DISTRICT V. FRASER*, 478 U.S. 675 (1986); **and** *HAZELWOOD SCHOOL DISTRICT V. KUHLMEIER*, 484 U.S. 260 (1988).

(b) Students have the right to express themselves unless such expression materially and substantially interferes with the educational process, threatens immediate **OR SERIOUS** harm to the welfare of the school or community, encourages unlawful activity or interferes with another individual's rights.

(f) Bulletin boards shall conform **[with] to** the following:

(g) School newspapers and publications shall conform **[with] to** the following:

(i) School officials may set forth the time and place of distribution of materials so that distribution would not materially or substantially interfere with the requirements of appropriate discipline in the operation of the school.

(1) A proper time and place set for distribution is one **[which] that** would give the students the opportunity to reach fellow students.

§ 12.11. Hair and dress.

(a) **The GOVERNING board of directors may establish dress codes or require that students wear school uniforms. Policies may apply to individual school buildings or to all school buildings.**

(b) Students have the right to govern the length or style of their hair, including facial hair. Any limitation of this right shall include evidence that length or style of hair causes disruption of the educational process or constitutes a health or safety hazard.

[Where] When length or style of the hair presents a **[problem] health or safety hazard.** some types of covering **[should] shall** be **[considered] used.**

[(b) School officials may not impose limitations on dress unless the attire causes the disruption of the educational process or constitutes a health or safety hazard.]

§ 12.12. Confidential communications.

(b) Information received in confidence from a student may be revealed to the student's parents **OR GUARDIANS**, the principal or other appropriate authority where the health, welfare or safety of the student or other persons is clearly in jeopardy.

§ 12.14. Searches.

[School authorities may search a student's locker and seize any illegal materials. Such materials may be used as evidence against the student in disciplinary proceedings. Prior to a locker search the students shall be notified and given an opportunity to be present. However, where school authorities have a reasonable suspicion that the locker contains materials which pose a threat to the health, welfare and safety of students in the school, student lockers may be searched without prior warning.]

(a) The governing board of every local education agency SCHOOL ENTITY shall adopt reasonable policies and procedures regarding student searches. The local education agency shall notify students and their parents OR GUARDIANS of the policies and procedures regarding student searches.

(b) Any illegal or prohibited materials seized during a student search may be used as evidence against the student in a school disciplinary proceeding.

(c) Prior to a locker search, students shall be notified and given an opportunity to be present. However, where school authorities have a reasonable suspicion that the locker contains materials that pose a threat to the health, welfare or safety of students in the school, student lockers may be searched without prior warning.

§ 12.16. DEFINITIONS.

THE FOLLOWING WORDS AND TERMS, WHEN USED IN THIS CHAPTER, HAVE THE FOLLOWING MEANINGS, UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

***GOVERNING BOARD*—THE BOARD OF SCHOOL DIRECTORS OF A SCHOOL DISTRICT, JOINT SCHOOL COMMITTEE OF A JOINT SCHOOL OR JOINT VOCATIONAL SCHOOL, INTERMEDIATE UNIT BOARD OF DIRECTORS, OR THE BOARD OF TRUSTEES OF A CHARTER SCHOOL OR CYBER-CHARTER SCHOOL.**

***SCHOOL ENTITY*—A LOCAL PUBLIC EDUCATION PROVIDER (E.G., PUBLIC SCHOOL, CHARTER SCHOOL, CYBER-CHARTER SCHOOL, AREA VOCATIONAL-TECHNICAL SCHOOL, OR INTERMEDIATE UNIT).**

***STUDENT ASSISTANCE PROGRAM*—A SYSTEMATIC PROCESS DESIGNED TO ASSIST SCHOOL PERSONNEL TO IDENTIFY ISSUES, INCLUDING ALCOHOL, DRUGS AND OTHERS, WHICH POSE A BARRIER TO A STUDENT'S LEARNING AND SCHOOL SUCCESS. STUDENT**

ASSISTANCE IS A SYSTEMATIC PROCESS USING EFFECTIVE AND ACCOUNTABLE PROFESSIONAL TECHNIQUES TO MOBILIZE SCHOOL RESOURCES TO REMOVE THE BARRIERS TO LEARNING, AND, WHERE THE PROBLEM IS BEYOND THE SCOPE OF THE SCHOOL, TO ASSIST THE PARENT AND THE STUDENT WITH INFORMATION SO THEY MAY ACCESS SERVICES WITHIN THE COMMUNITY.

***STUDENT SERVICES*—SERVICES DESIGNED BY A SCHOOL ENTITY TO SUPPORT THE INSTRUCTIONAL PROGRAM AND TO HELP STUDENTS ATTAIN THEIR EDUCATIONAL AND CAREER GOALS. SERVICES MAY INCLUDE SCHOOL GUIDANCE COUNSELING, HEALTH SERVICES (AS PER ARTICLE XIV OF THE PUBLIC SCHOOL CODE (24 P.S. §§ 14-1401--14-1423) AND 28 PA. CODE CHAPTER 23 (RELATING TO SCHOOL HEALTH)), PSYCHOLOGICAL SERVICES, SOCIAL WORK AND HOME AND SCHOOL VISITOR SERVICES. SCHOOL ENTITIES MAY SUPPLEMENT, BUT SHALL NOT SUPPLANT, THESE SERVICES THROUGH SCHOOL-BASED, SCHOOL-LINKED, OR COORDINATED SERVICES PROVIDED BY LOCALLY AVAILABLE SOCIAL AND HUMAN SERVICES AGENCIES.**

[PUPIL] STUDENT RECORDS

§ 12.31. General requirements.

(a) The governing board of every ~~local education agency~~ **SCHOOL ENTITY** [school district, intermediate unit and area vocational-technical school] shall adopt a

plan for the collection, maintenance and dissemination of **[pupil] student** records **[and submit the same to the Department for approval].**

(b) Copies of the **[approved] adopted** plan shall be maintained by the ~~local educational agencies~~ **SCHOOL ENTITY** and updated as required by changes in State or Federal law. **[Copies of the updated plan shall be submitted to the Department only upon request of the Secretary.]**

(c) Copies of the plan shall be submitted to the Department only upon request of the Secretary.

§ 12.32. Elements of the plan.

(a) The plan for **[pupil] student records shall conform to ~~§ 12.33 (relating to guidelines), except that a school district may modify § 12.33 with the approval of the Secretary, to conform with local policy]~~ **WITH APPLICABLE STATE AND FEDERAL LAWS, REGULATIONS AND DIRECTIVES IDENTIFIED IN guidelines issued by the Department of Education.****

~~**(b) The plan shall establish policies on **[pupil] student** records consistent with the minimum requirements of section 13(a) of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A. § 1232g) and in 34 C.F.R. Part 99 (relating to privacy rights of parent and students[.]).**~~

§ 12.33. [Guidelines] (Reserved).

[(a) The full text of the Guidelines for the Collection, Maintenance and Dissemination of Pupil Records appears at 4 Pa.B. 1092 (June 1, 1974).

(b) Portions of Guidelines for the Collection, Maintenance and Dissemination of Pupil Records are attached hereto as Exhibit A and made a part of this chapter.]

SERVICES TO STUDENTS

§ 12.41. Definitions.

The following words and terms, when used in this section and §§ 12.42 and 12.43 (relating to student services, and student assistance program), have the following meanings, unless the context clearly indicates otherwise:

Student Services—Services designed by a local education agency entity to complement the instructional program and to help students attain their educational and career goals. Services may include guidance counseling, health services (under Article XIV of the Public School Code of 1949 (24 P.S. §§ 14-1401–14-1423) and 28 Pa. Code Chapter 23 (relating to school health), psychological services, social work and student attendance services.

Student assistance program—A systematic process by which school personnel can respond to referred students experiencing difficulties in school because of drug, alcohol or mental health problems.

§ 12.42. Student services.

(a) Each local education agency SCHOOL ENTITY shall prepare a written plan for the implementation of a comprehensive AND INTEGRATED K-12 program of the student services based on the needs of its students. THE PLAN

SHALL BE PREPARED AND REVISED IN ACCORDANCE WITH THE TIMEFRAMES AND PROCEDURES DESCRIBED IN §§ 4.13(a), (b), (d), (e) AND (f) (RELATING TO STRATEGIC PLANS). Services offered by community agencies in public schools shall be coordinated by and under the general direction of the local education agency SCHOOL ENTITY. The plan shall include policies and procedures for emergency care and administration of medication and treatment under The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144) and guidelines issued by the Department of Health. The Department of Health guidelines are available from the Division of School Health, Department of Health, P.O. Box 90, Harrisburg, Pennsylvania 17108.

(b) Though the variety of student services offered will differ from school to school depending upon its size and the needs of its students, the following categories of services shall be provided by each local education agency SCHOOL ENTITY in planning its student services:

(1) Developmental services for students that address their developmental needs throughout their enrollment in school. DEVELOPMENTAL SERVICES INCLUDE GUIDANCE COUNSELING, PSYCHOLOGICAL SERVICES, HEALTH SERVICES, HOME AND SCHOOL VISITOR SERVICES AND SOCIAL WORK SERVICES THAT SUPPORT STUDENTS IN ADDRESSING THEIR ACADEMIC, BEHAVIORAL, HEALTH, PERSONAL AND SOCIAL DEVELOPMENT ISSUES.

(2) Diagnostic, intervention and referral services for students who are experiencing problems attaining educational achievement appropriate to their

learning potential. STUDENT SERVICES STAFF USE DIAGNOSTIC SERVICES TO IDENTIFY BARRIERS THAT LIMIT A STUDENT'S SUCCESS IN SCHOOL. INTERVENTION SERVICES ACTIVELY ENGAGE STUDENT SERVICES STAFF IN ACTIVITIES PLANNED TO REDUCE OR ELIMINATE SPECIFIC BARRIERS TO STUDENT SUCCESS. STUDENT SERVICES STAFF MAY ARRANGE FOR REFERRALS TO OTHER SCHOOL-BASED OR SCHOOL-LINKED PROFESSIONALS OR MAY REFER PARENTS AND GUARDIANS TO APPROPRIATE COMMUNITY-BASED SERVICES FOR ASSISTANCE.

(3) Consultation and coordination services for students who are experiencing chronic problems which THAT require multiple services by teams or specialists.
CONSULTATION SERVICES ARE USED BY STUDENT SERVICES STAFF, IN PARTNERSHIP WITH PARENTS OR GUARDIANS, TO OBTAIN ASSISTANCE TO ADDRESS BARRIERS AND ISSUES THAT ARE OUTSIDE THE SCOPE OF THE STUDENT SERVICES PROFESSIONAL. CONSULTATION AND COORDINATION SERVICES MAY BE USED TO ASSIST IN THE DIAGNOSIS, INTERVENTION OR REFERRAL OF STUDENTS WHO FACE BARRIERS TO SUCCESS. COORDINATION SERVICES CONNECT SCHOOL RESOURCES WITH OTHER AVAILABLE RESOURCES TO ASSIST STUDENTS IN MEETING THEIR EDUCATIONAL OBJECTIVES.

(c) Student services shall:

(1) Be an integral part of the instructional program at all levels of the school system.

(2) Provide information to students and parents OR GUARDIANS about educational opportunities of the school's instructional program and how to access these opportunities.

(3) Provide career information and assessments so that students and parents OR GUARDIANS might become aware of the world of work and of a variety of career options available to individual students.

(4) Provide basic health services outlined in Article XIV of the Public School Code 1949 for students and information to parents OR GUARDIANS about the health needs of their children.

(d) When student assessments using individual standardized psychological tests SURVEYS are administered, parents OR GUARDIANS shall be informed of the nature and scope of local education agencies' student tests THE SURVEYS and of their relationship to the educational program of their child, CONSISTENT WITH THE REQUIREMENTS OF 20 U.S.C. § 1232h (RELATING TO PROTECTION OF PUPIL RIGHTS). The parents PARENTS OR GUARDIANS, OR THE STUDENT IF THEY ARE 18 YEARS OF AGE OR OLDER, shall have the right to challenge the appropriateness of any individual standardized psychological tests REFUSE TO PARTICIPATE IN THE SURVEY via procedures established by the local education agency SCHOOL ENTITY.

(e) Persons delivering student services shall be specifically licensed or certified as required by statute or regulation.

(f) The Department will provide guidelines and technical assistance to local education agencies in planning student services.

§ 12.43 12.42. Student assistance program.

Local education agencies SCHOOL ENTITIES shall plan and provide for a student assistance program under the Early Intervention Services System Act (11 P.S. §§ 875-101—875-503).

[EXHIBIT A

Collection of data.

1.0. We begin, and urge school authorities to begin, from the fundamental principle that no information should be collected from students without the prior informed consent of the child and his parents.

1.1. Such consent may be given either individually or through the parents' legally elected or appointed representatives (for example the Board of Education) depending on the nature of the information to be collected.

1.2. With respect to conditions under which individual as opposed to representational consent should be required, we acknowledge, first, that it will not always be possible to obtain the separate consent of every parent for every data gathering process, and that the approval of such processes by appropriately elected representatives (whether a legislature, a school board or other body) will in some situations adequately satisfy the principle of consent. We do not believe that it would be appropriate to endorse rigid formulae for the identification of situations in which representational consent will be sufficient; it is enough for present purposes to emphasize two contrasting benchmarks:

1.2.1. On one hand, we have concluded that representational consent will, for example, ordinarily be sufficient in situations involving aptitude and achievement testing (whether standardized or informal) and reporting of skill and knowledge outcomes in the subject-matter areas now within the customary curricula of the public schools.

1.2.2. On the other hand, we believe that programs of personality testing and assessment, for example, should proceed only with the informed individual consent of each child and/or his parents. (See 1.5 and 4.6) The test or assessment itself should not be shown to the child or his parents, although representative questions not included in the scoring or evaluation may be shown. Moreover, individual consent should be an absolute requirement before information, other than that required for pupil identification, concerning a pupil's family is obtained (for example, ethnic origin, religious beliefs, income and occupational data, husband-wife relations, and the like), or before any information not directly relevant for educational purposes is solicited from the pupil or his parents.

1.2.3. Classification of information-gathering procedures falling somewhere between these two extremes; for example, habit/skills tests or vocational interest inventories, should be undertaken by each school system, with parents being notified of the result of all such decisions.

1.3. No statement of consent, whether individual or representational, should be binding unless it is freely given after:

1.3.1. The parents (and students where appropriate by the principles described) have been fully informed, preferably in writing, as to the methods by which the information will be collected; the uses to which it will be put; the methods by which it will be recorded and maintained; the time period for which it will be retained; and the persons to whom it will be available, and under what conditions, or

1.3.2. The reasons for the impossibility or undesirability of such explanations have been presented.

1.4. In all situations where individual consent is to be obtained, it should be in writing.

1.5. Where individual consent is required, the student's consent should also be obtained where he is reasonably competent to understand the nature and consequences of his decision. (See also 4.6)

1.6. In situations in which representational consent is sufficient, students and their parents should be informed in advance, by school officials, perhaps annually or biannually, of the purposes and character of the data collections. Moreover, they should be guaranteed reasonable opportunities by the representational agency (for example, the School Board) to contest the necessity or desirability of particular data collection processes, or proposed use of such data. We emphasize, however, that the decision of the representational agency is, subject to higher authority or judicial review, binding on all students and parents, whether or not they might individually have consented to the collection. (See also 1.3)

1.7. We recognize that certain special problems are presented by data-gathering in individual situations. Illustrative here are interviews or diagnostic tests by the school counselor, social worker, nurse, psychologist, school principal, etc. While the foregoing recommendations

on informed consent should be applied in these situations where possible, there are special problems to be resolved. In most of this class of situations, the requirement of informed consent cannot be met, perhaps because of the age of the student, or the unforeseeable course of the interview process. Moreover, in many schools there is an element of duress in that the student feels obliged to participate in the situation. The principles advanced by the conferees for these situations are as follows:

1.7.1. The professional should inform the student as fully as possible, consonant with his professional responsibility and the capacity of the student to understand the implications of the situation, about the data that are likely to be obtained; and

1.7.2. Should stress the voluntary character of the student's participation.

1.7.3. Where reasonable doubt exists about the capacity of the student to understand the implications of the situation, either because of the student's age or other circumstances, parental permission should be sought first. Moreover, where a student clearly in need of intervention declines to participate, the professional should seek parental consent.

1.7.4. In either case, if parental consent is not given, further steps to provide assistance (including resort to the compulsory machinery of the school; for example, visits with the principal, sanctions, and the like) should be initiated only if the counselor or guidance officer:

a. Is entirely convinced, giving full attention to the privacy interests involved, that intervention is imperative;

b. Both the student and his parents have been fully informed, so far as that is possible; and

c. Appropriate school authorities (See 3.3) have consented.

1.7.5. It should be noted that the difficulties in meeting the criterion of informed consent in this type of situation place unusual stress on the proper management of recording of information and control over dissemination. (See 3.0--3.4)

1.8. Where the data are to be collected for nonschool purposes, either by school personnel or outsiders, as in the case where it is proposed that the student population be used as subjects in medical or social science research studies, then the above recommendations also should be fully applied, with the further provision that prior informed consent must be obtained from the responsible school authorities.

1.8.1. In cases where data are to be collected under conditions of anonymity, this fact should not relieve the collecting agency of the obligation to obtain the appropriate form of consent. In addition, we urge school authorities to establish procedures for regulating the collection of such data; including:

a. Timely notification to students and their parents that their participation in any aspect of any such data collection is entirely voluntary, and

b. Careful reviews of the instruments and procedures to be used for any such data collection to determine whether the methods and/or inquiries constitute a significant potential invasion of privacy, even though the data are to be collected under conditions of anonymity.

School authorities may, for example, conclude that the topics to be investigated are so intimate or likely to be so embarrassing to the students involved that an invasion of privacy will occur even under conditions of anonymity. In any such situation, prior informed individual consent should be required.

Classification and maintenance of data.

2.0. The total set of student personnel data extant in a school at a given time ranges from tentative uncorroborated reports on alleged student behavior to highly stable information. To illustrate: On one end of the continuum a memo may contain a report or allegation that a particular student molested a child, disrupted a class or wept for several hours yesterday; at the other extreme records will show that a student has completed grade five, that he received a specified score on a nationally standardized test, and that he has a particular attendance record. These differing kinds of data require differing arrangements for security and access.

2.1. Category ``A'' Data: Includes official administrative records that constitute the minimum personal

data necessary for operation of the educational system. Specifically we take this to mean identifying data (including names and address of parents or guardian), birth date, academic work completed, level of achievement (grades, standardized achievement test scores), and attendance data.

2.1.1. These records should be maintained for at least 100 years, subject to the conditions set forth in 3.0--3.3.

2.1.2. Conditions of access to these data are given in 4.0--4.9.

2.2. *Category ``B'' Data:* Includes verified information of clear importance, but not absolutely necessary to the school, over time, in helping the child or in protecting others. Specifically, scores on standardized intelligence and aptitude tests, interests inventory results, health data, family background information, systematically gathered teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns are included in this category.

2.2.1. Great care must be exercised by the school to ensure the accuracy of Category ``B'' data. In particular, reported behavior patterns and specific incidents must be unambiguously described and clearly verified before they become part of any continuing record. (See 2.3.1)

2.2.2. School systems should give serious consideration to the elimination of unnecessary Category ``B'' data at periodic intervals; for example, at points of transition from elementary to junior high school and from junior high to high school. In any case, these records should be destroyed, or else retained only under conditions of anonymity, (for research purposes) when the student leaves school. Exceptions may be made where, under rigorous standards and impartial judgment, good cause for their retention can be shown. (See 3.4)

2.2.3. Conditions of access to these data are set forth in 4.0--4.9. Parents should be periodically informed of the content of these records and their right of access to these data.

2.3. *Category ``C'' Data:* Includes potentially useful information but not yet verified or clearly needed beyond the immediate present; for example, legal or clinical findings including certain personality test results, and unevaluated reports of teachers, counselors and others

which may be needed in ongoing investigations and disciplinary or counseling actions.

2.3.1. Such data should be reviewed at least once a year and destroyed as soon as their usefulness is ended; or transferred to Category ``B``. Transfer to Category ``B`` may be made only if two conditions are met; namely,

1. The continuing usefulness of the information is clearly demonstrated, and

2. Its validity has been verified, in which case parents must be notified and the nature of the information explained.

Formal procedures for validating information and protecting the interests of students and parents at this stage are set forth in 3.3.

2.3.2. If, for any reason, temporary unevaluated data are held for more than a year, the existence of these data must be discussed with the parent and the reason for their maintenance explained fully. Parents then should have an opportunity to challenge the decision to maintain such data through procedures outlined in 3.3.

2.4. *Confidential, Personal Files of Professionals in the School* (school psychologist, social workers, counselors): We recognize that, in some instances, professionals working in the school may maintain personal and confidential files containing notes, transcripts of interviews, clinical diagnoses and other memory aids for their own use in counseling pupils. Any and all data that are considered to be the personal property of the professional should be guarded by the rules given above in addition to those dictated by professional ethics, subject to the terms of the employment contract between the school and the professional and any special agreements made between the professional and individual parents and/or students.

Administration of security.

3.0. It is recommended that schools designate a director of guidance to be responsible for record maintenance and access, and to educate the staff about maintenance and access policies. All school personnel having access to records should receive periodic training in security, with emphasis upon privacy rights of students and parents.

3.1. Records should be kept under lock and key at all times, under the supervision of the designated professional.

3.2. Computerized data banks pose special problems of maintenance, security and access not fully dealt with by these Guidelines. These problems should be fully explored and procedures developed for dealing with them, with the understanding that use of external data banks for record-keeping should be in accordance with all procedures outlined in these Guidelines.

3.3. Formal procedures should be established whereby a student or his parents might challenge the validity of any of the information contained in Categories ``A`` or ``B`` (See 4.7.2)

3.3.1. It is recommended that the school create a quasi-judicial review panel composed of qualified professional personnel to determine the validity of Category ``C`` data, and to provide for parental challenges of such data on occasions where their transfer to Category ``B`` is held to be desirable. Panel members should not be limited to school employes.

3.3.2. With respect to both challenges and verifications, parents and students should be given rights to counsel, to present evidence and to cross-examine witnesses. Further, parents should receive written notice of these proceedings and should be given reasonable time to prepare for them.

3.3.3. Provision should be made for an annual review of all data retained in Categories ``B`` and ``C``. The principle that good cause must be shown for the retention of any of these data should be followed. Parents should have an opportunity to challenge the decision to maintain such data through procedures outlined above.

3.4. Current practice of maintaining Category ``B`` data, with accompanying identifying information, after the student leaves school, often makes possible the use of these data for retrospective research studies. Significant value may accrue to society as well as individuals from the results of such studies. Therefore it may be that, in some cases, the maintenance of such records after the child leaves school is justified. However, the difficulty of maintaining such data under secure conditions, the inability to foresee the value of future research, the difficulty in defining and obtaining informed consent when

the data are collected initially, and the ultimate threat to individual privacy all militate against such policies. We therefore urge school systems to review their policies regarding long-term maintenance of such data and to establish procedures pertaining to consent, security and access fully consonant with the general principles outlined above should they decide to retain identifiable information.

Dissemination of information regarding pupils.

4.0. As indicated in previous sections, all information regarding pupils and their families should be collected and maintained under such safeguards of privacy as may be obtained through informed consent, verification of accuracy, limited access, selective discard and appropriate use. As long as the data are retained within the school, it can implement these principles with some flexibility of procedures. The school, however, is often asked to transmit student information to other agencies, institutions and even individuals. Such requests come from schools, colleges, employers, courts, police, social agencies and sundry others. Since conveyance of records removes the data from control of the school, much more stringent precautions are required to protect the rights of the student against infringement of privacy, misinterpretation of data and inappropriate use.

4.1. The school may, without consent of parents or students, release a student's permanent record file, including Categories 'A' and 'B' defined above, to:

4.1.1. Other school officials, including teachers, within the district who have a legitimate educational interest. All school personnel desiring access to pupil records, however, should be required to sign a written form (see Sample Form C) which would be kept permanently on file, indicating specifically the 'legitimate educational interest' that they have in seeking this information. Such a file would be available to parents and to the school official responsible for record maintenance (see 3.0) as a means of auditing the operation of the system.

4.1.2. The state superintendent and his officers or subordinates, so long as the intended use of the data is consistent with the superintendent's statutory powers and responsibilities. (See also 4.9)

4.1.3. To officials of other primary or secondary school systems in which the student intends to enroll, under the condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity to challenge the record's content via a specified judicial-like procedure. (See 3.3, 4.7 and Sample Form D)

4.2. The school or any school personnel may not divulge, in any form, to any persons other than those listed in 4.1.1--4.1.3 above, any information contained in school records except:

4.2.1. With written consent from the student's parents specifying records to be released, and to whom, and with a copy of the records to be released to the student's parents and/or students if desired by the parents, or

4.2.2. In compliance with judicial order, or orders of administrative agencies where those agencies have the power of subpoena. Parents and/or students should be notified of all such orders and the school's compliance.

4.3. Where parental and/or student permission is required for the release of school records, procedures for obtaining this permission should take into account the distinctions made in 2.1--2.3 regarding differences in the kinds of data contained in a student's record file, as follows:

4.3.1. Routine, nonspecific (with respect to information to be released), consent applies only to Category ``A'' data. (See 2.1)

4.3.2. Additional, separate and specific (with respect to information to be released) permission should be required for the release of any data in Category ``B.'' (See 2.2)

4.3.3. Under no conditions, except as in 4.2.2, should the school release information in Category ``C.'' (See 2.3)

4.3.4. Under no conditions, except as in 4.2.2, should the school release information gathered by any nonschool agency, but included in the school record, with the exception of birth date. This would include, for example, the report of a caseworker concerning conditions in the pupil's home, etc.

4.4. Each matter of request for consent must be handled separately; for example, blanket permissions for release of data within an extended period of time may not be solicited since they, by definition, do not provide an opportunity for informed consent.

4.5. The school may comply with parental requests for the release of information to other persons or agencies, subject to the qualifications set forth in 4.6 regarding safeguards of the student's rights when he reaches legal age.

4.6. With respect to the problem of a student's age and his legal rights, the following exceptions should be made to the principle of parental consent:

4.6.1. When a student reaches the age of eighteen and no longer is attending high school, or is married (whether age eighteen or not), his or her consent alone must be obtained.

4.6.2. This includes the right to deny parental access to his records.²

4.7. Either a child, or his parents or guardian, or their legal representative, may have access to the official administrative record (Category 'A' above). Parents may have access to Category 'B' data. Students may have access to Category 'B' data with parental permission.

4.7.1. This rule is subject to the qualifications regarding age and consent specified in 4.6.

4.7.2. This right of access includes the right to challenge the validity of information contained in the record through procedures to be developed by the school and involving a formal review process incorporating due process principles. (See 3.3)

4.8. The school may provide anonymous data from its records for outside research purposes without consent under conditions where the likelihood of identifying any individual because of his unique characteristics is negligible.

4.9. School districts often face instances in which governmental agencies, local, state and federal, mandate the release of information on individuals. The principle of informed consent should apply in all cases except those

involving school responsibilities under existing child abuse or neglect statutes. Governmental agencies, in mandating the provision of information should abide by the recommendations herein contained to assure the rights of privacy. Where identification of individuals is nevertheless legally required, with or without consent, it is recommended that written protests be made by the local educational agency to the requesting agency, that parents be informed of the specific information which has been provided, and that legislative redress be sought. For Category ``C`` information the principles enumerated in 4.2.2 and 4.3.3 shall apply.

² Twenty-one remains the age of effective consent for many purposes in most states. Our recommendations are premised on the social and educational interests of students and parents and not on any particular view of the various local laws. We urge school authorities to seek counsel to determine whether significant legal difficulties might arise from these recommendations under applicable state law.

SAMPLE FORM A

**ROUTINE INFORMATION LETTER TO BE SENT HOME AT THE
BEGINNING OF EACH SCHOOL YEAR OR AT TIME STUDENT
ENROLLS DURING YEAR**

Dear Parent,

In accordance with the recommendations of the Superintendent of Schools and the Director of Measurement and Evaluation, the Board of Education has approved a city-wide testing program designed to provide information concerning the proficiency of all children in the district on standardized tests of academic achievement and aptitude.

The results of these tests provide a continuing record of each child's academic progress in comparison with national norms. They are also an invaluable aid to your child's teacher and counselor in diagnosing individual strengths and weaknesses in order to provide more effective individualized instruction. During the coming year the following tests will be administered to your child as part of this program:

<i>Name of Test</i>	<i>Purpose</i>
Iowa Tests of Educational	Measurement of achievement in mathematics, English, basic science

EXAMPLE

Terman-McNemar Test of Mental Ability	Measurement of verbal and mathematical aptitude
--	--

Your child's scores on these tests will be checked carefully and maintained in the school record as long as your child attends school in this system. Should your child transfer to another school system, you will be notified of the transfer of his or her permanent record to the new school system. *No individual or agency outside of the school system will be permitted to inspect your child's school record without your written permission.*

Should you wish to examine your child's record file at any time you may arrange to do so by making an appointment with the principal's office. [In addition, a routine report and interpretation of your child's scores on the above-mentioned tests will be included as part of the second term grade report.]

Sincerely,

Superintendent of Schools

SAMPLE FORM B

**REQUEST FOR PERMISSION TO COLLECT PERSONAL DATA
SPECIAL REQUEST FOR PERMISSION
TO COLLECT PERSONAL INFORMATION**

In order to provide your child with more effective guidance and counseling services, your permission is requested for the collection of the following kinds of personal information from your child.

<i>Type of Information or Test</i>	<i>Description and Purpose</i>	<i>Permission Granted</i>	<i>Permission Denied</i>
Minnesota Multiphasic Personality Inventory		[]	[]
Kuder Preference Record	EXAMPLE	[]	[]
Wrenn Study Inventory		[]	[]
Family Background Information		[]	[]

Because of the sensitive nature of this information, all test scores and related information will be treated with complete confidentiality. Only parents and authorized school personnel will be permitted access to this information without parental consent.

Please check the appropriate box signifying your approval or disapproval of this request, sign the form in the space provided below, and return in the enclosed envelope.

Parent's signature

Date

SAMPLE FORM C

RECORD OF INSPECTION OF PUPIL RECORDS

Date: _____

Records Examined: _____
(Name of pupil or pupils)

Records Examined by: _____

Purpose: _____

SAMPLE FORM D

NOTIFICATION OF TRANSFER OF PERMANENT PUPIL RECORD
TO ANOTHER SCHOOL SYSTEM

Dear Parent,

You are hereby notified of the pending transfer of (name of pupil)'s permanent school record to (name of school district) in (location).

Should you wish to receive a copy of the record to be transferred please return the bottom portion of this form with your signature by (date).

Sincerely,

Principal



I wish to receive a copy of the school record of

(Please print name of pupil)

who is my (son) (daughter) (legal ward).

Parent's signature

Date

Address to which transcript should be sent:

SAMPLE FORM E

**REQUEST FOR PERMISSION TO RELEASE
PERMANENT SCHOOL RECORD TO THIRD PARTY**

Dear Parent,

We have received a request from

_____ (name of requesting individual, agency, etc.)

for a copy of (access to) (name of pupil)'s school record.

Please indicate in the space below whether you are willing for us to comply with this request.

(Name of requesting party) may have a copy of (access to) the following parts of (name of pupil)'s record:

- Official Administrative Record (name, address, birthdate, grade level completed, grades, class standing, attendance record)
- Standardized Achievement Test Scores
- Intelligence and Aptitude Test Scores
- Personality and Interest Test Scores
- Teacher and Counselor Observations and Ratings
- Record of Extracurricular Activities
- Family Background Data

Parent's signature

Date]

Don Golden
Director of Special
Ed/Curriculum
Montrose ASD
80 High School Road
Montrose, PA 18801

Ann Marie Klibert
Director of Pupil Services
Bensalem Twp. S.D.
3000 Donallen Drive
Bensalem, PA 19020

Beverly Bieniek
Laurel Highlands S.D.
304 Bailey Ave.
Uniontown, PA 15401

Dr. Janet Welsh
Chester Upland S.D.
1720 Melrose Avenue
Chester, PA 19013-5897

Lynnette Snyder
Cumberland Valley S.D.
6746 Carlisle Pike
Mechanicsburg, PA 17050-1796

Elizabeth Schmoyer
Counselor
Warwick H.S.
301 W. Orange Street
Lititz, PA 17543

Len Reiser
Education Law Center
1315 Walnut Street
Suite 400
Philadelphia, PA 19107

Barbara Shafer
Director of Pupil Services
Upper Darby S.D.
Admin. Bldg.
4611 Bond Avenue
Drexel Hill, PA 19026

Dr. Michael Murphy
Parkland S.D.
Administration Center
1210 Springhouse Road
Allentown, PA 18104

Wayne Fausnaught
Williamsport ASD
District Service Center
201 West Third Street
Williamsport, PA 17701

Donald Kensinger
Lower Dauphin S.D.
291 East Main Street
Hummelstown, PA 17036

Judith Barnhouse
Newport S.D.
Fickes Lane
Post Office Box 9
Newport, PA 17074

Donald Teti
Plum Borough S.D.
200 School Road
Plum, PA 15239

Robert Wilson, Jr.
West York ASD
2605 W. Market Street
York, PA 17404

Dr. Kristen Angstadt
Capital Area IU
55 Miller Street
P.O. Box 489
Summerdale, PA 17093-0489

Louis Rusnock
North Penn S.D.
Education Service Center
401 E. Hancock Street
Lansdale, PA 19446-3960

Dr. Constance Ames
Kennett Consolidated S.D.
300 East South Street
Kennett Square, PA 19348

Eloise Stoehr
Upper St. Clair S.D.
1820 McLaughlin Run Road
Upper St. Clair, PA 15241

Ms. Jane Blystone, Ph.D.
11022 Sunset Drive
North East, PA 16428

Deborah Waters
2451 Market Street
Harrisburg, PA 17104

Valerie Gates
2451 Market Street
Harrisburg, PA 17104

Mr. Taylor
PA School Press Assn.
3899 North Front Street
Harrisburg, PA 17110

Deborah Griffiths
PA Newspaper Assn.
3899 North Front Street
Harrisburg, PA 17110

James Heckard
246 Schuylkill Ave.
Shenandoah, PA 17976

Mr. Richard Brickley
305 Anthony Road
King of Prussia, PA 19406

Tim Potts
300 North 2nd Street
12th Floor
Harrisburg, PA 17101

Deborah Waters
2451 Market Street
Harrisburg, PA 17101

Valerie Gates
2451 Market Street
Harrisburg, PA 17104

Dr. Stephen Shenton
11109 Spring Ridge Road
Shippensburg, PA 17257

Shirley A. Schenker
Social Studies Dept.
Avon Grove High School
257 East State Road
West Grove, PA 19390

Jane Scrip
150 Sugar Maple Circle
Washington, PA 15301

Nancy Hall
Manheim Central S.D.
111 S. Penn Street
Manheim, PA 17545

Kathy Capon
R.D. #4, Box 405
Ebensburg, PA 15931

Jane Erdo
Local Task Force #20
2167 Orchard Court
Bath, PA 18014

F.C. Brown & Associates
Association & Public Policy
Management
224 Pine Street
Harrisburg, PA 17101

Frances Schuster
R.D. 2, Box 138
Lewisburg, PA 17837

Nora Williams
2581 Sunset Lane
York, PA 17404

Wayne Mery
4017 Monroe Street
Danielsville, PA 18038

PSEA
400 N. 3rd Street
Harrisburg, PA 17101

Samuel Knapp
Pa Psychological Assn.
416 Forster St.
Harrisburg, PA 17102

Patricia Bakich
525 Kingsberry Court
Pittsburgh, PA 15237

Patricia Ann Buck
1816 Warren Street
Pittsburgh, PA 15212-3339

George Drozin
Selingsgrove ASD
401 N. 18th Street
Selingsgrove, PA 17870

Karl DiMartino
R.R. #1, Box 374
West Decatur, PA 16878

Barbara Nelson
4th Floor

INTEROFFICE MAIL

Frederick Brown
President, NAESP
Boyertown Elementary School
South Madison Street
Boyertown, PA 19512

Daniel McGinley
Phila. Assn. Of School Admin.
2813 Brown St.
Philadelphia, PA 19130

Dr. William Duffy
Marple Newtown S.D.
26 Medline Road
Newtown Square, PA 19073

Len Ferrence
Middle Schools Assn.
P.O. Box 7258
Pittsburgh, Pa 15213

Elaine Plunkett
1177 Windmill Lane
Pittsburgh, PA 15237

Brett R. Miller
2816 Spring Valley Road
Lancaster, PA 17601

Sue Billings
98 High Street
Annville, Pa 17003

Rene Levine
6663 Wayne Ave.
Philadelphia, PA 19119

Jackie Cullen
23 Meadow Drive
Camp Hill, PA 17011

Big Spring S.D.
Superintendent
45 Mt. Rock Road
Newville, PA 17241

Shirley Keith-Knox
The ARC/PA
2001 N. Front Street
Suite 221, Bldg. #2
Harrisburg, PA 17102-2104

Debra Allen
PAPSA
Mt. Lebanon S.D.
7 Horseman Drive
Pittsburgh, Pa 15228

Eileen Glisan
IUP
472 Sutton Hall
Indiana, PA 15705

John Tarka
PAFT
10 South 19th Street at the
River
Pittsburgh, PA

Naomi Kuziemski
Philadelphia H.S. for Girls
1400 Olmey Ave.
Philadelphia, PA 19141

Jeanne Stefanac
220 Conrad Drive
Pittsburgh, PA 15227

Sandra Swetland
129 Baywood Ave. 1-2D
Pittsburgh, PA 15228

PA Catholic Conference
223 N. Street
Box 2835
Harrisburg, PA 17105

Frank Manchester
PAESP
122 Valley St.
Box 39
Summerdale, PA 17093

Dr. W. Edward Bureau
KCSD
300 East South Street
Kennett Square, PA 19348

Pam Nelson
140 Silver Lake Lane
Fombell, PA 16123

Judy Bomze
Abington S.D.
970 Highland Ave.
Abington, PA 19001

Sheila Carson
2201 Rudy Road
Box 5042
Harrisburg, PA 17110

Janet Lonsdale
1211 Chestnut Street
11th Floor
Philadelphia, PA 19107

Priscella Fini
PASSWP, President
400 Fourth Street
McDonald, PA 15057

Charles Karl
7810 Pine Road
Wyndmoor, PA 19118

Ron Cowell
800 North 3rd Street
Suite 408
Harrisburg, PA 17102

Stinson Stroup
PASA
2579 Interstate Drive
Harrisburg, PA 17110

William Logan
PAESP
122 Valley Street
Box 39
Summerdale, PA 17093

Sandra Novotni
6 Fetvow Drive
Mechanicsburg, PA 17055

Dr. Richman
PA Home Schools
R.R. 2, Box 117
Kittanning, PA 16201

Dorothy Andrews
PA Chapter NASW
L337 North Front Street
Harrisburg, PA 17102

Robert Griffin
100 River Street
Forty Fort, PA 18704

Claudia Mahon
Bensalem Twp. S.D.
3000 Donallen Drive
Bensalem, PA 19020

Timothy Allwein
PSBA
774 Limekiln Road
New Cumberland, PA 17070

Mary Jo Shisko
RR3, Box 202 Pole 203
Lakeside Drive
Harveys Lake, PA 18618

Terry Houch
PASSP
122 Valley St.
Box 39
Summerdale, PA 17093

Dr. Vito Forlenza
Northeastern Educational IU
1200 Line Street
Archbald, PA 18403-1918

Dr. Robert Cormany
PAPSA
1883 Douglas Drive
Carlisle, PA 17013

Charles Glenn
827 Colony Lane
Mt. Joy, PA 17552

Margarita Marengo
Executive Director
Latino Leadership Alliance
229 Mill Street
Bristol, PA 19007

Becky Herr
Big Spring School District
45 Mt. Rock Road
Newville, PA 17241

Lori A. Rea
Contract Administrator
Glad Run
P.O. Box 70
Zelienople, PA 16063

Barbara Fash
Centennial S.D.
433 Centennial Road
Warminster, PA 18974

Mary Kay Rhude-Faust
Conestoga H.S.
200 Irish Road
Berwyn, PA 19312

Alan Kennedy-Shaffer
904 Peachtree Drive
Mechanicsburg, PA 17055

Nancy McElroy
AGHS
257 East State Road
West Grove, PA 19390

Janet Stotland
1315 Walnut Street
Suite 400
Philadelphia, PA 19107

Ellen Mancuso
ELC
1315 Walnut Street
Suite 400
Philadelphia, PA 19107

Susan Morgan
PA Newspaper Assn.
3899 North Front Street
Harrisburg, PA 17110

Janet Neidig
PA Newspaper Assn.
3899 North Front Street
Harrisburg, PA 17110

Chris Guavono
2365 Westminster Drive
Emmaus, PA 18049

George Taylor
PA Newspaper Assn.
3899 N. Front Street
Harrisburg, PA 17110

Mr. Leslie J. Nicholas, CJE
107 East Walnut Street
Kingston, PA 18704-4841

Senator Lemmond
Room 172
Main Capitol
INTEROFFICE MAIL

Randy Miller
House Research
Room 136
Capitol Annex

Dr. David F. Simpson
Director of Admissions
Children's Residential
Services, 111 Elwyn Road
Elwyn, PA 19063

INTEROFFICE MAIL
Dr. Judith Silver
The Starting Young Program
The Children's Hospital
34th St. & Civic Center Blvd
Phila., PA 19104-4399

Mr. Erwin Hyman
1198 Old Jordan Road
Holland, PA 18966

Helen Fallon
Point Park College
201 Wood Street
Pittsburgh, PA 15222

Sally Reiss
911 Bethlehem Road
Catasauqua, PA 18032

Rebecca S. Myers, LSW
Executive Director, PA
Chapter NASW
1337 North Front Street
Harrisburg, PA 17102

Dr. Thomas E. Eveslage
Professor of Communications
Temple University
2020 North 13th Street
Philadelphia, PA 19122-6080

Patricia Leggio
Pike County Children &
Youth Services
506 Browd Street
Milford, PA 18337

Nancy Hall
23 E. Lemon Street
Lancaster, PA 17602

Dr. Dennis W. Clawson
Hempfield ASHS
R.R. 6, Box 77
Greensburg, PA 15601

Evelyn Warner
520 Shearer Street
North Wales, PA 19454

Esther Lee
431 Pawnee Street
Bethlehem, PA 18015

Geraldine W. Talley
504 Monroe Road
King of Prussia, PA 19406

Linda Renick
2820 Klein St.
Allentown, PA 18103

Bernard G. Hoffman
808 Kendrick Street
Philadelphia, PA 19111

Howard Richman
R.R. 2, Box 117
Kittanning, PA 16201-9311

Ann Lyon
20 Clifton Road
Camp Hill, PA 17011

Dr. J. Daniel Collins
PAESSP
122 Valley Road, box 39
Summerdale, PA 17093

INTEROFFICE MAIL

Jay Himes
PASBO
Box 6993
Harrisburg, PA 17112-0993

Policy Office
10th Floor

Greg Dunlap
OGC
17th Floor
333 Market St.

Dave Dumeyer
Room 136 A
ROB

Dave Broderic
Room 350
Main Capitol

Marilyn Zilli
Room 182
Main Capitol

Chris Wakely
Room 208
Irvis Office Building



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

October 21, 2004

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17126

Dear Mr. Nyce:

Enclosed is a copy of the final-form regulation 22 Pa. Code, Chapter 12, Students and Student Services (#006-280) for review by the Commission pursuant to the provisions of section 5 (c) of the Regulatory Review Act. The act provides that the Commission shall approve or disapprove final-form regulations within 10 days of the close of the Committee review period or at its next scheduled meeting.

The Department of Education will provide the Commission with any assistance it requires to facilitate a thorough review of these final-form regulations.

Please let me know if there is anything that you need.

Sincerely,

A handwritten signature in black ink that reads "Jim Buckheit".

Jim Buckheit
Executive Director

Enclosure

cc: Dr. Francis V. Barnes
Gregory E. Dunlap, Esquire
Ernie Helling, Esquire

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: #6 - 280
 SUBJECT: State Board of Education - Students & Student Services
 AGENCY: DEPARTMENT OF EDUCATION # 2367

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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 2004 OCT 21 PM 2:02
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/21/04	<i>Shirley D. [Signature]</i>	HOUSE COMMITTEE ON EDUCATION
10/21/04	<i>M. [Signature]</i>	
	<i>[Signature]</i>	SENATE COMMITTEE ON EDUCATION
	<i>D. H.</i>	
10/21/04	<i>Joseph F. [Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)