

Regulatory Analysis Form

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(1) Agency

State Board of Education

REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)

#006-280

IRRC Number: 2367

(3) Short Title

Students
Pupil Personnel Services

(4) PA Code Cite

22 Pa. Code Chapters 7 and 12

(5) Agency Contacts & Telephone Numbers

Primary Contact: Patricia A. White
717-787-3787

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

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 *No Child Left Behind Act of 2001* (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relative to student records, the Board also proposes to remove from Chapter 12 the Annex which contains detailed, but outdated, guidelines on student records.

(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 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 around 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 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, the Board received many comments 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).

(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.

A committee of the Council of Basic Education, over the course of nearly two years, 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 and National Center for the Study of Corporal Punishment.

(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. Public schools may need to revise and update school district policies and practice regarding student discipline, maintenance of 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 to be less than \$20,000. Actual costs incurred by each school entity for compliance with these requirements may vary from school entity to school entity. 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.

The proposed regulations will have negligible costs. The proposed revisions largely bring the regulations into alignment with current statutory provisions and relevant case law. 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. There may be costs associated with all of these changes.

(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.

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 costs associated with implementation of both of these programs/ procedures.

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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:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

N/A.

Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY

(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.
- New provisions reflect current reality where community organizations such as school-based probation officers, family services and mental health professionals are increasingly providing student services within our schools.
- 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
- Elimination of any overlap between Chapters 7 and 12.
- At present, Chapter 7 needs to be updated, in order to align with language contained in Chapters 14 and 342.
- 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. There may be 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 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.

Alternatives include seeking statutory amendments to address items in the Pennsylvania School Code of 1949. However, at the present time it was more appropriate to move the relevant issues through the regulatory process by way of the existing regulations.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal. Rather than place Chapter 7 in Reserved form, the Board considered allowing Chapter 7 to remain as a full Chapter, however the Board determined that this scheme would result in an added expense to small schools, and also that the regulations needed updating.

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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 broader speech rights to students than is required by current 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 use of school media 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.

Regulatory Analysis Form

(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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INDEPENDENT
REVIEW COMMISSION

#2367

DO NOT WRITE IN THIS SPACE

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

[Signature]
BY: _____

(DEPUTY ATTORNEY GENERAL)

OCT 21 2003

DATE OF APPROVAL

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: _____

BY: *[Signature]*

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

Check if applicable
Copy not approved. Objections attached.

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

[Signature]

9/3/03

DATE OF APPROVAL

Asst. General Counsel

(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

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

Proposed Rulemaking

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

PROPOSED RULEMAKING

STATE BOARD OF EDUCATION

[22 PA. CODE CHS. 7 and 12]

Pupil Personnel Services and Students

The State Board of Education (State Board) proposes to delete Chapter 7 (Pupil Personnel Services) and to revise Chapter 12 (Students) to read as set forth in Annex A. The State Board acts under the authority of the Public School Code of 1949, including section 2603-B (24 P.S. § 26-2603-B).

Purpose

The proposed revisions to Chapter 12 would both make changes to Chapter 12 and replace existing Chapter 7 by adding new sections to Chapter 12 that are now addressed in Chapter 7. 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 proposed amendments would add a new subchapter regarding student services and update the same subject matter now included in Chapter 7.

Requirements of the Regulations

Chapter 12 of the State Board's 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 amendments to the 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 Chapter 7. A new regulatory requirement would be added that requires schools to operate Student Assistance Programs. This amendment would incorporate into regulations a long-standing Commonwealth policy established through section 1547(g) of the Public School Code (24 P.S. § 15-1547(g)). Due to recent changes made by the federal *No Child Left Behind Act of 2001* (20 U.S.C. § 6311 *et.seq.*) and the Act 153 of 2002 relative to student records, the State Board also proposes to remove from Chapter 12 the Annex that contains detailed, but outdated, guidelines on student records.

Specific proposed changes to the regulations include the following:

- The current Chapter 7 regulations that address Pupil Personnel Services would be deleted in their entirety. The State Board proposes to address student services by creating a new subchapter in Chapter 12 and by renaming Chapter 12 as Students and Student Services. The State Board believes that Chapter 7 as it currently exists is too detailed and prescriptive for today's educational environment. The regulations are also inconsistent with other State Board regulations in that they limit flexibility provided to school districts and other educational entities in the planning, implementation and administration of cost effective, comprehensive student services programs.
- The modifying term, "full," is proposed for deletion from § 12.1(a), which would then describe a student's right to a "free" public education. In addition, language would be added to prohibit the exclusion of students from school solely on the basis of a handicapping condition or disability.

- Homework would be added to the list of student responsibilities outlined in § 12.2(a). The State Board believes that students should make a conscientious effort in completing assigned homework.
- The modifier, “fair,” would be deleted from the term, “standards of safety and health,” which appears in § 12.2(d)(3). The State Board believes that the modifier is vague when referring to student dress and grooming.
- Section 12.2(d)(9) would be revised to remove reference to courses of study prescribed by the “Commonwealth.” Local school districts prescribe courses of study, not the Commonwealth.
- Section 12.2(d)(10) would be revised to reflect the use of technology as means of publishing student work by covering student work beyond that distributed through traditional hard copy publications.
- Section 12.3(b) would be amended to clarify the test that school board policies must accomplish some legitimate school purpose by deleting the vague terms “fairness and reasonableness” from the regulation.
- The term “full” would be deleted from § 12.4 (relating to discrimination) to make it consistent with § 12.1 (relating to free education and attendance).

The State Board proposes to make the following additional changes:

- Amend its current regulation at § 12.5 (relating corporal punishment), which now permits use of corporal punishment as a form of student discipline, to prohibit the use of corporal punishment. However, the regulation would continue to permit

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) would be revised to update the references to both revised Chapter 14 (Special Education and Related Services) and federal regulations under the Individuals With Disabilities Education Act.
- Section 12.6(d) would replace current language that permits a time extension for conducting a formal disciplinary hearing if the hearing would not be unreasonably delayed. The proposed language limits the extension to 15 days unless mutually agreed upon by both parties.
- Section 12.6(e)(2) would be revised to clarify the current obligation of parents of expelled students to notify the board of school directors within 30 days that they are unable to provide for an education for their child, whereupon the district would be obliged to provide for the student's education.
- Section 12.8(a) would be clarified to require that all elements of due process be afforded to students if they are to be excluded from school. To § 12.8(b)(1)(ii) would be added a requirement that a copy of the expulsion policy, notice that the student may be represented by counsel, hearing procedures and notice of the right to appeal be provided with notice of the time and place of the hearing.
- Section 12.8(b)(1)(iv) would be revised to clarify that a student may be represented by counsel at their parents' expense and that parents or guardians may attend the hearing.
- Proposed § 12.8(b)(1)(viii) would update the section to reflect current use of technology to keep and make available a copy of the hearing record.

- Section 12.8(b)(1)(ix) would be revised to make it consistent with § 12.6(d).
- Section 12.8(b)(2), regarding appeal of the school board’s determination, would be deleted as unnecessary, given the addition of § 12.8(b)(1)(ii).
- Section 12.8(c) is proposed for revision to add a subsection entitled, “informal hearings,” to clarify the meaning and application of the subsection.
- The wording of § 12.8(c)(1) concerning the purpose of an informal hearing would be revised to clarify the meaning and intent of the regulation.
- The State Board proposes to revise § 12.11 (regarding hair and dress) to reflect new statutory authority granted to school boards that permits school boards to adopt dress codes or to require students to wear school uniforms. The section is also revised to indicate that when the length or style of hair presents a health or safety hazard, the hair shall be covered.
- Section 12.14 would be revised to update language pertaining to searches of student lockers to make it consistent with current case law.
- Section 12.31 (relating to student records) would be revised to update language and to provide that copies of the student record plan that should be submitted only to the Department of Education upon request of the Secretary.

The State Board is also proposing to delete the Guidelines for the Collection, Maintenance and Dissemination of Pupil Records from Chapter 12. The State Board believes that the Guidelines are outdated and cannot be updated in a timely manner to reflect court decisions and federal and state statutory changes. Instead, the State Board

would instruct the Department of Education to issue guidelines that would be published in the *Pennsylvania Bulletin* for use of local education agencies.

The State Board proposes to add to Chapter 12 a new subchapter on student services. This subchapter would provide regulation of student services that are currently addressed in Chapter 7. New § 12.41 would provide definitions, and § 12.42 would provide revised requirements for the planning and implementation of a comprehensive K-12 program of student services. Local education agencies would be required to prepare a written student services plan that might include guidance counseling, health services, psychological services, social work and student attendance services. To assist in the development of the plan, the Department of Education would be required to issue guidance to local educational agencies and to publish the guidance in the *Pennsylvania Bulletin*. In addition, the Student Assistance Program, which has operated in the Commonwealth's secondary schools since 1991, would be added to Chapter 12.

Affected Parties

The proposed regulations would affect the students and professional employees of the public schools of this Commonwealth (including intermediate units, area vocational-technical schools, public charter and alternative schools).

Cost and Paperwork Estimates

The proposed regulations would have negligible costs. The proposed revisions largely would bring the regulations into alignment 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 records policies to

comply with the guidelines regarding records that would be issued by the Department. There might be costs associated with all of these changes.

The Student Assistance Program, which is currently operated under Department of Education guidelines, would be 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 would be required to develop a comprehensive written plan for student services. There might be costs associated with implementation of both of these programs and procedures.

Public schools might need to revise and update school district policies and practice regarding student discipline, maintenance of student records and student services as a result of the regulations. This would include, 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 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 proposed regulations would become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

The effectiveness of Chapter 12 would be reviewed by the State Board of Education every 4 years, in accordance with the State Board's policy and practice respecting all regulations promulgated by the Board. Thus, no sunset date is necessary.

Regulatory Review

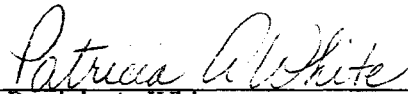
Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on 11/16, 2003, the State Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the State Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Patricia A. White, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the Pennsylvania Bulletin.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Patricia A. White at (717) 787-3787 or TDD (717) 787-7367.



Patricia A. White
Executive Director

Proposed Rulemaking

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 7. [PUPIL PERSONNEL SERVICES] (RESERVED)

[GENERAL PROVISIONS]

[Sec.

7.1. Definition.] [Reserved].

[7.2. General policy.] [Reserved].

[PUPIL PERSONNEL SERVICES PROGRAM]

[7.11. Guidance services.] [Reserved].

[7.12. Psychological services.] [Reserved].

[7.13. Health services.] [Reserved].

[7.14. Home and school visitor services (school social work services).] [Reserved].

Proposed Rulemaking

CHAPTER 12. STUDENTS AND STUDENT SERVICES

STUDENT RIGHTS AND RESPONSIBILITIES

Sec.

- 12.1. Free education and attendance.
- 12.2. Student responsibilities.
- 12.3. School rules.
- 12.4. Discrimination.
- 12.5. Corporal punishment.
- 12.6. Exclusions from school.
- 12.7. Exclusions from classes—in-school suspension.
- 12.8. Hearings.
- 12.9. Freedom of expression.
- 12.10. Flag Salute and the Pledge of Allegiance.
- 12.11. Hair and dress.
- 12.12. Confidential communications.
- 12.13. [Reserved].
- 12.14. Searches.
- 12.15. [Reserved].

[PUPIL] STUDENT RECORDS

- 12.31. General requirements.
- 12.32. Elements of the plan.

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12.33. Guidelines.

STUDENT SERVICES

12.41. Definitions.

12.42. Student services.

12.43. Student assistance.

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]** 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:

(1) [of being] The student is married.

(2) The student is [or] pregnant.

(3) The student has a handicapping condition 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).

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§ 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.

(b) No student has the right to interfere with the education of his fellow students. It is the responsibility of each student to respect the rights of teachers, students, administrators and all others who are involved in the educational process.

(c) Students should express their ideas and opinions in a respectful manner.

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

(1) Be aware of all rules and regulations for student behavior and conduct themselves in accord with them. Students should assume that, until a rule is waived, altered or repealed in writing, it is in effect.

(2) Volunteer information in matters relating to the health, safety, and welfare of the school community and the protection of school property.

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

(4) Assist the school staff in operating a safe school for all students enrolled therein.

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- (5) Comply with Commonwealth and local laws.
- (6) Exercise proper care when using public facilities and equipment.
- (7) Attend school daily and be on time at all classes and other school functions.
- (8) Make up work when absent from school.
- (9) Pursue and attempt to complete satisfactorily the courses of study prescribed by **[Commonwealth and]** local school authorities.
- (10) Report accurately **in student media.** **[and]**
- (11) **Not [not] use [indecent or] obscene language in student media [newspapers or publications] or on school premises.**

§ 12.3. School rules.

(a) The school 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 has only those powers which are enumerated in the statutes of this Commonwealth, or which may reasonably be implied or necessary for the orderly operation of the school.

(b) School boards may not make rules **[which] that** are arbitrary, capricious 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

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a rational means of accomplishing some legitimate school purpose.

(c) Each board of school directors shall adopt a code of student conduct **[which]** **that** shall include policies governing student discipline and a listing of students rights and responsibilities as outlined in this chapter. This conduct code shall be published and distributed to students and parents. 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 student shall be denied access to a free **[and full]** public education.

§ 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.**

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(d) Teachers and school authorities may use reasonable force under the following circumstances:

- (1) To quell a disturbance.
- (2) To obtain possession of weapons or other dangerous objects.
- (3) For the purpose of self-defense.
- (4) For the protection of persons or property.

[(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 shall define and publish the types of offenses that would lead to exclusion from school. Exclusions affecting certain exceptional students shall be governed by [**§ 14.35 (relating to discipline)**] **§ 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.

(i) Suspensions may be given by the principal or person in charge of the public school.

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(ii) No student shall be suspended until the student has been informed of the reasons for the suspension and given an opportunity to respond. Prior notice of the intended suspension need not be given when it is clear that the health, safety or welfare of the school community is threatened by the continued presence of the student.

(iii) The parents 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 hearings).

(v) Suspensions may not be made to run consecutively beyond the 10 school day period.

(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.

(2) Expulsion is exclusion from school by the board of education 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.

(c) During the period prior to the hearing and decision of the board of school directors in an expulsion case, the student shall be placed in his normal class except as set

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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**]. **In no case may a student 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 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 w]Within 30 days of action by the board of school directors, the parents or guardian shall submit to the school district written evidence that the required education is being provided as described in paragraph (1) or that they are unable to do so. If the parents or guardian are unable to provide the required education, [so stating. The] the district then [has the responsibility to] shall make**

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[some] provision for the student's education. **[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 may take action in accordance with Chapter 63 of the Juvenile Act (42 Pa. C.S. Chapter 63) 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.

(a) No student may receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective.

(b) Communication to the parents or guardian shall follow the suspension action taken by the school.

(c) When the in-school suspension exceeds 10 consecutive school days, an informal hearing with the principal shall be offered to the student and the student's parent or guardian prior to the 11th school day in accordance with the procedures in § 12.8 (relating to hearings).

(d) The student's school district has the responsibility to make [some] provision

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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 or a duly authorized committee of the board, or a qualified hearing examiner appointed by the board. Where the hearing is conducted by a committee of the board or a hearing examiner, a majority vote of the entire school board is required to expel a student.

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

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

(ii) Sufficient notice of the time and place of the hearing must be given. **A copy of the expulsion policy, notice that the student may be represented by counsel, 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 he demonstrates good cause for an extension.**

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- (iii) The hearing shall be held in private unless the student or parent requests a public hearing.
- (iv) The student **[has the right to] may** be represented by counsel, **at parents' expense, and may have his parent or guardian attend the hearing.**
- (v) The student has the right to be presented with the names of witnesses against the student, and copies of the statements and affidavits of those witnesses.
- (vi) The student has the right to request that any such witnesses appear in person and answer questions or be cross-examined.
- (vii) The student has the right to testify and present witnesses on his own behalf.
- (viii) A **written or audio** record must 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]**.
- (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.**

[(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

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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 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 and to the student.

(ii) Sufficient notice of the time and place of the informal hearing shall be given.

(iii) A student has the right to question any witnesses present at the hearing.

(iv) A student has the right to speak and produce witnesses on his own behalf.

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(v) The district 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 by the United States Supreme Court in *Tinker v. Des Moines Community School District*, 393 U.S. 503[, 89 S.Ct. 733, 21 L.Ed 2nd 731] (1969).

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

(c) Students may use publications, handbills, announcements, assemblies, group meetings, buttons, armbands and any other means of common communication, provided that the use of public school communications facilities shall be in accordance with the regulations of the authority in charge of those facilities.

(1) Students have the responsibility to obey laws governing libel and obscenity and to be aware of the full meaning of their expression.

(2) Students have the responsibility to be aware of the feelings and opinions of others and to give others a fair opportunity to express their views.

(d) Identification of the individual student or at least one responsible person in a student group may be required on posted or distributed materials.

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(e) School officials may require students to submit for prior approval a copy of materials to be displayed, posted or distributed on school property.

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

(1) School authorities may restrict the use of certain bulletin boards.

(2) Bulletin board space should be provided for the use of students and student organizations.

(3) School officials may require that notices or other communications be officially dated before posting, and that the materials be removed after a prescribed reasonable time to assure full access to the bulletin boards.

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

(1) Students have a right and are as free as editors of other newspapers to report the news and to editorialize within the provisions in paragraphs (4) and (5).

(2) School officials shall supervise student newspapers published with school equipment, remove obscene or libelous material and edit other material that would cause a substantial disruption or interference with school activities.

(3) School officials may not censor or restrict material simply because it is critical of the school or its administration.

(4) Prior approval procedures regarding copy for school newspapers shall identify the individual to whom the material is to be submitted and shall establish a

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limitation on the time required to make a decision. If the prescribed time for approval elapses without a decision, the material shall be considered authorized for distribution.

(5) Students who are not members of the newspaper staff shall have access to its pages. Written criteria for submission of material by nonstaff members shall be developed and distributed to all students.

(h) The wearing of buttons, badges or armbands shall be permitted as another form of expression within the restrictions listed in subsection (c).

(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.

(2) The place of the activity may be restricted to permit the normal flow of traffic within the school and at exterior doors.

(j) School officials should adopt and publish guidelines for student use of school facilities and equipment.

(k) The constitutional right of freedom of speech guarantees the freedom of public school students to publish materials on their own.

(1) The school has no responsibility to assist students or to provide

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facilities in the publishing of the materials.

(2) The students themselves have sole responsibility for any statements published.

(3) Approval procedures must be followed prior to distribution or display of materials on school property. *See* subsection (i).

§ 12.10. Flag Salute and the Pledge of Allegiance.

It is the responsibility of every citizen to show proper respect for his country and its flag.

(1) Students may decline to recite the Pledge of Allegiance and may refrain from saluting the Flag on the basis of personal belief or religious convictions.

(2) Students who choose to refrain from such participation shall respect the rights and interests of classmates who do wish to participate.

§ 12.11. Hair and dress.

(a) **The 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.**

[(a)] (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

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hazard. Where 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.]

(c) Students may be required to wear certain types of clothing while participating in physical education classes, shops, extracurricular activities, or other situations where special attire may be required to insure the health or safety of the student.

(d) Students have the responsibility to keep themselves, their clothes, and their hair clean. School officials may impose limitations on student participation in the regular instructional program where there is evidence that the lack of cleanliness constitutes a health hazard.

§ 12.12. Confidential communications.

(a) Use of a student's confidential communications to school personnel in legal proceedings is governed by statutes and regulations appropriate to the proceeding. *See, [for example] e.g., 42 Pa. C.S. § 5945 (relating to confidential communications to school personnel).*

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

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§ 12.13. (Reserved).

§ 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 shall adopt reasonable policies and procedures regarding student searches. The local education agency shall notify students and their parents 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.

§ 12.15. (Reserved).

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[PUPIL] STUDENT RECORDS

§ 12.31. General requirements.

(a) The governing board of every local education agency [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 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] guidelines issued by the Department of Education.

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

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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 subchapter, 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 (as per 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.

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§ 12.42. Student services.

(a) Each local education agency shall prepare a written plan for the implementation of a comprehensive K-12 program of the student services based on the needs of its students. Services offered by community agencies in public schools shall be coordinated by and under the general direction of the local education agency. 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 in planning its student services:

(1) Developmental services for students that address their developmental needs throughout their enrollment in school.

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

(3) Consultation and coordination services for students who are experiencing chronic problems which require multiple services by teams or

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specialists.

(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 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 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 for students and information to parents about the health needs of their children.

(d) When student assessments using individual standardized psychological tests are administered, parents shall be informed of the nature and scope of local education agencies' student tests and of their relationship to the educational program of their child. The parents shall have the right to challenge the appropriateness of any individual standardized psychological tests via procedures established by the local education agency.

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

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

§ 12.43. Student Assistance Program.

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

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[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

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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

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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)

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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.

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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.

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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

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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)

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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

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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

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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

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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.

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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.

Proposed Rulemaking

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:

Proposed Rulemaking

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:

Proposed Rulemaking

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

Proposed Rulemaking

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.

Proposed Rulemaking

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

Proposed Rulemaking

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

Proposed Rulemaking

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		<input type="checkbox"/>	<input type="checkbox"/>
Kuder Preference Record	EXAMPLE	<input type="checkbox"/>	<input type="checkbox"/>
Wrenn Study Inventory		<input type="checkbox"/>	<input type="checkbox"/>
Family Background Information		<input type="checkbox"/>	<input type="checkbox"/>

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.

Proposed Rulemaking

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

Proposed Rulemaking

SAMPLE FORM C

RECORD OF INSPECTION OF PUPIL RECORDS

Date: _____

Records Examined: _____
(Name of pupil or pupils)

Records Examined by: _____

Purpose: _____

Proposed Rulemaking

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:

Proposed Rulemaking

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

Proposed Rulemaking

Parent's signature

Date]



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

November 7, 2003

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, PA 17101

Dear Mr. Nyce:

Enclosed is a copy of proposed regulations for review by your Committee pursuant to the Regulatory Review Act. The proposed regulation(s) included in this packet is Chapter 7 (Pupil Personnel Services) and Chapter 12 (Students).

The Regulatory Review Act, as amended, provides that the standing committees may convey to the Board and the Independent Regulatory Review Commission their comments on the proposed regulations any time prior to Final-Form Regulation Delivery.

The State Board of Education will provide your Committee with any assistance you may require to facilitate a thorough review of these proposed regulations.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in cursive script that reads "Jim Buckheit".

Jim Buckheit
Executive Director

cc: Dr. Vicki L. Phillips
Gregory Dunlap, Esq.

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

I.D. NUMBER: 6-280
 SUBJECT: Students
 AGENCY: DEPARTMENT OF EDUCATION

TYPE OF REGULATION

- X 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

RECEIVED
 2003 NOV -7 AM 10:37
 INDEPENDENT REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
11/7/03	<i>W. O'Leary</i>	HOUSE COMMITTEE ON EDUCATION
11/7/03	<i>M. Latta</i>	
11/7/03	<i>D. Hook</i>	SENATE COMMITTEE ON EDUCATION
11/7/03	<i>K. Creola</i>	
11/7/03	<i>E. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)