

**DEPARTMENT OF EDUCATION**  
**251 Family Educational Rights and Privacy Act (FERPA)**  
**Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d)) 14 DE Admin.**  
**Code 251**

**FINAL**

**REGULATORY IMPLEMENTING ORDER**

**251 Family Educational Rights and Privacy Act (FERPA)**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to repeal 14 **DE Admin. Code** 250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data and replace it with 14 **DE Admin. Code** 251 Family Education Rights and Privacy Act (FERPA) and 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. Regulation 251 is intended to govern access to, confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. 1232g, and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations. Regulation 252 defines important terms, describes the education records that schools are required to maintain, describes the conditions for the transfer of records from school to school and provides for the proper maintenance and destruction of student records in connection with the requirements of the Delaware Public Archives.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on November 24, 2004 in the form hereto attached as *Exhibit “A”*. Comments were received from Governor’s Advisory Council for Exceptional Children and the State Council for Persons with Disabilities.

As per the Councils’ recommendation, the Department has added phrases to 4.0 of Regulation 251 to clarify that the U.S. Department of Education’s Family Policy Compliance Office enforcement powers extend only to those agencies covered under federal law and language has been added to the reference to the “career area competence list” for better clarity.

In response to the concern about the Department holding hearings, the Department response is as follows; the Department concludes that hearings to challenge the content of an educational record are best conducted at the local level; adding a hearing requirement at the state level adds unnecessary complexity to record maintenance without appreciable additional benefit to students or their families. Finally, the Department recognizes that the Individuals with Disabilities Education Act may impose additional requirements concerning the educational records of children with disabilities. 14 **DE Admin Code** 925 reflects those requirements.

**II. Findings of Facts**

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data and replace it with 14 **DE Admin. Code** 251 Family Education Rights and Privacy Act (FERPA) and 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. The new regulations add clarity and more accurately reflect the federal statute.

**III. Decision to Repeal the Regulation and Replace It with Two Separate Regulations**

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 250. and replace it with 14 **DE Admin. Code** 251 Family Education Rights and Privacy Act (FERPA) and 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 250 is hereby repealed and regulations 251 and 252 attached hereto as *Exhibit “B”* are hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 251 and 252 hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 251 and 252 hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulations shall be cited as 14 **DE Admin. Code** 251 and 14 **DE Admin. Code** 252 in the *Administrative Code of Regulations* for the Department of Education. In addition 14 **DE Admin. Code** 250 shall be removed from the *Administrative Code of Regulations* for the Department of Education.

## **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 10, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 10<sup>th</sup> day of January 2005.

### **DEPARTMENT OF EDUCATION**

Valarie A. Woodruff, Secretary of Education

### **251 Family Educational Rights and Privacy Act (FERPA)**

#### **1.0 Authority and Incorporation of Federal Regulations:**

1.1 The Department of Education is authorized by 14 **Del.C.** §4111, to adopt rules and regulations regarding the educational records of students in public and private schools in Delaware. This regulation is intended to govern access to, confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations at 34CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations.

#### **2.0 Use and Adoption of FERPA by School Districts, Charter Schools, and Private Schools:**

2.1 Each school district, charter school and private school shall develop, adopt, and maintain a written policy regarding the educational records of its students. This policy shall address access to such records, the confidentiality of such records, and the method by which the records may be amended. The policy shall comply with FERPA and its implementing regulations.

2.2 Each school district, charter school and private school shall periodically review and revise its policy on educational records to ensure continued compliance with FERPA.

2.3 Nothing in this regulation shall preclude a school district, charter school, or private school from adopting additional policies regarding educational records so long as those regulations are consistent with FERPA. Nothing in this regulation shall alter a school district or a charter school's duties regarding educational records of children with disabilities pursuant to the Individuals with Disabilities Education Act.

#### **3.0 State Adoption of FERPA:**

3.1 Except as otherwise provided, the Department of Education adopts the federal regulation implementing FERPA (34 C.F.R. part 99), including any subsequent amendment or revision to that regulation, to the extent the Department maintains educational records on students in attendance in Delaware schools.

3.2 Notwithstanding section 3.1, the Department shall not be required to annually notify parents or eligible students of their rights under FERPA or this regulation. School districts, charter schools, and private schools shall continue to be responsible for such notification. The Department may also disclose directory information from the educational records it maintains without prior public notification.

3.3 Notwithstanding section 3.1, the Department shall not be required to provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation.

#### **4.0 Federal Complaints and Investigations:**

4.1 The Family Policy Compliance Office ("FPCO") of the U.S. Department of Education is responsible for monitoring compliance with FERPA [by agencies to which federal education funds have been made available].

That office will investigate, process and review violations and complaints that may be filed with it concerning the privacy rights of parents and students [of covered agencies]. The following is the address of the office: The Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605. [Families of students attending schools to which federal education funding has not been made available may also find FPCO's interpretations and policy letters useful in understanding their rights under the policies required by this regulation].

## **252 Required Educational Records and Transfer and Maintenance of Educational Records**

**1.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:**

**"Court Orders"** shall mean any written direction from a court of competent jurisdiction directed to the student or affecting the student's care or custody.

**"Discipline Record"** shall mean information about any and all periods of out of school suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district's code of conduct or other rules.

**"Emergency Treatment Card"** shall mean the card containing the general emergency information and procedures for the care of a student when the student becomes sick or injured in school as required in 14 **DE Admin Code** 811.1.1.

**"Identifying Data"** shall mean the name of the student, date of birth, sex, race/ethnicity, address, telephone number, Delaware student identification number and the name of the parent(s), guardian(s) or Relative Caregiver.

**"Progress Report"** shall mean a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized test(s) scores such as the DSTP and attendance data for each year of the student's attendance.

**"School Health Record"** shall mean the form required by 14 **DE Admin Code** 811.2.0 for Delaware public school students.

**"Student Transcript"** shall mean a single record maintained for each student in grades 9 and above that contains the following: end of year and up to date grades; credits earned; class rank; Grade Point Average (GPA); withdrawal or graduation date; standardized test(s) scores such as the DSTP, SAT, PSAT, ACT; ~~[the career area competency if applicable list;]~~ attendance data and school activities. **[If applicable, a list of the career-technical competencies achieved by a student enrolled in a specific career-technical program shall also be included.]**

## **2.0 Education Records Required by Schools in Delaware**

2.1 Each Delaware school shall maintain a Cumulative Record File either as an electronic or paper file for each student enrolled.

2.1.1 The student Cumulative Record File shall contain the Emergency Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above) and Discipline Record.

2.1.2 The student Cumulative Record File shall also contain any Court Orders in the school or district's possession, to the extent the school or district maintains such documents for an individual student.

2.1.3 In addition, the Cumulative Record File for a child with a disability as defined in 14 **DE Admin Code** 925 shall contain any records related to the identification, evaluation, placement, and provision of a free appropriate public education. Such documents may be collected and maintained separately.

## **3.0 Transfer of the Records of Public School and Private Schools Students**

3.1 When a student transfers from a public school, private school or an educational program operated by the Department of Services for Children Youth and Their Families to any other school in Delaware, the receiving school shall immediately request the Cumulative Record File from the sending school or program.

3.2 The Cumulative Record File shall follow each student transferred from one school to another including files for each student with disabilities transferred from one school to another.

3.2.1 Public schools, school districts, private schools and educational programs operated by the Department of Services for Children Youth and Their Families shall promptly transfer a student's Cumulative Record File upon the request of a receiving school.

3.2.2 Unpaid student fees or fines shall not be a basis for a public school, school district or an educational program operated by the Department of Services for Children Youth and Their Families to deny or to delay transfer of the Cumulative Record File.

3.2.3 Students shall not be denied enrollment into a public school on the grounds that the student's

Cumulative Record File has not been received.

3.3 Before transferring student records, a public school, school district or private school shall specifically confirm that the Cumulative Record File contains the student's Discipline Record.

3.4 When students transfer to a Delaware school from any other school including a school in a foreign country the receiving school is responsible for having the transcripts evaluated.

#### **4.0 Maintenance of the Education Records of Public Schools**

4.1 The Delaware School District General Records Retention Schedule published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the maintenance of education records.

4.2. Contracts for storage of student records of graduates, withdrawals and special education students for district storage, shall be initiated between the school district and the Delaware Public Archives.

4.3 The Cumulative Record Files for students who have graduated from or who left school prior to graduation from high school shall be stored at the school or district of last attendance or in the Delaware Public Archives.

#### **5.0 Destruction of Education Records of Public Schools**

5.1 The Delaware School District General Records Retention Schedule published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the destruction of any education records.

5.2 The destruction of educational records of children with disabilities shall also comply with the requirements of 14 DE Admin Code 925.

**8 DE Reg 1112 (2/1/05)**