

Guidelines for Handling Health Care Information in School Records



Dr. Terry Bergeson
State Superintendent of
Public Instruction

November 2001

ACKNOWLEDGMENT

This document was prepared jointly by the Office of Superintendent of Public Instruction and the Office of the Attorney General. We wish to acknowledge the major contribution of Jan Frickelton, Assistant Attorney General, Education Division, to the completion of these guidelines.

These guidelines are intended for general information purposes and should not be relied upon as a complete statement of any particular law.

GUIDELINES FOR HANDLING HEALTH CARE INFORMATION IN SCHOOL RECORDS

Dr. Terry Bergeson
State Superintendent of Public Instruction

Marcia L. Riggers
Assistant Superintendent
Operations and Support

Martin Mueller
Director
Learning and Teaching Support

Judith A. Maire
Program Supervisor
Health Services

This material is available in alternative format upon request. Contact Learning and Teaching Support (360) 725-6040, TTY (360) 664-3631. The Office of Superintendent of Public Instruction complies with all federal and state rules and regulations and does not discriminate on the basis of race, color, national origin, sex, disability, age or marital status.

Reprinted
November 2001

GUIDELINES FOR HANDLING HEALTH CARE INFORMATION IN SCHOOL RECORDS

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Education Records.....	2
III.	Health Care Information	4
	A. Public Policy.....	5
	B. Definitions.....	5
	C. Disclosure.....	7
	D. School District Disclosure.....	7
	E. Valid Authorization to Disclose.....	7
	F. Disclosure Without Patient's Consent.....	8
	G. Denial of Access.....	8
	H. Limitations of Parent's Access.....	9
	I. Corrections or Amendment to the Record.....	9
	J. Recording Disclosure Notices.....	9
	K. Informing the Student/Patient.....	9
	L. Interagency Exchange of Information.....	10
	M. Redislosure Prohibited.....	11
	N. Faxed Information.....	11
IV.	Records Containing Specific Health Care Information.....	11
	A. HIV/AIDS—Other Sexually Transmitted Diseases.....	11
	B. Family Planning/Abortion.....	12
	C. Drug and Alcohol Assessment and Treatment.....	12
	D. Mental Health Treatment.....	13
	E. Student Health Record.....	13
	Record Retention Requirements.....	14
	F. Health Room Logs/Medication Administration Forms.....	14
	G. Special Education Health Records.....	15
	H. Child Abuse Reporting.....	17
	I. Food and Nutrition Records.....	18
	J. Communicable Diseases.....	18
	K. Summary--Ages of Consent to Release Particular Records.....	18
V.	Exchange of Information Within a District.....	18
VI.	Education and Training—Parents and Staff.....	19

VII. Appendices

A.	FERPA Regulations—34 CFR Part 99; Student Records Policies and Procedures for the Alpha School District (ED) Model Policy.	20
B.	Chapter 70.02 RCW—Medical Records.	35
C.	Authorization for Release of Medical Information—Sample Form.	42
D.	Chapter 70.24.105 RCW—HIV; 70.24.110 Minors—Treatment, Consent, Liability for Payment for Care.	45
E.	Chapter 9.02 RCW—Abortion; Assistant Attorney General Memos dated September 21, 1992, and May 6, 1993.	49
F.	Recommendations for Maintaining Confidentiality in Student Assistance Programs; RCW 71.34; WAC 275-57-350 Consent to Treatment and Access to Records and -360, Confidentiality of Consumer Information (DSHS).	56
G.	RCW 26.44.020-050, DSHS Child Abuse Statutes; Washington State School Directors' Association policy and Assistant Attorney General Memo dated March 29, 1988.	69
H.	U.S. Department of Education Letter dated April 30, 1990; WAC 246-100-046 and -071.	82
I.	Record Retention Schedule: Health Services, Special Education Student Records.	86
J.	Food and Nutrition Records—confidentiality requirements.	91
K.	Fax Cover Sheet—Sample Confidentiality Statement.	97

I. INTRODUCTION

The final report and recommendations of the Information Sharing Committee* contains the following paragraph:

In discussion, the committee recognized the important concept of self-determination and dignity which are key components of confidentiality provisions. While each agency and provider encourages responsible professional standards which treat the client with dignity and compassion, we recognize that unlimited access to each other's records would create a confidentiality myth. The legitimate purposes of information sharing must respect the person about whom the information is kept but it must not become the cloak behind which vital information is hidden.

These guidelines will assist districts in protecting the confidentiality of student health care information while facilitating the appropriate exchange of information between agencies and providers and within the school district.

The purpose of these guidelines is to provide a reference document for the development of school district policy on the identification and security of confidential information and records held by schools, with an emphasis on the handling of health care information. The recommendations will address district responsibility to ensure the confidentiality of student education records and of specific health care information related to students. These guidelines include references to the laws and regulations applying to school health care providers and exchange of information with outside agencies and within the district. **School districts should always refer to the most updated version of a specific law or regulation when making decisions about how a particular record should be handled.**

Student records are protected and released according to the Family Educational Rights and Privacy Act (FERPA) regulations (Appendix A). Student records may contain health care information as well as academic and disciplinary documentation. All of these records are protected under FERPA. The health care information contained in individual student records may be further protected, in addition to FERPA, under state and federal statutes and regulations.

These guidelines will address:

1. Student health care records and information, what constitutes confidential health care information, and the applicable statutes or regulations.
2. Procedures for disclosure or release of confidential information.

* Information Sharing Committee, Washington State Department of Social and Health Services, Final Report and Recommendations, December 1994.

The final section of the document discusses recommendations for providing staff education and consultation resources regarding the handling of student records.

II. EDUCATION RECORDS

Record keeping and record release in public schools are governed by the federal Family Educational Rights and Privacy Act, otherwise known as FERPA or the Buckley Amendment. Under FERPA, a covered school district is subject to termination of federal funds if it discloses personally identifiable information in the education records of students without the appropriate consent or judicial order or subpoena. The federal law is found at 20 U.S.C. §1232g and the implementing regulations are found in 34 CFR Part 99 (Appendix A). State public records law also exempts student records from disclosure (RCW 42.17.310[1][a]).

FERPA requires that every school district have a written policy explaining the standards for keeping records confidential. Parents and students 18 years of age and older must be notified of the policy on an annual basis. The confidentiality requirements apply to education records that are directly related to a student and are maintained by a school district. In addition to transcripts, disciplinary reports and the usual records related to the academic program, education records can include a variety of health records maintained within the school system. Health records related to HIV/AIDS and drug and alcohol assessment and treatment, for example, have specific legal protections which are discussed under individual headings in these guidelines. Information from an education record may be disclosed in an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. Briefly summarized, FERPA requires that:

- a. Records of individual students containing “personally identifiable information” must be kept confidential and not released without parent consent or consent from students who have reached age 18.
- b. Parents, guardians, and students have the right to inspect school records concerning the student. “Personal notes” of school personnel are not education records, and, therefore, parents have no right under FERPA to access personal notes. However, if “personal notes” are to remain protected from disclosure, they must not be shared with anyone, except a substitute for the person who made the notes.
- c. The record keeping system should be described in the policy so parents can easily locate records.

- d. The school district must determine which school officials have access to records due to legitimate educational interests. The school district must specify in policy the criteria for identifying "school officials" and "legitimate educational interests." The U.S. Department of Education's model Student Records Policy (Appendix A) includes the following guidance:

- A school official is a person employed or under contract to the district to perform a special task and could include medical consultants or therapists.

A school official has a legitimate educational interest if the official is:

- Performing a task that is specified in his or her position description or by a contract agreement.
- Performing a task related to a student's education.
- Performing a task related to the discipline of a student.
- Providing a service or benefit relating to the student or student's family, such as health care, counseling, or job placement.

- e. Each student's file must include a record of access, which school staff members must sign whenever they consult that student's file.
- f. Parents have the right to appeal anything in a student's file which they consider incorrect, misleading or in violation of their privacy rights. If the school district is unwilling to delete such challenged material, the parent may request a hearing and/or provide a written statement to be attached to the challenged material.
- g. The school district must define what constitutes "directory information" which may be released without consent, and describe how a parent may have "directory information" protected from release.

State law authorizes school districts to participate in the exchange of information with law enforcement and juvenile court officials to the extent permitted by FERPA (RCW 28A.600.475).

In 1994 FERPA was amended to permit disclosure of education records to authorities in the juvenile justice system, if permitted by state law. The juvenile justice authorities must certify in writing that the information will not be redisclosed without consent of the parent or student.

A 1994 FERPA amendment also permits placing information in a student's record concerning disciplinary action for conduct that posed a risk to safety or well-being of that student or others. This information can be disclosed to teachers and school officials, including personnel in other schools who have a legitimate educational interest in the behavior of the student.

Starting in 1994, state law permits a school district to request from an enrolling student certain information including whether or not the student has a history of special education placement, disciplinary action, violent behavior, or health conditions affecting the student's educational needs. This information from the parent and student would become part of the student's education records (RCW 28A.225.330). This law also requires school districts to request the permanent records of an enrolling student, which should be transmitted by the previous school district within two school days.

Access to school health records must comply with FERPA protections, as well as federal and state requirements pertaining to specific health information records. In Washington state, all health care information is protected under Chapter 70.02 RCW. Laws protecting specific health related records such as HIV/AIDS, mental health and family planning/abortion are discussed in more detail in subsequent sections of these guidelines.

School district policy should address access to and the protection of confidential health information in various school records. All records containing health information should be stored in a secure area accessible only to the health care provider unless the student, parent or guardian has signed a consent for release of information.

III. HEALTH CARE INFORMATION

These guidelines address handling specific health care information contained in student records. Not only does FERPA apply to these records, but, in addition, state and federal law impose additional restrictions on handling health records. Each of the following sections contains a description of the applicable law, the nature of the confidential information addressed by the law, and guidelines and requirements for release of that information.

Generally, health care information contained in school district records can not be disclosed to anyone without the consent of a parent or a student who is 18 years of age or older. (Chapter 70.02 RCW—Medical Records—Health Care Information Access and Disclosure [Appendix B].)

A. Public Policy

The Legislature recognizes that “health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient’s interests in privacy, health care, or other interests” (RCW 70.02.005[1]). It is the public policy of this state that health care information be used and disclosed properly even when the information is held by persons other than health care providers. This means that even when health care information is contained in education records, its confidentiality must be safeguarded and disclosure is governed by FERPA and Chapter 70.02 RCW.

This law applies to health care providers both inside and outside educational institutions as well as other school district staff with access to health care information (RCW 70.02.005[4]).

B. Definitions

RCW 70.02.010 defines health care provider, health care and health care information, and patient as follows:

“Health care provider” means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

Comment: In schools, those persons authorized by the state to provide “health care” may include certified occupational therapists (OT), physical therapists (PT), speech-language pathologists, mental health counselors, psychologists, social workers, nurses, educational staff associates (ESAs) certified in one of the preceding specialties, and licensed or certified intervention specialists.

An individual who assists a “health care provider” in the delivery of health care may not disclose health care information per RCW 70.02.020 without the patient’s written authorization.

The term “health care provider” does not include certificated teachers, because such certification is not an authorization to provide health care. School districts will have to determine on a case-by-case basis which employees meet the definition of “health care provider” and which information meets the definition of “health care information.”

- **“Health care”** means any care, service, or procedure provided by a health care provider:

- To diagnose, treat, or maintain a patient's physical or mental condition; or
- That affects the structure or any function of the human body.
- **"Health care information"** means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care. The term includes any record or disclosures of health care information.

Comment: "Health care information" is prepared by a health care provider. The information usually relates to diagnosis or treatment. "Health care information" would include physician's reports provided to a special education assessment team. Vision screening reports prepared by a nurse would not be "health care information" as long as the service is merely for screening purposes and is not a diagnostic service. Vision screening reports prepared by volunteer parents would not be "health care information" because volunteers are not licensed or certified to provide health care. Likewise, immunization records prepared by parents would not be "health care information," but the same records prepared by a physician's office would relate to a patient's treatment by a "health care provider" and should be given the protections provided to other "health care information."

The "health care information" access and disclosure law allows disclosure of "health care information" to other health care providers under specific circumstances and to any person in order to avoid an imminent danger to health or safety. There is no other provision which allows disclosure to other school personnel on a "need to know" basis. Sharing of "health care information" can be accomplished by obtaining a valid parent or student consent to release specific information. See Section M, page 10 for recommendations on exchange of information with teachers, administrators and other school district staff involved in planning and providing a safe, therapeutic, educational environment for students.

- **"Patient"** means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

See RCW 70.02.010 for the complete list of defined terms.

C. Disclosure

Health care providers, their assistants, agents, and employees may not disclose health care information to any other person without the patient's written authorization (RCW 70.02.020).

D. School District Disclosure

Nursing, medical and mental health/counseling records cannot be released to others either in or outside the district without the written permission of the parent, guardian or student 18 years or older. The requirements for disclosure in the most recent version of Chapter 70.02 RCW should be reviewed prior to obtaining the patient's authorization and releasing the records.

All school staff who need access to the health care information should be listed on the consent for release of information signed by the parents or the student, as required. Health care information may be exchanged with school health care providers, their assistants and with auditors without signed consent (70.02.050).

E. Valid Authorization to Disclose

A patient, if 18 years of age or older, may authorize a health care provider to disclose the patient's health care information. A health care provider must honor an authorized disclosure. To be valid, a disclosure authorization to a health care provider shall:

- Be in writing, dated, and signed by the patient, parent or guardian;
- Identify the nature of the information to be disclosed;
- Identify the name, address, and institutional affiliation of the person to whom the information is to be disclosed;
- Identify the provider who is to make the disclosure; and
- Identify the patient.

An authorization may not permit the release of health care information relating to future health care that the patient receives more than 90 days after the authorization was signed. Patients shall be advised of the period of validity of their authorization on the disclosure authorization form. If the authorization does not contain an expiration date, **it expires 90 days after it is signed**. A patient may revoke in writing a disclosure authorization to a health care provider at any time (Chapter 70.02.040). See Appendix C for sample authorization forms.

F. Disclosure Without Patient's Consent

The release of health care information by a health care provider to another health care provider on a need-to-know basis is permitted under certain circumstances set out in RCW 70.02.050. Health care providers can make oral disclosures to close family members unless the patient has provided written instructions not to make such disclosure. Disclosure may be made if the health care provider reasonably believes that disclosure will aid or minimize an imminent danger to the health or safety of the patient or any other individual. Disclosures to other health care providers without the patient's consent should be made with the utmost caution and with strict compliance with the conditions set out in RCW 70.02.050.

Health care providers cannot disclose health care information to non-health care providers (teachers, etc.) until parent permission is obtained unless someone's health and safety is at risk.

School staff (who are not health care providers) may receive written health care information if parent permission is obtained prior to exchanging that information. A general discussion of a student's situation could also take place with non-health care providers if identifiable patient information is not communicated.

School districts obtaining information from health care providers without the patient's consent must adopt rules establishing policies for records acquisition, retention, and security.

G. Denial of Access

A health care provider can deny the patient or parent access to health care information in those circumstances listed in RCW 70.02.090. Access may be denied if any of the following statements is true:

- Knowledge of the health care information would be injurious to the health of the patient;
- Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;
- Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;
- The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

- Access to the health care information is otherwise prohibited by law.

H. Limitations of Parent's Access

At 18 years of age, students have the legal right to make decisions in regard to their own bodies, including consent to surgical operations. See RCW 26.28.015. If a student is under 18 years of age, the patient and the parents can view the records. **However, when a minor is permitted to consent to health care without parental consent, then only the minor student may authorize disclosure.** Chapter 70.02.130 states in part:

“If the patient is a minor and is authorized to consent to health care without parental consent under federal and state law, only the minor may exercise the rights of a patient under this chapter as to information pertaining to health care to which the minor lawfully consented.”

In addition to a student's ability to consent to release of health care information based upon the type of care provided, a minor's ability to consent may be affected by his or her status as an “emancipated minor.” Under Chapter 13.64 RCW, minors 16 years of age or older are allowed to petition the court for a declaration of emancipation. An emancipated minor has the “right to give informed consent for receiving health care services” (RCW 13.64.060[1][h]).

Section IV, page 17 contains a summary of ages of consent to release particular records.

I. Corrections or Amendment to the Record

The patient or parents may request corrections or amendments to health care records. FERPA also contains procedures for correcting records.

J. Recording Disclosure Notices

A disclosure made under a patient's written authorization must conform to the authorization. Health care providers or facilities must chart all disclosures, except to third-party health care payors, of health care information. The disclosure notations become part of the health care information (RCW 70.02.020). FERPA requires school districts to maintain a record of requests and disclosures.

K. Informing the Student/Patient

The health care provider is required to inform the patient of the following:

NOTICE

“We keep a record of the health care services we provide you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at . . . ”

This notice must either be posted in a conspicuous place in the health care facility or be part of the consent-for-care form, if one is used.

Students must also be informed that their parents or guardians may request access to the information except in certain circumstances involving information on HIV, STD, mental health and drug and alcohol treatment, as well as information on family planning and abortion.

L. Interagency Exchange of Information

To exchange any confidential health care information regarding an individual student with agencies and individuals outside of the school district except as provided for in RCW 70.02.050, the school must have the written consent of the student, parent or guardian.

If the information relates to HIV or STD and the student is 14 years of age or older, then the student must sign the consent. If the information relates to outpatient mental health treatment, and/or counseling, treatment and rehabilitation for drug or alcohol abuse, students 13 years of age or older may consent to treatment and to release of information. Parents may apply to a treatment program for admission of a minor child without the child's consent, Section 47, Chapter 312, Laws of 1995 (ESSSB 5439). Parental consent is required for anyone under 18 years of age for residential chemical dependency treatment.

If the information relates to family planning or abortion, students of an age capable of giving informed consent for services must authorize the release of information. Schools must take care to release only the information designated on the authorization form. For example, a general release of health care information is not sufficient to allow release of HIV and drug treatment records. It is important to release a minimum of information. The requirements for release of student health care information must be followed for interagency exchanges of information, unless other law provides for an exception.

M. Redisdisclosure Prohibited

FERPA and confidentiality laws regarding health care information including HIV and drug and alcohol treatment, require a warning that redisclosure of the information is prohibited. Therefore, when health care information is released, such a warning should be incorporated into the records released.

The record released must contain a statement similar to the following statement:

“This information has been disclosed to you from records whose confidentiality is protected by state and/or federal law. State and/or federal law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is NOT sufficient for this purpose.”

N. Faxed Information

Faxing of health care information must comply with all requirements relating to confidentiality and disclosure. Procedures must assure the maintenance of confidentiality when transmitting or receiving a fax containing confidential health information. Faxing may not be appropriate when confidentiality requirements cannot be met. See Appendix K for sample fax cover sheet—confidentiality statement.

IV. RECORDS CONTAINING SPECIFIC HEALTH CARE INFORMATION

In addition to FERPA requirements, federal and state laws may impose additional requirements for handling specific health related information.

A. HIV/AIDS—Other Sexually Transmitted Diseases

RCW 70.24.105 forbids disclosure of the identity of anyone who has investigated, considered or requested testing or treatment for a sexually transmitted disease (STD), including HIV/AIDS, and forbids the release of HIV antibody or other STD test results without signed release of the patient (if 14 years of age or older) or legal representative unless required by law. This law also forbids re-releasing the confidential information to a second party without a signed consent and requires a statement to that

effect to accompany released information. The statute permits the exchange of medical information among health care providers in order to provide health services to the patient.

References: FERPA Regulations (Appendix A); RCW 70.24.105 (Appendix D).

B. Family Planning/Abortion

Every individual possesses in a fundamental right of privacy with respect to personal reproductive decisions (RCW 9.02.100). Every individual has the right to choose or refuse birth control and every woman has the right to choose or refuse to have an abortion (RCW 9.02.100). The authority to release information regarding decisions on birth control and abortion rests solely with the student, unless the student's health is in jeopardy. Family planning and abortion records are considered health records subject to the controls of Chapter 70.02 RCW. See sample consent form, Appendix C, for release of HIV, STD, family planning and abortion information.

References: FERPA Regulations (Appendix A); Chapter 70.02 RCW (Appendix B); RCW 9.02.100 (Appendix E); Memoranda by Assistant Attorney General Margaret M. Bichl dated September 21, 1992, and May 6, 1993 (Appendix E).

C. Drug and Alcohol Assessment and Treatment

Student assistance program records related to drug and alcohol assessment and treatment which are maintained within a school district are subject to FERPA requirements, as well as strict confidentiality requirements in federal alcohol and drug treatment law. Such records may also contain HIV, STD, family planning or abortion information about the student. Under state law, students 13 years of age or older may consent to drug and alcohol outpatient treatment and, therefore, must sign for release of such information. Parental consent for residential chemical dependency treatment is required for anyone under 18 years of age. Parents may apply to a treatment program for admission of a minor child without child's consent, Section 47, Chapter 312, Laws of 1995 (ESSSB 5439).

Federal regulations prohibit information about persons in alcohol or drug-related programs from being supplied to anyone unless: the student or parent consents; a court orders disclosure; disclosure is made to medical personnel in an emergency; or the information is used for research, program evaluation, or audit purposes. A copy of "Recommendations for Maintaining Confidentiality in Student Assistance Programs" is included in Appendix F.

References: FERPA Regulations (Appendix A); Chapter 70.02 RCW (Appendix B); 42 U.S.C. §290dd-3, addresses alcohol programs; 42 U.S.C. §290ee-3, addresses drug programs; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; RCW 70.96A.095.

D. Mental Health Treatment

Outpatient

If a student has reached his or her 13th birthday, outpatient mental health treatment may be requested and received without the consent of the student's parent. The student may authorize disclosure of admission and treatment records (RCW 71.34.200). Parental authorization is required for outpatient treatment of a minor under the age of 13.

Inpatient

In order to receive inpatient care, a minor 13 years of age or older may voluntarily commit himself or herself without parental consent when proper notice is provided to the parents by the facility. The statute sets out the parental notice requirements as well as the procedure when the parents object to the inpatient treatment (RCW 71.34.030[2][c]).

1995 legislation allows parents to admit a minor child without the minor's consent (ESSSB 5439 Sec. 52).

The provider of mental health services is not permitted to disclose confidential information, including the fact that the person is or has been a consumer, without informed consent. The requirements for release of information is contained in WAC 275-57-360 (see Appendix F).

References: FERPA Regulations (Appendix A); Chapter 70.02 RCW (Appendix B); Memorandum by Assistant Attorney General Margaret M. Bichl dated September 21, 1992 (Appendix E); Chapter 71.34 RCW, Mental Health Services for Minors; and WAC 275-57-360, Community Mental Health Programs (Appendix F).

E. Student Health Record

The student health record contains screening information on the student for scoliosis, vision and hearing, other district-required data such as height, weight, etc., and the immunization record. These records are afforded protection under FERPA Regulations. The record will also include emergency information and information on disabilities, chronic disease, health needs and a summary of how these were addressed by the school. This record should not contain information on HIV status, STD, family planning or abortion information. Student health records could include a notation of the date of any referrals to Child Protective Services (CPS) by the school.

The information in the student's health record may be shared among school health care provider staff with a need to know in order to protect the health and safety of the student and to plan for a safe environment conducive to learning. This information may be shared with teaching staff if disclosure is consistent with school district FERPA requirements. FERPA requires that the school policy designate who may have access to

the student's records. Parents should be informed of the conditions under which this information will be distributed among school staff at the time the parents provide health and emergency information to schools, and should be asked for their consent to the release of the information to identified staff.

Consent to release diagnosis, treatment or referral information on HIV status and STD may be signed by a student if 14 years of age or older. Family planning and abortion information may be released on the signature of a student of any age. Information on diagnosis and treatment of mental health conditions may be released on the signature of a student 13 years of age or older. None of this information should be included in student health records, or health room or medication logs. Release of this information must comply with the strict confidentiality laws specific to each of these kinds of information as discussed in other sections of these guidelines.

Record Retention Requirements

State law provides that any civil action for damages for injury against a nurse, psychologist, or other licensed health care professional must be commenced within three years of the act alleged to have caused the injury, or within one year of the time the patient has discovered the injury, whichever period expires later. In no event shall an action be commenced more than eight years after the injury-causing act. However, action may be brought after the eight-year period upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect. **Thus, health care records should be retained a minimum of eight years.** Whether health care records should be kept longer than eight years is a risk assessment decision. See Appendix I for Record Retention Schedule.

References: FERPA Regulations (Appendix A); Chapter 70.02 RCW (Appendix B); RCW 4.16.350, Action for Injuries; Record Retention Schedule (Appendix I).

F. Health Room Logs/Medication Administration Forms

Health room logs contain confidential health information and should be accessible only to staff providing care or supervision and to students and parents in accordance with state and federal law and regulations. Volunteers who monitor health rooms should be informed of the confidential nature of the information recorded. Medication administration forms may be part of these confidential records. The information may only be released on signed permission of the parent and the release applies only to that part of the log specific to that student.

References: FERPA Regulations (Appendix A); Chapter 70.02 RCW (Appendix B).

G. Special Education Health Records

To maintain the confidentiality required by federal and state law, access to health care information must be limited to those identified on a signed consent to release health information. Districts may choose to maintain health care information separate from other portions of a student's special education records unless access by individuals is in compliance with Chapter 70.02 RCW. Any health care records released on written authorization by a parent or adult special education student (defined as age 18 and above in WAC 392-171-310[2]) cannot be re-released to other individuals or school districts without additional written permission of the parent or adult student. Therefore, **health care information should not be incorporated into the student's special education record** since education records may be transferred between districts. Health care information transferred to other districts requires proper written authorization. Health care information from school district health care providers must be handled according to the requirements of Chapter 70.02 RCW—Medical Records.

Health care information obtained from health care providers with written parent or adult student authorization may only be accessed by school district staff listed on the authorization form. The authorization expires in 90 calendar days. Health care information used to support assessment purposes is to be referenced by date of record, location and source person (WAC 392-171-351[8]). The health care record is not to be incorporated into the special education record unless access is limited to those with signed consent to access health and education records.

Following completion of assessment activities and requirements and after meeting the conditions of WAC 392-171-351(8), the district should return the health care record to the health care provider (e.g., physician, audiologist, qualified vision specialist, mental health specialist). Should the district choose not to return the record, the record may be retained according to the applicable record retention schedule in secure storage accessible only to those staff identified on the authorization form, and not forwarded to other districts. If the record is given to the parent or the student (if he/she signed the authorization to release information), the "Health care provider" must be notified on the authorization form as this action would represent a re-release of medical information.

Any health care information contained in the assessments and reports of multi-disciplinary team (MDT) members should be shared or released only with proper written authorization. RCW 70.02.050(h) does permit disclosure of health care information without the patient's authorization to the extent a recipient needs to know the information if the disclosure is to a person who obtains information for purposes of an audit. The auditor must agree in writing to not disclose the information further and to remove or destroy at the earliest opportunity information that would enable the patient to be identified.

Disclosure without a patient's authorization to other current health care providers, including school health care providers, is permitted. Information may also be disclosed to those assisting the health care provider in the delivery of health care if the health care provider reasonably believes the person will not use or disclose the health care information for any other purpose and will protect the information from disclosure (RCW 70.02.050[b]).

Health care information from school district health care providers must be handled according to the confidentiality protections provided by the health care information law in Chapter 70.02 RCW.

Health care information may be shared with those school district staff who need to know, but only if they are health care providers. Proper consent needs to be obtained to disclose health care information to school district staff who are not health care providers. Secure monitor's/auditor's written agreement to no further disclosure of health care information (See RCW 70.02.050[1][h]).

Summary:

We recommend the following steps in a special education assessment process to assure the securing and proper handling of student health care information:

1. Secure parent consent for release of information. Use an authorization for requesting health care information from physicians, clinics, etc. and list MDT members and other school district staff who need to be involved in the assessment, e.g., transportation, teachers, principals. Sample form in Appendix C.
2. Develop two records for each student being assessed, unless access is limited to those with signed authorization.
 - A. Special education record—contains education information with access controlled by FERPA Regulations.
 - B. Health care record—contains "Health care provider" information with access further protected by Chapter 70.02 RCW. This record may also contain information used to support the special education assessment, but which is not incorporated into the file (WAC 392-171-351[8]).
3. Obtain parent consent to release education records per FERPA Regulations to other districts if required. Obtain parent consent to release health care information per Chapter 70.02 RCW.

4. Return medical record to provider or other option as described above.

References: FERPA Regulations (Appendix A); 34 CFR 300.560-.574, Confidentiality of Information; Chapter 70.02 RCW (Appendix B); Chapter 28A.155 RCW, Special Education; WAC 392-171-351(8).

H. Child Abuse Reporting

Child abuse reporting requirements are contained in RCW 26.44.020 through .040. Professional school personnel including teachers, administrators, nurses, child care facility personnel and counselors, have a duty to report suspected abuse or neglect. Persons in positions required by state law to report suspected child abuse or neglect may be limited to making an initial report and written confirmation, unless written consent is obtained or a court order is issued for education records or health care information.

Reports of child abuse and neglect are required to be maintained and disseminated with the "strictest regard for the privacy of the subjects of the reports and so as to safeguard against arbitrary, malicious or erroneous information or actions" (RCW 26.44.010). If requested, a written report must follow the immediate oral report. This record may or may not contain health care information. The contents of the written report are listed in RCW 26.44.040. Once the Department of Social and Health Services (DSHS) has received a report, that agency should have access to all relevant records in the possession of persons who are required to report (RCW 26.44.030[11]). Release of education records to a Child Protective Services (CPS) caseworker must comply with FERPA Regulations.

Information regarding a child who receives child protective services cannot be further disseminated or released unless authorized by state or federal statute (RCW 26.44.030[9]).

The date of a student's referral to CPS may be placed in the student's permanent record per district policy. See Assistant Attorney General (AAG) opinion dated March 29, 1988 (Appendix G). This information has additional protection from unauthorized release under state public disclosure law. "Information revealing the identity of child victims of sexual assault who are under age 18 is confidential and not subject to public disclosure" (RCW 42.17.31901). The child victim's name, address, location, and photograph cannot be released. If the child is a relative or stepchild of the alleged perpetrator, that relationship cannot be disclosed.

References: FERPA Regulations (Appendix A); DSHS statutes, RCW 26.44.020-.040, AAG opinion dated March 29, 1988 (Appendix G).

I. Food and Nutrition Records

Food and nutrition records contain confidential information which is not "Health care information" and therefore not covered by RCW 70.02. See Appendix J for discussion of the confidentiality requirements of this program.

J. Communicable Diseases

School officials and others are required to cooperate with public health personnel during the investigation of a case involving a communicable disease. The school district could release directory information, including students' addresses, because directory information under FERPA Regulations can be disclosed without consent. If a parent has refused to permit disclosure, FERPA Regulations allow disclosure without consent in connection with a health or safety emergency when the information is necessary to protect the health or safety of the student or other individuals. The school district must make a reasonable effort to notify the parent(s) in advance of release of information under the health or safety exception.

References: FERPA Regulations (Appendix A); WAC 246-100-046, Department of Health regulations; U.S. Department of Education letter, 1990 (Appendix H).

K. Summary—Ages of Consent to Release Particular Records

Following is a chart of the ages which minors may consent to counseling, care, treatment or rehabilitation:

<u>Health Care Information</u>	<u>Age of consent</u>
Human immunodeficiency virus (HIV)	14 years
Sexually transmitted diseases (STD)	14 years
Drug, alcohol abuse (outpatient)	13 years
Chemical dependency treatment (residential)	18 years
Mental health (outpatient)	13 years
Birth control	age at which individual is capable of giving informed consent
Abortion	age at which she is capable of giving informed consent

Records containing this information must have signed consent for release to non-health care providers as well as to health care providers, except as provided for in RCW 70.02.050.

V. EXCHANGE OF INFORMATION WITHIN A DISTRICT

The statute on health care information access and disclosure (Chapter 70.02 RCW) allows the disclosure of health care information to other health care providers and those assisting the health care provider in the delivery of health care under specific circumstances and without patient's consent (RCW

70.02.050). When a student has a health condition which affects the student's school and learning environment, school district staff other than the direct health care providers need to be apprised of a student's medical information in order to monitor the student's condition; design appropriate classroom, program or transportation adaptations; and, in general, provide a safe, therapeutic environment. In order to facilitate school district staff working with the student, the student's family, and with the school health care providers, a release should be signed by the parents, guardian or student (age appropriate) which identifies the school district staff (teachers, aides, bus drivers, etc.) who will be involved in planning a safe, therapeutic environment for the student. The staff are to be listed by name and job position on authorization to release medical information. The release should be signed on first contact with the patient/student in order to facilitate the involvement of all appropriate school district staff in the initial and ongoing planning for the student. (See Appendix C, Medical Authorization, for sample consent form.)

VI. EDUCATION AND TRAINING—PARENTS AND STAFF

FERPA has an annual notification requirement. The school district must inform parents of its education records policy. All school district clerical and administrative staff and health care providers should receive further inservice education on the requirements for the security and release of health care records, including what constitutes a valid consent to release that information. Inservice must also address the limits of personal access to HIV/AIDS and STD information for students 14 years of age or older, family planning and abortion information for students capable of giving informed consent, and drug and alcohol and mental health information for students 13 years of age or older.

Resources for answering questions or providing additional information are:

1. School district attorney—local.
2. Legal Services, Office of Superintendent of Public Instruction, (360) 753-2298, or TDD (360) 664-3631.
3. Health Services Program Supervisor, Office of Superintendent of Public Instruction, (360) 753-2744, or TDD (360) 664-3631.
4. Supervisor, Safe and Drug-free Schools, Office of Superintendent of Public Instruction, (360) 753-5595, or TDD (360) 664-3631.
5. Special Education, Office of Superintendent of Public Instruction, (360) 753-6733, or TDD (360) 586-0126.
6. Child Nutrition, Director, Office of Superintendent of Public Instruction, (360) 753-3580, or TDD (360) 664-3631.

APPENDIX A

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Subpart A—General

Sec.

- 99.1 To which educational agencies or institutions do these regulations apply?
- 99.2 What is the purpose of these regulations?
- 99.3 What definitions apply to these regulations?
- 99.4 What are the rights of parents?
- 99.5 What are the rights of eligible students?
- 99.6 What information must an educational agency's or institution's policy contain?
- 99.7 What must an educational agency or institution include in its annual notification?

Subpart B—What are the Rights of Inspection and Review of Education Records?

- 99.10 What rights exist for a parent or eligible student to inspect and review education records?
- 99.11 May an educational agency or institution charge a fee for copies of education records?
- 99.12 What limitations exist on the right to inspect and review records?

Subpart C—What are the Procedures for Amending Education Records?

- 99.20 How can a parent or eligible student request amendment of the student's education records?

§ 99.1

Sec.

- 99.21 Under what conditions does a parent or eligible student have the right to a hearing?
- 99.22 What minimum requirements exist for the conduct of a hearing?

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

- 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?
- 99.31 Under what conditions is prior consent not required to disclose information?

- 99.32 What recordkeeping requirements exist concerning requests and disclosures?

- 99.33 What limitations apply to the redisclosure of information?

- 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

- 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

- 99.36 What conditions apply to disclosure of information in health and safety emergencies?

- 99.37 What conditions apply to disclosing directory information?

Subpart E—What are the Enforcement Procedures?

- 99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?

- 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

- 99.62 What information must an educational agency or institution submit to the Office?

34 CFR Subtitle A (7-1-92 Edition)

Sec.

- 99.63 Where are complaints filed?
- 99.64 What is the complaint procedure?
- 99.65 What is the content of the notice of complaint issued by the Office?

- 99.66 What are the responsibilities of the Office in the enforcement process?

- 99.67 How does the Secretary enforce decisions?

AUTHORITY: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g).

SOURCE: 53 FR 11943, Apr. 11, 1988, unless otherwise noted.

Subpart A—General

- § 99.1 To which educational agencies or institutions do these regulations apply?

- (a) This part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education that:

- (1)(i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and

- (ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or

- (2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 438 of the General Education Provisions Act inapplicable.

(Authority: 20 U.S.C. 1230, 1232g, 3487, 3507)

- (b) The following chart lists the funded programs to which part 99 does not apply as of April 11, 1988:

Name of program	Authorizing statute	Implementing regulations
1. High School Equivalency Program and College Assistance Migrant Program.	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) 20 U.S.C. 1070d-2).	part 206.
2. Programs administered by the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research.	The Rehabilitation Act of 1973, as amended. (29 U.S.C. 700, <i>et seq.</i>)	parts 350-359, 361, 365, 366, 369-371, 373-375, 378, 379, 385-390, and 395.
3. Transition program for refugee children.	Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212 (8 U.S.C. 1522(d)).	part 538.

Office of the Secretary, Education

Name of program	Authorizing statute	Implementing regulations
4. College Housing.	Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749, <i>et seq.</i>)	part 614.
5. The following programs administered by the Assistant Secretary for Educational Research and Improvement: Educational Research Grant Program, Regional Educational Laboratories Research and Development Centers. All other research or statistical activities funded under Section 405 or 406 of the General Education Provisions Act.	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e), and section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	parts 700, 706-708.

Note: The Secretary, as appropriate, updates the information in this chart and informs the public.

- (c) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

- (d) The Secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section—

- (1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

- (2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

- (e) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

§ 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

(NOTE: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.)

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

Act means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 438 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

Attendance includes, but is not limited to:

- (a) Attendance in person or by correspondence; and
- (b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

Directory information means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports,

weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

Disclosure means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

Educational agency or institution means any public or private agency or institution to which this part applies under § 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

Education records (a) The term means those records that are:

- (1) Directly related to a student; and
- (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

- (1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
- (2) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are:

- (i) Maintained separately from education records;
 - (ii) Maintained solely for law enforcement purposes; and
 - (iii) Disclosed only to law enforcement officials of the same jurisdiction;
- (3)(i) Records relating to an individual who is employed by an educational agency or institution, that:
- (A) Are made and maintained in the normal course of business;
 - (B) Relate exclusively to the individual in that individual's capacity as an employee; and
 - (C) Are not available for use for any other purpose.

- (ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.
- (4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

- (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
- (ii) Made, maintained, or used only in connection with treatment of the student; and
- (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

- (5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

Eligible student means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

Institution of postsecondary education means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

Party means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

Office of the Secretary, Education

Personally identifiable information includes, but is not limited to:

- (a) The student's name;
- (b) The name of the student's parent or other family member;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number or student number;
- (e) A list of personal characteristics that would make the student's identity easily traceable; or
- (f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

Record means any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

Secretary means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

Student, except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

§ 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

§ 99.5 What are the rights of eligible students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under

this part transfer from the parents to the student.

- (b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.
- (c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

§ 99.6 What information must an educational agency's or institution's policy contain?

(a) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of the Act and of this part. The policy must include:

- (1) How the agency or institution informs parents and students of their rights, in accord with § 99.7;
- (2) How a parent or eligible student may inspect and review education records under § 99.10, including at least:

- (i) The procedure the parent or eligible student must follow to inspect and review the records;
- (ii) With an understanding that it may not deny access to education records in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records;

- (iii) A schedule of fees (if any) to be charged for copies; and
- (iv) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(3) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in § 99.31;

(4) A statement indicating whether the educational agency or institution

§ 99.7

has a policy of disclosing personally identifiable information under § 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest;

(5) A statement that a record of disclosures will be maintained as required by § 99.32, and that a parent or eligible student may inspect and review that record;

(6) A specification of the types of personally identifiable information the agency or institution has designated as directory information under § 99.37; and

(7) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under § 99.20, to obtain a hearing under § 99.21(a), and to add a statement to the record under § 99.21(b)(2).

(b) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g(e) and (f))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]

§ 99.7 What must an educational agency or institution include in its annual notification?

(a) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under the Act and this part. The notice must include a statement that the parent or eligible student has a right to:

(1) Inspect and review the student's education records;

(2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and

34 CFR Subtitle A (7-1-92 Edition)

the regulations in this part authorize disclosure without consent;

(4) File with the U.S. Department of Education a complaint under § 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the act and this part; and

(5) Obtain a copy of the policy adopted under § 99.6.

(b) The notice provided under paragraph (a) of this section must also indicate the places where copies of the policy adopted under § 99.6 are located.

(c) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights.

(d) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g(e))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]

Subpart B—What are the Rights of Inspection and Review of Education Records?

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under § 99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student.

(b) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

(c) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records.

(d) The educational agency or institution shall give the parent or eligible student a copy of the records if failure to do so would effectively prevent the

Office of the Secretary, Education

parent or student from exercising the right to inspect and review the records.

(e) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in § 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1)(A))

§ 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

§ 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are:

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for

§ 99.20

the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if:

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's:

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if:

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall:

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1) (A) and (B))

Subpart C—What are the Procedures for Amending Education Records?

§ 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy

or o'her rights, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]

§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall:

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall:

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

§ 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by § 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under § 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of § 99.35, to authorized representatives of:

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, *financial aid* means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities, if a State statute adopted before November 19, 1974, specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

§ 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?

(a) Except as provided in § 99.31, an educational agency or institution shall obtain a signed and dated written consent of a parent or an eligible student before it discloses personally identifiable information from the student's education records.

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section:

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education

§ 99.32

by individuals other than representatives of the organization; and
(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term *organization* includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in § 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in § 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(b) This section does not forbid or require an educational agency or institution to disclose personally identifiable information from the education records of a student to any parties under paragraphs (a) (1) through (11) of this section.

(Authority: 20 U.S.C. 1232g (a)(5)(A), (b)(1) and (b)(2)(B))
[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable in-

34 CFR Subtitle A (7-1-92 Edition)

formation from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under § 99.33(b), the record of the disclosure required under this section must include:

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under § 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in § 99.31(a) (1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:

(1) The parent or eligible student;

(2) A school official under § 99.31(a)(1);

(3) A party with written consent from the parent or eligible student; or

(4) A party seeking directory information.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

(Approved by the Office of Management and Budget under control number 1880-0508)

Office of the Secretary, Education

§ 99.33 What limitations apply to the disclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(1) The disclosures meet the requirements of § 99.31; and

(2) The educational agency or institution has complied with the requirements of § 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures of directory information under § 99.31(a)(11) or to disclosures to a parent or student under § 99.31(a)(12).

(d) Except for disclosures under § 99.31(a) (11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

§ 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The policy of the agency or institution under § 99.6 includes a notice that the agency or institution for-

§ 99.35

wards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must:

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

§ 99.36

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

- (a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- (b) Paragraph (a) of this section shall be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(1)(D))
[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]

§ 99.37 What conditions apply to disclosing directory information?

- (a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))

Subpart E—What are the Enforcement Procedures?

§ 99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?

- (a) For the purposes of this subpart, *Office* means the *Family Policy and*

34 CFR Subtitle A (7-1-92 Edition)

Regulations Office, U.S. Department of Education.

(b) The Secretary designates the Office to:

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Education Appeal Board to act as the Review Board required under the Act.

(Authority: 20 U.S.C. 1232g (f) and (g), 1234)

§ 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

§ 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g (f) and (g))

§ 99.63 Where are complaints filed?

A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy and Regulations Office, U.S. Department of Education, Washington, DC 20202.

(Authority: 20 U.S.C. 1232g(g))

§ 99.64 What is the complaint procedure?

(a) A complaint filed under § 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether

Office of the Secretary, Education

er the educational agency or institution has failed to comply with the provisions of the Act or this part.

(Authority: 20 U.S.C. 1232g(f))

§ 99.65 What is the content of the notice of complaint issued by the Office?

(a) If the Office receives a complaint, it notifies the complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(b) The notice to the agency or institution under paragraph (a) of this section:

(1) Includes the substance of the alleged violation; and

(2) Informs the agency or institution that the Office will investigate the complaint and that the educational agency or institution may submit a written response to the complaint.

(Authority: 20 U.S.C. 1232g(g))

§ 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section:

§ 99.67

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

§ 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under § 99.66(c), the Secretary may take an action authorized under 34 CFR part 78, including:

(1) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(2) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94(b) or 298.45(b), depending upon the applicable program under which the notice is issued; or

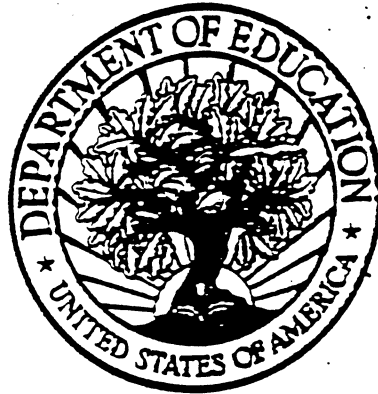
(3) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued.

(b) If, after an investigation under § 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR part 78 contains the regulations of the Education Appeal Board.)

(Authority: 20 U.S.C. 1232g(g))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]



STUDENT RECORDS POLICIES AND PROCEDURES FOR ALPHA SCHOOL DISTRICT

A model for school districts to use in meeting the requirements of
Section 99.6 of the regulations implementing the
Family Educational Rights and Privacy Act of 1974

Revised: April 1995

DEFINITIONS

(Optional)

For the purposes of this policy, the Alpha School District has used the following definitions of terms.

Student - any person who attends or has attended a school in the Alpha School District.

Eligible student - a student or former student who has reached age 18 or is attending a postsecondary school.

Parent - either natural parent of a student, a guardian, or an individual acting as a parent or guardian in the absence of the student's parent or guardian.

Education records - any record (in handwriting, print, tapes, film, computer, or other medium) maintained by the Alpha School District or an agent of the District which contains information directly related to a student, except:

1. A personal record kept by a staff member if it is kept in the sole possession of the maker of the record and is not accessible or revealed to any other person except a temporary substitute for the maker of the record.
2. Records created and maintained by the Alpha School District Law Enforcement Unit for law enforcement purposes.
3. An employment record which relates exclusively to an individual in his or her capacity as an employee of Alpha School District and which is not available for any other use.
4. Alumni records which contain information about a student after he or she is no longer in attendance at the District and which do not relate to the person as a student.

METHOD OF ANNUAL NOTIFICATION

(Required)

(NOTE: A school district is required by § 99.7 of the FERPA regulations to provide parents annual notification of their FERPA rights. If parents have a primary or home language other than English, the district must effectively notify them. Its student records policy must specify the method it will use to inform parents. The following are sample methods for inclusion in the district's policy:)

- o Parents will be notified of their FERPA rights annually by publication in their child's student handbook;

or

- o Parents will be notified of their FERPA rights at the beginning of each new school year by mail.

PROCEDURE TO INSPECT EDUCATION RECORDS

(Required. Method optional.)

Parents of students or eligible students may inspect and review the student's education records upon request.

Parents or eligible students should submit to the student's school principal a written request which identifies as precisely as possible the record or records he or she wishes to inspect.

The principal (or appropriate school official) will make the needed arrangements for access as promptly as possible and notify the parent or eligible student of the time and place where the records may be inspected. Access must be given in 45 days or less from the date of receipt of the request.

When a record contains information about students other than a parent's child or the eligible student, the parent or eligible student may not inspect and review the portion of the record which pertains to other students.

REFUSAL TO PROVIDE COPIES

(NOTE: If a school district has a policy of denying parents or eligible students copies of the students' education records, the circumstances in which copies will be denied must be specified in the district's student records policy. While a school district cannot deny parents access to their children's education records, it may deny copies in circumstances specified in the policy. The following are examples of situations in which a school district may decide it will not provide a copy of an education record.)

The Alpha School District reserves the right to deny a parent or eligible student a copy of the student's education records in the following circumstances, unless failure to provide a copy would effectively prevent the parent or eligible student the right to inspect and review the records:

1. The parent or student has an unpaid financial obligation to Alpha School District.
2. The education record requested is an exam or set of standardized test questions. (An exam or standardized test which is not directly related to a student is not an education record subject to FERPA's access provisions.)
3. The parent or eligible student lives within commuting distance of Alpha School District.

FEEES FOR COPIES OF RECORDS

(Required. Actual fee is optional.)

The fee for copies will be _____ per page. (NOTE: A school district may not charge for search and retrieval of the records; however, it may charge for copying time and postage.)

TYPES, LOCATIONS, AND CUSTODIANS OF EDUCATION RECORDS

(Listing required. Types, Locations, and Custodians are examples.)

The following is a list of the types of records that the District maintains, their locations, and their custodians.

Types	Location	Custodian
Cumulative School Records <i>(Current students)</i>	School Principal's Office	School Principal
Cumulative School Records <i>(Former students)</i>	Office of School Archives	Chief Archivist Alpha Public School Library
Health Records	Health Supervisor's Office	Director of Health Services Alpha School District Administration
Speech Therapy Records Psychological Records	Office of Special Education	Chief Speech Pathology/Chief School Psychologist Alpha School District Administration
School Transportation Records	School Bus Garage	Director of Pupil Transportation
Special Test Records	Office of Pupil Personnel Services	Director of School Counseling Alpha School District Administration
Occasional Records <i>(Student education records not identified above; such as those in superintendent's office, in the school attorney's office, or in the possession of teachers.)</i>	Principal will collect and make available at student's school	School Principal

DISCLOSURE OF EDUCATION RECORDS

(Required)

The Alpha School District will disclose information from a student's education records only with the written consent of the parent or eligible student, except that the District may disclose without consent when the disclosure is:

1. To school officials who have a legitimate educational interest in the records. (NOTE: A school district is required to specify the criteria for determining who are school officials and criteria for determining what constitutes legitimate educational interests. The following are examples:)

A school official is:

- o A person employed by the District as an administrator, supervisor, instructor, or support staff member, including health or medical staff.
- o A person elected to the School Board.
- o A person employed by or under contract to the District to perform a special task, such as an attorney, auditor, medical consultant, or therapist.
- o A person who is employed by the Alpha School District Law Enforcement Unit.
- o A student serving on an official committee, such as a disciplinary or grievance committee, or who is assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official is:

- o Performing a task that is specified in his or her position description or by a contract agreement.
 - o Performing a task related to a student's education.
 - o Performing a task related to the discipline of a student.
 - o Providing a service or benefit relating to the student or student's family, such as health care, counseling, job placement, or financial aid.
 - o Maintaining the safety and security of the campus.
2. To officials of another school, upon request, in which a student seeks or intends to enroll. (NOTE: FERPA requires a district to make a reasonable attempt to notify the parent or eligible student of the records request unless it states in its policy that it intends to forward records on request.)

3. To certain officials of the U.S. Department of Education, the Comptroller General, and State and local educational authorities, in connection with audit or evaluation of certain State or federally supported education programs.
4. In connection with a student's request for or receipt of financial aid to determine the eligibility, amount, or conditions of the financial aid, or to enforce the terms and conditions of the aid.
5. To State and local officials or authorities if specifically required by a State law that was adopted before November 19, 1974.
6. To organizations conducting certain studies for or on behalf of the District.
7. To accrediting organizations to carry out their functions.
8. To parents of an eligible student if the student is a dependent for income tax purposes.
9. To comply with a judicial order or a lawfully issued subpoena.
10. To appropriate parties in a health or safety emergency.
11. To individuals requesting directory information so designated by the District.

RECORD OF REQUESTS FOR DISCLOSURE (Required)

The Alpha School District will maintain a record of all requests for and/or disclosures of information from a student's education records. The record will indicate the name of the party making the request, any additional party to whom the information may be redisclosed, and the legitimate interest the party had in requesting or obtaining the information. The record may be reviewed by the parents or eligible student.

DIRECTORY INFORMATION

(NOTE: Disclosure of Directory Information is optional. If the option is exercised, a school district is required to list the items it has designated as Directory Information.)

The Alpha School District designates the following items as Directory Information: student name, parent's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, most recent previous school attended and photograph. The District may disclose any of those items without prior written consent, unless notified in writing to the contrary by (date).

CORRECTION OF EDUCATION RECORDS (Required)

(NOTE: A school district must include in its policy a procedure for the correction of records.)

Parents or eligible students have the right to ask to have records corrected that they believe are inaccurate, misleading, or in violation of their privacy rights. Following are the procedures for the correction of records:

1. Parents or the eligible student must ask Alpha School District to amend a record. In so doing, they should identify the part of the record they want changed and specify why they believe it is inaccurate, misleading or in violation of the student's privacy rights.
2. Alpha School District may comply with the request or it may decide not to comply. If it decides not to comply, the District will notify the parents or eligible student of the decision and advise them of their right to a hearing to challenge the information believed to be inaccurate, misleading, or in violation of the student's privacy rights.
3. Upon request, Alpha School District will arrange for a hearing, and notify the parents or eligible student, reasonably in advance, of the date, place, and time of the hearing.
4. The hearing will be conducted by a hearing officer who is a disinterested party; however, the hearing officer may be an official of the District. The parents or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The parents or student may be assisted by one or more individuals, including an attorney.
5. Alpha School District will prepare a written decision based solely on the evidence presented at the hearing. The decision will include a summary of the evidence presented and the reasons for the decision.
6. If Alpha School District decides that the information is inaccurate, misleading, or in violation of the student's right of privacy, it will amend the record and notify the parents or eligible student, in writing, that the record has been amended.
7. If Alpha School District decides that the challenged information is not inaccurate, misleading, or in violation of the student's right of privacy, it will notify the parents or eligible student that they have a right to place in the record a statement commenting on the challenged information and/or a statement setting forth reasons for disagreeing with the decision.
8. The statement will be maintained as part of the student's education records as long as the contested portion is maintained. If Alpha School District discloses the contested portion of the record, it must also disclose the statement.

APPENDIX B

Chapter 70.02 RCW

MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

Sections

70.02.005	Findings.
70.02.010	Definitions.
70.02.020	Disclosure by health care provider.
70.02.030	Patient authorization of disclosure.
70.02.040	Patient's revocation of authorization for disclosure.
70.02.050	Disclosure without patient's authorization.
70.02.060	Discovery request or compulsory process.
70.02.070	Certification of record.
70.02.080	Patient's examination and copying—Requirements.
70.02.090	Patient's request—Denial of examination and copying.
70.02.100	Correction or amendment of record.
70.02.110	Correction or amendment or statement of disagreement— Procedure.
70.02.120	Notice of information practices—Display conspicuously.
70.02.130	Consent by others; health care representatives.
70.02.140	Representative of deceased patient.
70.02.150	Security safeguards.
70.02.160	Retention of record.
70.02.170	Civil remedies.
70.02.900	Conflicting laws.
70.02.901	Application and construction—1991 c 335.
70.02.902	Short title.
70.02.903	Severability—1991 c 335.
70.02.904	Captions not law—1991 c 335.

Record retention by hospitals: RCW 70.41.190.

RCW 70.02.005 Findings. The legislature finds that:

(1) Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests.

(2) Patients need access to their own health care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

(3) In order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information.

(4) Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

(5) The movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information. [1991 c 335 § 101.]

RCW 70.02.010 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

(a) Statutory, regulatory, fiscal, medical, or scientific standards;

(b) A private or public program of payments to a health care provider; or

(c) Requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, residence, sex, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(8) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(12) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

(13) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan; or a state or federal health benefit program. [1993 c 448 § 1; 1991 c 335 § 102.]

Effective date—1993 c 448: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 448 § 9.]

RCW 70.02.020 Disclosure by health care provider.

Except as authorized in RCW 70.02.050, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

Health care providers or facilities shall chart all disclosures, except to third-party payors, of health care information, such as chartings to become part of the health care information. [1993 c 448 § 2; 1991 c 335 § 201.]

Effective date—1993 c 448: See note following RCW 70.02.010.

RCW 70.02.030 Patient authorization of disclosure.

(1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under RCW 70.02.090.

(2) A health care provider may charge a reasonable fee for providing the health care information and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider shall:

- (a) Be in writing, dated, and signed by the patient;
- (b) Identify the nature of the information to be disclosed;
- (c) Identify the name, address, and institutional affiliation of the person to whom the information is to be disclosed;
- (d) Except for third-party payors, identify the provider who is to make the disclosure; and
- (e) Identify the patient.

(4) Except as provided by this chapter, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

(5) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made. This requirement shall not apply to disclosures to third-party payors.

(6) Except for authorizations given pursuant to an agreement with a treatment or monitoring program or disciplinary authority under chapter 18.71 or 18.130 RCW or to provide information to third-party payors, an authorization may not permit the release of health care information relating to future health care that the patient receives more than ninety days after the authorization was signed. Patients shall be advised of the period of validity of their authorization on the disclosure authorization form. If the authorization does not contain an expiration date, it expires ninety days after it is signed. [1994 1st sp.s. c 9 § 741; 1993 c 448 § 3; 1991 c 335 § 202.]

Severability—Headings and captions not law—Effective date—1994 1st sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1993 c 448: See note following RCW 70.02.010.

RCW 70.02.040 Patient's revocation of authorization for disclosure. A patient may revoke in writing a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no actual notice of the revocation of the authorization. [1991 c 335 § 203.]

RCW 70.02.050 Disclosure without patient's authorization. (1) A health care provider may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and the health care provider reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider in writing not to make the disclosure;

(d) To any person if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other

individual, however there is no obligation under this chapter on the part of the provider to so disclose;

(e) Oral, and made to immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider in writing not to make the disclosure;

(f) To a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider not to make the disclosure;

(k) In the case of a hospital or health care provider to provide, in cases reported by fire, police, sheriff, or other public authority, name, residence, sex, age, occupation, condition, diagnosis, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter. [1993 c 448 § 4; 1991 c 335 § 204.]

Effective date—1993 c 448: See note following RCW 70.02.010.

RCW 70.02.060 Discovery request or compulsory process. (1) Before service of a discovery request or compulsory process on a health care provider for health care information, an attorney shall provide advance notice to the health care provider and the patient or the patient's attorney involved through service of process or first class mail, indicating the health care provider from whom the information is sought, what health care information is sought, and the date by which a protective order must be obtained to prevent the health care provider from complying. Such date shall give the patient and the health care provider adequate time to seek a protective order, but in no event be less than fourteen days since the date of service or delivery to the patient and the health care provider of the foregoing. Thereafter the request for discovery or compulsory process shall be served on the health care provider.

(2) Without the written consent of the patient, the health care provider may not disclose the health care information sought under subsection (1) of this section if the requestor has not complied with the requirements of subsection (1) of this section. In the absence of a protective order issued by a court of competent jurisdiction forbidding compliance, the health care provider shall disclose the information in accordance with this chapter. In the case of compliance, the request for discovery or compulsory process shall be made a part of the patient record.

(3) Production of health care information under this section, in and of itself, does not constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure. [1991 c 335 § 205.]

RCW 70.02.070 Certification of record. Upon the request of the person requesting the record, the health care provider or facility shall certify the record furnished and may charge for such certification in accordance with RCW 36.18.020(9). No record need be certified until the fee is paid. The certification shall be affixed to the record and disclose:

- (1) The identity of the patient;
- (2) The kind of health care information involved;
- (3) The identity of the person to whom the information is being furnished;
- (4) The identity of the health care provider or facility furnishing the information;
- (5) The number of pages of the health care information;
- (6) The date on which the health care information is furnished; and
- (7) That the certification is to fulfill and meet the requirements of this section. [1991 c 335 § 206.]

RCW 70.02.080 Patient's examination and copying—Requirements. (1) Upon receipt of a written request

from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances, but no later than fifteen working days after receiving the request shall:

(a) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient;

(b) Inform the patient if the information does not exist or cannot be found;

(c) If the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) If the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than twenty-one working days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) Deny the request, in whole or in part, under RCW 70.02.090 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the health care information available in the requested form. The health care provider may charge a reasonable fee for providing the health care information and is not required to permit examination or copying until the fee is paid. [1993 c 448 § 5; 1991 c 335 § 301.]

Effective date—1993 c 448: See note following RCW 70.02.010.

RCW 70.02.090 Patient's request—Denial of examination and copying. (1) Subject to any conflicting requirement in the public disclosure act, chapter 42.17 RCW, a health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) Knowledge of the health care information would be injurious to the health of the patient;

(b) Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) Access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) of this section from information for which access cannot be

denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1) (a) or (c) of this section, the provider shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, registered, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection. The patient shall be responsible for arranging for compensation of the other health care provider so selected. [1991 c 335 § 302.]

RCW 70.02.100 Correction or amendment of record. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which a patient has access under RCW 70.02.080.

(2) As promptly as required under the circumstances, but no later than ten days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) Make the requested correction or amendment and inform the patient of the action;

(b) Inform the patient if the record no longer exists or cannot be found;

(c) If the health care provider does not maintain the record, inform the patient and provide the patient with the name and address, if known, of the person who maintains the record;

(d) If the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing, the earliest date, not later than twenty-one days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) Inform the patient in writing of the provider's refusal to correct or amend the record as requested and the patient's right to add a statement of disagreement. [1991 c 335 § 401.]

RCW 70.02.110 Correction or amendment or statement of disagreement—Procedure. (1) In making a correction or amendment, the health care provider shall:

(a) Add the amending information as a part of the health record; and

(b) Mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) Permit the patient to file as a part of the record of the patient's health care information a concise statement of

the correction or amendment requested and the reasons therefor; and

(b) Mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances. [1991 c 335 § 402.]

RCW 70.02.120 Notice of information practices—Display conspicuously. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a "notice of information practices" that contains substantially the following:

NOTICE

"We keep a record of the health care services we provide you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at"

(2) The health care provider shall place a copy of the notice of information practices in a conspicuous place in the health care facility, on a consent form or with a billing or other notice provided to the patient. [1991 c 335 § 501.]

RCW 70.02.130 Consent by others; health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this chapter to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized to consent to health care without parental consent under federal and state law, only the minor may exercise the rights of a patient under this chapter as to information pertaining to health care to which the minor lawfully consented. In cases where parental consent is required, a health care provider may rely, without incurring any civil or criminal liability for such reliance, on the representation of a parent that he or she is authorized to consent to health care for the minor patient regardless of whether:

(a) The parents are married, unmarried, or separated at the time of the representation;

(b) The consenting parent is, or is not, a custodial parent of the minor;

(c) The giving of consent by a parent is, or is not, full performance of any agreement between the parents, or of any order or decree in any action entered pursuant to chapter 26.09 RCW.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient. [1991 c 335 § 601.]

RCW 70.02.140 Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this chapter. If there is no personal representative, or upon discharge of the personal representative, a deceased patient's rights under this chapter may be exercised by persons who would have been

(1994)

authorized to make health care decisions for the deceased patient when the patient was living under RCW 7.70.065. [1991 c 335 § 602.]

RCW 70.02.150 Security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains. [1991 c 335 § 701.]

RCW 70.02.160 Retention of record. A health care provider shall maintain a record of existing health care information for at least one year following receipt of an authorization to disclose that health care information under RCW 70.02.040, and during the pendency of a request for examination and copying under RCW 70.02.080 or a request for correction or amendment under RCW 70.02.100. [1991 c 335 § 702.]

RCW 70.02.170 Civil remedies. (1) A person who has complied with this chapter may maintain an action for the relief provided in this section against a health care provider or facility who has not complied with this chapter.

(2) The court may order the health care provider or other person to comply with this chapter. Such relief may include actual damages, but shall not include consequential or incidental damages. The court shall award reasonable attorneys' fees and all other expenses reasonably incurred to the prevailing party.

(3) Any action under this chapter is barred unless the action is commenced within two years after the cause of action is discovered.

(4) A violation of this chapter shall not be deemed a violation of the consumer protection act, chapter 19.86 RCW. [1991 c 335 § 801.]

RCW 70.02.900 Conflicting laws. (1) This chapter does not restrict a health care provider from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, 70.39, 70.96A, 71.05, and 71.34 RCW and rules adopted under these provisions. [1991 c 335 § 901.]

RCW 70.02.901 Application and construction—1991 c 335. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [1991 c 335 § 903.]

RCW 70.02.902 Short title. This act may be cited as the uniform health care information act. [1991 c 335 § 904.]

RCW 70.02.903 Severability—1991 c 335. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 335 § 905.]

RCW 70.02.904 Captions not law—1991 c 335. As used in this act, captions constitute no part of the law. [1991 c 335 § 906.]

APPENDIX C

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

SAMPLE

To Parents/Clients: We can help you better if we are able to work with health care providers and agencies that know you and your family. By signing this form, you are giving permission for these individuals, clinics or organizations to share information about your situation.

I authorize release of the medical records indicated below of:

Name	Birth date
------	------------

Person or Agency Making Disclosure:

Name	Institution, Agency
------	---------------------

Name	Institution, Agency
------	---------------------

Name	Institution, Agency
------	---------------------

Nature of information to be disclosed: _____

Records to be released to: (1) Multidisciplinary Team Members *
Name

School District	Address
-----------------	---------

(2) _____
Name Job Title

(3) _____
Name Job Title

* MDT staff names and job titles are on the attached roster.

SAMPLE

The agencies and individuals listed above may exchange information about my situation. ☐ Yes ☐ No

This permission expires 90 days after the date it is signed. This permission expires on _____

Month - Day - Year

I can cancel this at any time, but I understand that the cancellation will not affect any information that was already released before the cancellation.

I understand that this information is confidential, is protected by state and federal law and requires my consent before disclosure. I voluntarily approve the release of this information. I understand what this agreement means.

I understand that my express consent is required to release any health care information relating to testing, diagnosis, and/or treatment for HIV/AIDS, sexually transmitted diseases, psychiatric disorder/mental health, or drug and/or alcohol use. This authorization covers information about my child's/my status as a patient and includes records of: (Initial any that apply.)

_____ HIV/AIDS status, diagnosis, treatment	(14 years of age—student's consent)
_____ family planning/abortion	(no age limit—student's consent)
_____ alcohol/drug treatment	(13 years of age—student's consent)
_____ mental health services	(13 years of age—student's consent)

Other, as listed: _____

Signature of patient or patient's authorized representative

Date

Relationship or status if signed by anyone other than patient.

☐ Student ☐ Guardian
☐ Parent ☐ Legal Custodian

Signature

Date

Staff Name

Staff Signature

Date

To those receiving information under this authorization: This information disclosed to you is protected by state and federal law. You are not authorized to release it to any agency or person not listed on this form without specific written consent of the person to whom it pertains. A general authorization for release of medical or other information is not sufficient. See Chapter 70.02 RCW.

This is a true copy of the original authorization document.

School Staff Person

Date

School District Address

APPENDIX D

RCW 70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information. (1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this chapter.

(2) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is positive be disclosed. This protection against disclosure of test subject, diagnosis, or treatment also applies to any information relating to diagnosis of or treatment for HIV infection and for any other confirmed sexually transmitted disease. The following persons, however, may receive such information:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(b) Any person who secures a specific release of test results or information relating to HIV or confirmed diagnosis of or treatment for any other sexually transmitted disease executed by the subject or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(c) The state public health officer, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(d) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(e) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, provided that such record was obtained by means of court ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(f) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure shall: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services, including but not limited to the written statement set forth in subsection (5) of this section;

(g) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(h) A law enforcement officer, fire fighter, health care provider, health care facility staff person, or other persons as defined by the board in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(i) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection shall be confidential and shall not be released or available to persons who are not involved in handling or determining medical claims payment; and

(j) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency; this information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender, except as provided in subsection (2)(e) of this section, shall be governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender shall be made available by department of corrections health care providers to a department of corrections superintendent or administrator as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of correction's jurisdiction.

(b) The sexually transmitted disease status of a person detained in a jail shall be made available by the local public health officer to a jail administrator as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities.

(c) Information regarding a department of corrections offender's sexually transmitted disease status is confidential and may be disclosed by a correctional superintendent or

administrator or local jail administrator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to any other penalties as may be prescribed by law.

(5) Whenever disclosure is made pursuant to this section, except for subsections (2)(a) and (6) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(6) The requirements of this section shall not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor shall they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(7) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing. [1994 c 72 § 1; 1989 c 123 § 1; 1988 c 206 § 904.]

RCW 70.24.110 Minors—Treatment, consent, liability for payment for care. A minor fourteen years of age or older who may have come in contact with any sexually transmitted disease or suspected sexually transmitted disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section. [1988 c 206 § 912; 1969 ex.s. c 164 § 1.]

APPENDIX E

Chapter 9.02 RCW

ABORTION

Sections

9.02.005	Transfer of duties to the department of health.
9.02.050	Concealing birth.
9.02.100	Reproductive privacy—Public policy.
9.02.110	Right to have and provide.
9.02.120	Unauthorized abortions—Penalty.
9.02.130	Defenses to prosecution.
9.02.140	State regulation.
9.02.150	Refusing to perform.
9.02.160	State-provided benefits.
9.02.170	Definitions.
9.02.900	Construction—1992 c 1 (Initiative Measure No. 120).
9.02.901	Severability—1992 c 1 (Initiative Measure No. 120).
9.02.902	Short title—1992 c 1 (Initiative Measure No. 120).

Advertising or selling means of abortion: RCW 9.68.030.

Health care facilities, interference with: Chapter 9A.50 RCW.

Right to medical treatment of infant born alive in the course of an abortion procedure: RCW 18.71.240.

RCW 9.02.005 Transfer of duties to the department of health. The powers and duties of the state board of health under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 202; 1985 c 213 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

RCW 9.02.050 Concealing birth. Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a gross misdemeanor. [1909 c 249 § 200; RRS § 2452.]

RCW 9.02.100 Reproductive privacy—Public policy. The sovereign people hereby declare that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions.

Accordingly, it is the public policy of the state of Washington that:

(1) Every individual has the fundamental right to choose or refuse birth control;

(2) Every woman has the fundamental right to choose or refuse to have an abortion, except as specifically limited by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902;

(3) Except as specifically permitted by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902, the state shall not deny or interfere with a woman's fundamental right to choose or refuse to have an abortion; and

(4) The state shall not discriminate against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information. [1992 c 1 § 1 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 9.02.110 Right to have and provide. The state may not deny or interfere with a woman's right to choose to have an abortion prior to viability of the fetus, or to protect her life or health.

A physician may terminate and a health care provider may assist a physician in terminating a pregnancy as permitted by this section. [1992 c 1 § 2 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 9.02.120 Unauthorized abortions—Penalty. Unless authorized by RCW 9.02.110, any person who performs an abortion on another person shall be guilty of a class C felony punishable under chapter 9A.20 RCW. [1992 c 1 § 3 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 9.02.130 Defenses to prosecution. The good faith judgment of a physician as to viability of the fetus or as to the risk to life or health of a woman and the good faith judgment of a health care provider as to the duration of pregnancy shall be a defense in any proceeding in which a violation of this chapter is an issue. [1992 c 1 § 4 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 9.02.140 State regulation. Any regulation promulgated by the state relating to abortion shall be valid only if:

(1) The regulation is medically necessary to protect the life or health of the woman terminating her pregnancy,

(2) The regulation is consistent with established medical practice, and

(3) Of the available alternatives, the regulation imposes the least restrictions on the woman's right to have an abortion as defined by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902. [1992 c 1 § 5 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 9.02.150 Refusing to perform. No person or private medical facility may be required by law or contract in any circumstances to participate in the performance of an abortion if such person or private medical facility objects to so doing. No person may be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the termination of a pregnancy. [1992 c 1 § 6 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 9.02.160 State-provided benefits. If the state provides, directly or by contract, maternity care benefits, services, or information to women through any program administered or funded in whole or in part by the state, the state shall also provide women otherwise eligible for any

such program with substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies. [1992 c 1 § 7 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 9.02.170 Definitions. For purposes of this chapter:

(1) "Viability" means the point in the pregnancy when, in the judgment of the physician on the particular facts of the case before such physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

(3) "Pregnancy" means the reproductive process beginning with the implantation of an embryo.

(4) "Physician" means a physician licensed to practice under chapter 18.57 or 18.71 RCW in the state of Washington.

(5) "Health care provider" means a physician or a person acting under the general direction of a physician.

(6) "State" means the state of Washington and counties, cities, towns, municipal corporations, and quasi-municipal corporations in the state of Washington.

(7) "Private medical facility" means any medical facility that is not owned or operated by the state. [1992 c 1 § 8 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 9.02.900 Construction—1992 c 1 (Initiative Measure No. 120). RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902 shall not be construed to define the state's interest in the fetus for any purpose other than the specific provisions of RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902. [1992 c 1 § 10 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 9.02.901 Severability—1992 c 1 (Initiative Measure No. 120). If any provision of RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902 or its application to any person or circumstance is held invalid, the remainder of RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902 or the application of the provision to other persons or circumstances is not affected. [1992 c 1 § 11 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 9.02.902 Short title—1992 c 1 (Initiative Measure No. 120). RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902 shall be known and may be cited as the Reproductive Privacy Act. [1992 c 1 § 12 (Initiative Measure No. 120, approved November 5, 1991).]



Ken Eikenberry

SEP 22 1992

DOH Parent-Child Health Services

ATTORNEY GENERAL OF WASHINGTON

Highways Licenses Building • PO Box 40109 • Olympia WA 98504-0109

September 21, 1992

TO: Judy Schoder
Parent-Child Health Services

FROM: Margaret M. Bichl *mmB*
Assistant Attorney General

RE: Minor Consent and Confidentiality for
Health Care Services

Washington State minor children have the authority to consent to a number of health care services without notice to, or consent from, their parents:

Mental Health Services

Persons 13 years of age or older may consent to outpatient mental health care treatment. RCW 71.34.200. In order to receive inpatient care, the same age minor may voluntarily commit him or herself without parental consent when proper notice is provided to the parents. The statute sets out the parental notice requirements as well as the procedure when the parents object to the inpatient treatment. See, RCW 71.34.200.

Sexually Transmitted Diseases

A minor 14 years of age or older may consent to the furnishing of hospital, medical, or surgical care related to the diagnosis and treatment for sexually transmitted diseases. See, RCW 70.24.110.

Drug and/or Alcohol Abuse

A person 14 years of age or older may give consent to the furnishing of counseling, care, treatment, and rehabilitation for drug or alcohol abuse. See, RCW 70.96A.095.

Termination of Pregnancy

A minor female in Washington can consent to abortion services if she is capable of giving informed consent. Physicians in Washington are required to obtain "informed

ATTORNEY GENERAL OF WASHINGTON

Judy Schoder

-2-

September 21, 1992

consent" from patients prior to surgical procedures. See, State v. Koome, 530 P.2d 260, 84 W.2d. 901 (1975).

As you know, Washington has enacted a new abortion law. See, chapter 9.02 RCW (Initiative 20). The new legislation is silent on the subject of parental consent. The Koome case cited above held that the parental consent requirement in the since-repealed abortion statute was unconstitutional. That requirement allowed unmarried minor females to obtain an abortion only with prior parental consent. As the new legislation does not address the issue of parental consent for minors, the Koome decision is still authoritative. Minor females in Washington may obtain an abortion if they are capable of giving informed consent to the procedure.

Dependent Children

Minor children who are dependent pursuant to chapter 13.34 RCW are entitled to the rights to consent to health care services as set out above. Where parental consent is required for a health care service, the State is authorized to consent to most services for dependent children. In cases involving dependent children, I recommend that the Department obtain legal advice as to the appropriate person to consent to services.

Confidentiality of Records

Generally speaking, when a minor is authorized to consent to health care services, those records are confidential and the right to confidentiality belongs to the minor. Again, if questions arise, please obtain legal advice.

Please feel free to contact me if you have any questions or concerns.

MMB/jls



Christine O. Gregoire

MAY 6 1993

ATTORNEY GENERAL OF WASHINGTON

905 Plum Street Bldg 3 • PO Box 40109 • Olympia WA 98504-0109

May 6, 1993

TO: Judy Schoder
Adolescent Health Coordinator

FROM: Margaret M. Bichl *MMB*
Assistant Attorney General

RE: Minor Consent and Confidentiality for Health Care

This memorandum updates my memorandum of September 21, 1992. You have asked for clarification of the following issues:

1. Can a minor consent for treatment of medical conditions other than those specified in my previous memorandum (birth control, abortion, mental health care, etc.)?

2. Can a minor consent to his/her own wellness care, including immunizations?

3. If the minor can consent to health care services, does the parent or guardian have access to the minor's records under the Health Care Information Act?

1. Minors may not give consent to health care services unless there is a specific statutory exception for the delivery of that service or the minor is married to a person of full age (over 18 years old). RCW 26.28.015(5) states that

...all persons shall be deemed and taken to be of full age for the specific purposes hereafter enumerated at the age of eighteen years:

...
(5) To make decisions in regard to their own body ... including, but not limited to consent to surgical operations;....

Thus, persons under 18 years of age cannot give consent to treatment for sore throats, ear infections, or acne. If a health care provider becomes aware of an unrelated health care problem during authorized treatment without parental consent, i.e. during a pregnancy test, the health care provider can notify the minor of the problem, but cannot offer or provide care for that problem.

ATTORNEY GENERAL OF WASHINGTON

Judy Schoder

2

May 6, 1993

2. Based on the same analysis set out above, a minor cannot consent to wellness health care, including immunizations. This author is unclear as to the meaning of "passive parental consent". The individual health care provider should always obtain informed consent from the parent or guardian of the minor for each health care service. It is the responsibility of the health care provider to obtain adequate informed consent for the health care provided.

3. If the patient is a minor and is authorized to consent to health care without parental consent, only the minor may exercise the rights of a patient under the Health Care Information Act. In other words, only the minor can access his or her health care records as the patient. The parent or guardian is treated as a "person" under the statute, and must meet the criteria for access just as any other "person" is required under the Act.

For your assistance, I have attached copies of the statutes I refer to in this memorandum. Please feel free to contact me if you have any further questions or concerns.

MMB/jls
Attachments

APPENDIX F

APPENDIX F

Recommendations for Maintaining Confidentiality in Student Assistance Programs

These recommendations, prepared by the Washington State Omnibus Prevention and Intervention service program coordinators, govern both individual and group contacts.

Confidentiality, and the respect for privacy of all students and families involved in the student assistance program will be observed via the following guidelines which relate to both individual and group contacts:

- A. Discussion of any student involved in the student assistance program should be limited to those staff actively involved in that student's case, except to confirm to a referring staff that the student is engaged in the process.
- B. Any pre-assessment team notes kept as a part of the student assistance program will be kept separately from the student's cumulative record. Such notes, not unlike any other written communication about a student, are considered "permitted records" and are, by law, available to parents upon request. These notes can and should be destroyed when their usefulness has ended.
- C. When interacting with parents of students involved in the student assistance program for the purpose of soliciting input or making a recommendation or referral, the pre-assessment team member should always remain focused on the specific observable, behaviors of concern. Disclosing information shared by a student is not to be done without the consent of the student, or unless there is a clear and present threat to the well-being of the student or others.
- D. All students participating in school-based support groups shall attend such groups in a location that does not bring undue attention to the student or the group as a whole.
- E. All students participating in school-based support groups shall have knowledge of their participation held confidential from anyone without a legitimate need to know. Examples of those with a legitimate need to know include: attendance office, parents, releasing teacher.
- F. All students involved in school-based support groups, as a part of their screening orientation for the group, shall be informed of the importance of holding confidential the identities of, and information shared by, other group members--what is said in group stays in group.

- G. All students involved in school-based support groups, as a part of their screening and orientation for the group, shall be informed of the responsibilities of the support group facilitator regarding confidentiality. Specifically, where the group facilitator receives information prompting him or her to suspect that suicidal intent is being expressed, physical or sexual abuse has occurred, a felony relative to a current law enforcement investigation is disclosed, or where there is reason to suspect that a condition or behavior exists that places the safety and welfare of the student or others at risk, that information will need to be shared with other appropriate individuals. All other specific information shared in support groups will be held confidential.
- H. The support group facilitator and or other pre-assessment team member should always keep in mind their legal and ethical responsibility to promptly refer those students whose participation in the student assistance program or a support group reveals needs that the group facilitator or pre-assessment team member is not fully qualified to meet.
- I. Contact with counseling or treatment programs that are providing services to students involved in the student assistance program will be provided for the purpose of coordinating school-based support and follow up. This will be done through the completion of release of information forms which allow disclosure of information deemed relevant to the smooth coordination of services between the school and treatment or counseling resource.

Documentation/Record Keeping

Documentation of the student assistance program is required for the smooth and effective operation of the pre-assessment team, as well as to provide a "paper trail" that documents and supports the appropriate actions of team members.

A sample Authorization for Release of Medical Information form is in Appendix C.

Evaluation

The functioning of the student assistance program at each school will be reviewed regularly to determine how consistently the program has been implemented with the procedures outlined in this document. The review will also seek to determine what additional support or training is required to increase the effectiveness of the process at each school.

Chapter 71.34 RCW

MENTAL HEALTH SERVICES FOR MINORS

Sections

71.34.010	Purpose—Parental participation in treatment decisions.
71.34.020	Definitions.
71.34.030	Outpatient, inpatient treatment of minors—Voluntary admission—Procedures—Release, exception—Renewal of consent—Review of need for treatment—Discharge, exception.
71.34.040	Evaluation of minor thirteen or older brought for immediate mental health services—Temporary detention.
71.34.050	Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor.
71.34.060	Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period.
71.34.070	Petition for fourteen-day commitment—Requirements.
71.34.080	Commitment hearing—Requirements—Findings by court—Commitment—Release.
71.34.090	Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments.
71.34.100	Placement of minor in state evaluation and treatment facility—Placement committee—Facility to report to committee.
71.34.110	Minor's failure to adhere to outpatient conditions—Deterioration of minor's functioning—Transport to inpatient facility—Order of apprehension and detention—Revocation of alternative treatment or conditional release—Hearings.
71.34.120	Release of minor—Conditional release—Discharge.
71.34.130	Liability for costs of minor's treatment and care—Rules.
71.34.140	Responsibility of counties for evaluation and treatment services for minors.
71.34.150	Transportation for minors committed to state facility for one hundred eighty-day treatment.
71.34.160	Rights of minors undergoing treatment—Posting.
71.34.170	Release of minor—Requirements.
71.34.180	Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities.
71.34.190	No detention of minors after eighteenth birthday—Exceptions.
71.34.200	Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent.
71.34.210	Court records and files confidential—Availability.
71.34.220	Disclosure of information or records—Required entries in minor's clinical record.
71.34.230	Attorneys appointed for minors—Compensation.
71.34.240	Court proceedings under chapter subject to rules of state supreme court.
71.34.250	Jurisdiction over proceedings under chapter—Venue.
71.34.260	Transfer of superior court proceedings to juvenile department.
71.34.270	Liability for performance of duties under this chapter limited.
71.34.280	Mental health commissioners—Authority.
71.34.290	Antipsychotic medication and shock treatment.
71.34.800	Department to adopt rules to effectuate chapter.
71.34.805	Uniform application of chapter—Training for county-designated mental health professionals.
71.34.810	Redirection of Title XIX funds to fund placements within the state.

71.34.900	Severability—1985 c 354.
71.34.901	Effective date—1985 c 354.

RCW 71.34.010 Purpose—Parental participation in treatment decisions. It is the purpose of this chapter to ensure that minors in need of mental health care and treatment receive an appropriate continuum of culturally relevant care and treatment, from prevention and early intervention to involuntary treatment. To facilitate the continuum of care and treatment to minors in out-of-home placements, all divisions of the department that provide mental health services to minors shall jointly plan and deliver those services.

It is also the purpose of this chapter to protect the rights of minors against needless hospitalization and deprivations of liberty and to enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment. The mental health care and treatment providers shall encourage the use of voluntary services and, whenever clinically appropriate, the providers shall offer less restrictive alternatives to inpatient treatment. Additionally, all mental health care and treatment providers shall ensure that minors' parents are given an opportunity to participate in the treatment decisions for their minor children. The mental health care and treatment providers shall, to the extent possible, offer services that involve minors' parents or family. [1992 c 205 § 302; 1985 c 354 § 1.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

RCW 71.34.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(2) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(3) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(4) "County-designated mental health professional" means a mental health professional designated by one or more counties to perform the functions of a county-designated mental health professional described in this chapter.

(5) "Department" means the department of social and health services.

(6) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(7) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(8) "Gravely disabled minor" means a minor who, as a result of a mental disorder, is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(9) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, or residential treatment facility certified by the department as an evaluation and treatment facility for minors.

(10) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(11) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(12) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or mental retardation alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(13) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under this chapter.

(14) "Minor" means any person under the age of eighteen years.

(15) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed services providers as identified by RCW 71.24.025(3).

(16) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

(17) "Professional person in charge" means a physician or other mental health professional empowered by an evaluation and treatment facility with authority to make admission and discharge decisions on behalf of that facility.

(18) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of mentally ill or emotionally disturbed persons, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

(19) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(20) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(21) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(22) "Secretary" means the secretary of the department or secretary's designee.

(23) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter. [1985 c 354 § 2.]

RCW 71.34.030 Outpatient, inpatient treatment of minors—Voluntary admission—Procedures—Release, exception—Renewal of consent—Review of need for treatment—Discharge, exception. (1) Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization is required for outpatient treatment of a minor under the age of thirteen.

(2) When in the judgment of the professional person in charge of an evaluation and treatment facility there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to

an evaluation and treatment facility in accordance with the following requirements:

(a) A minor under thirteen years of age may only be admitted on the application of the minor's parent.

(b) A minor thirteen years or older may be voluntarily admitted by application of the parent. Such application must be accompanied by the written consent, knowingly and voluntarily given, of the minor.

(c) A minor thirteen years or older may, with the concurrence of the professional person in charge of an evaluation and treatment facility, admit himself or herself without parental consent to the evaluation and treatment facility, provided that notice is given by the facility to the minor's parent in accordance with the following requirements:

(i) Notice of the minor's admission shall be in the form most likely to reach the parent within twenty-four hours of the minor's voluntary admission and shall advise the parent that the minor has been admitted to inpatient treatment; the location and telephone number of the facility providing such treatment; and the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent.

(ii) The minor shall be released to the parent at the parent's request for release unless the facility files a petition with the superior court of the county in which treatment is being provided setting forth the basis for the facility's belief that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety.

(iii) The petition shall be signed by the professional person in charge of the facility or that person's designee.

(iv) The parent may apply to the court for separate counsel to represent the parent if the parent cannot afford counsel.

(v) There shall be a hearing on the petition, which shall be held within three judicial days from the filing of the petition.

(vi) The hearing shall be conducted by a judge, court commissioner, or licensed attorney designated by the superior court as a hearing officer for such hearing. The hearing may be held at the treatment facility.

(vii) At such hearing, the facility must demonstrate by a preponderance of the evidence presented at the hearing that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety. The hearing shall not be conducted using the rules of evidence, and the admission or exclusion of evidence sought to be presented shall be within the exercise of sound discretion by the judicial officer conducting the hearing.

(d) Written renewal of voluntary consent must be obtained from the applicant and the minor thirteen years or older no less than once every twelve months.

(e) The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days.

(3) A notice of intent to leave shall result in the following:

(a) Any minor under the age of thirteen must be discharged immediately upon written request of the parent.

(b) Any minor thirteen years or older voluntarily admitted may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(c) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(d) The professional person in charge of the evaluation and treatment facility shall discharge the minor, thirteen years or older, from the facility within twenty-four hours after receipt of the minor's notice of intent to leave, unless the county-designated mental health professional files a petition for initial detention within the time prescribed by this chapter. [1985 c 354 § 3.]

RCW 71.34.040 Evaluation of minor thirteen or older brought for immediate mental health services—Temporary detention.

If a minor, thirteen years or older, is brought to an evaluation and treatment facility or hospital emergency room for immediate mental health services, the professional person in charge of the facility shall evaluate the minor's mental condition, determine whether the minor suffers from a mental disorder, and whether the minor is in need of immediate inpatient treatment. If it is determined that the minor suffers from a mental disorder, inpatient treatment is required, the minor is unwilling to consent to voluntary admission, and the professional person believes that the minor meets the criteria for initial detention set forth herein, the facility may detain or arrange for the detention of the minor for up to twelve hours in order to enable a county-designated mental health professional to evaluate the minor and commence initial detention proceedings under the provisions of this chapter. [1985 c 354 § 4.]

RCW 71.34.050 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor. (1) When a county-designated mental health professional receives information that a minor, thirteen years or older, as a result of a mental disorder presents a likelihood of serious harm or is gravely disabled, has investigated the specific facts alleged and of the credibility of the person or persons providing the information, and has determined that voluntary admission for inpatient treatment is not possible, the county-designated mental health professional may take the minor, or cause the minor to be taken, into custody and transported to an evaluation and treatment facility providing inpatient treatment.

(2) Within twelve hours of the minor's arrival at the evaluation and treatment facility, the county-designated mental health professional shall serve on the minor a copy of the petition for initial detention, notice of initial detention, and statement of rights. The county-designated mental health professional shall file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial detention, and statement of rights along with an affidavit of service. The

county-designated mental health professional shall commence service of the petition for initial detention and notice of the initial detention on the minor's parent and the minor's attorney as soon as possible following the initial detention.

(3) At the time of initial detention, the county-designated mental health professional shall advise the minor both orally and in writing that if admitted to the evaluation and treatment facility for inpatient treatment, a commitment hearing shall be held within seventy-two hours of the minor's provisional acceptance to determine whether probable cause exists to commit the minor for further mental health treatment.

The minor shall be advised that he or she has a right to communicate immediately with an attorney and that he or she has a right to have an attorney appointed to represent him or her before and at the hearing if the minor is indigent.

(4) Whenever the county designated mental health professional petitions for detention of a minor under this chapter, an evaluation and treatment facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. Within twenty-four hours of the minor's arrival, the facility must evaluate the minor's condition and either admit or release the minor in accordance with this chapter.

(5) If a minor is not approved for admission by the inpatient evaluation and treatment facility, the facility shall make such recommendations and referrals for further care and treatment of the minor as necessary. [1985 c 354 § 5.]

RCW 71.34.060 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period. (1) Each minor approved by the facility for inpatient admission shall be examined and evaluated by a children's mental health specialist as to the child's mental condition and by a physician as to the child's physical condition within twenty-four hours of admission. Reasonable measures shall be taken to ensure medical treatment is provided for any condition requiring immediate medical attention.

(2) If, after examination and evaluation, the children's mental health specialist and the physician determine that the initial needs of the minor would be better served by placement in a chemical dependency treatment facility, then the minor shall be referred to an approved treatment program defined under RCW 70.96A.020.

(3) The admitting facility shall take reasonable steps to notify immediately the minor's parent of the admission.

(4) During the initial seventy-two hour treatment period, the minor has a right to associate or receive communications from parents or others unless the professional person in charge determines that such communication would be seriously detrimental to the minor's condition or treatment and so indicates in the minor's clinical record, and notifies the minor's parents of this determination. In no event may the minor be denied the opportunity to consult an attorney.

(5) If the evaluation and treatment facility admits the minor, it may detain the minor for evaluation and treatment for a period not to exceed seventy-two hours from the time of provisional acceptance. The computation of such seventy-

two hour period shall exclude Saturdays, Sundays, and holidays. This initial treatment period shall not exceed seventy-two hours except when an application for voluntary inpatient treatment is received or a petition for fourteen-day commitment is filed.

(6) Within twelve hours of the admission, the facility shall advise the minor of his or her rights as set forth in this chapter. [1991 c 364 § 12; 1985 c 354 § 6.]

Findings—Construction—Conflict with federal requirements—
1991 c 364: See notes following RCW 70.96A.020.

RCW 71.34.070 Petition for fourteen-day commitment—Requirements. (1) The professional person in charge of an evaluation and treatment facility where a minor has been admitted involuntarily for the initial seventy-two hour treatment period under this chapter may petition to have a minor committed to an evaluation and treatment facility for fourteen-day diagnosis, evaluation, and treatment.

(2) A petition for commitment of a minor under this section shall be filed with the superior court in the county where the minor is residing or being detained.

(a) A petition for a fourteen-day commitment shall be signed either by two physicians or by one physician and a mental health professional who have examined the minor and shall contain the following:

(i) The name and address of the petitioner;
(ii) The name of the minor alleged to meet the criteria for fourteen-day commitment;

(iii) The name, telephone number, and address if known of every person believed by the petitioner to be legally responsible for the minor;

(iv) A statement that the petitioner has examined the minor and finds that the minor's condition meets required criteria for fourteen-day commitment and the supporting facts therefor;

(v) A statement that the minor has been advised of the need for voluntary treatment but has been unwilling or unable to consent to necessary treatment;

(vi) A statement recommending the appropriate facility or facilities to provide the necessary treatment; and

(vii) A statement concerning whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(b) A copy of the petition shall be personally delivered to the minor by the petitioner or petitioner's designee. A copy of the petition shall be sent to the minor's attorney and the minor's parent. [1985 c 354 § 7.]

RCW 71.34.080 Commitment hearing—Requirements—Findings by court—Commitment—Release. (1) A commitment hearing shall be held within seventy-two hours of the minor's admission, excluding Saturday, Sunday, and holidays, unless a continuance is requested by the minor or the minor's attorney.

(2) The commitment hearing shall be conducted at the superior court or an appropriate place at the facility in which the minor is being detained.

(3) At the commitment hearing, the evidence in support of the petition shall be presented by the county prosecutor.

(4) The minor shall be present at the commitment hearing unless the minor, with the assistance of the minor's attorney, waives the right to be present at the hearing.

(5) If the parents are opposed to the petition, they may be represented at the hearing and shall be entitled to court-appointed counsel if they are indigent.

(6) At the commitment hearing, the minor shall have the following rights:

(a) To be represented by an attorney;

(b) To present evidence on his or her own behalf;

(c) To question persons testifying in support of the petition.

(7) If the minor has received medication within twenty-four hours of the hearing, the court shall be informed of that fact and of the probable effects of the medication.

(8) Rules of evidence shall not apply in fourteen-day commitment hearings.

(9) For a fourteen-day commitment, the court must find by a preponderance of the evidence that:

(a) The minor has a mental disorder and presents a "likelihood of serious harm" or is "gravely disabled";

(b) The minor is in need of evaluation and treatment of the type provided by the inpatient evaluation and treatment facility to which continued inpatient care is sought or is in need of less restrictive alternative treatment found to be in the best interests of the minor; and

(c) The minor is unwilling or unable in good faith to consent to voluntary treatment.

(10) If the court finds that the minor meets the criteria for a fourteen-day commitment, the court shall either authorize commitment of the minor for inpatient treatment or for less restrictive alternative treatment upon such conditions as are necessary. If the court determines that the minor does not meet the criteria for a fourteen-day commitment, the minor shall be released.

(11) Nothing in this section prohibits the professional person in charge of the evaluation and treatment facility from releasing the minor at any time, when, in the opinion of the professional person in charge of the facility, further inpatient treatment is no longer necessary. The release may be subject to reasonable conditions if appropriate.

Whenever a minor is released under this section, the professional person in charge shall within three days, notify the court in writing of the release.

(12) A minor who has been committed for fourteen days shall be released at the end of that period unless a petition for one hundred eighty-day commitment is pending before the court. [1985 c 354 § 8.]

RCW 71.34.090 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments. (1) At any time during the minor's period of fourteen-day commitment, the professional person in charge may petition the court for an order requiring the minor to undergo an additional one hundred eighty-day period of treatment. The evidence in support of the petition shall be presented by the county prosecutor unless the petition is filed by the professional person in charge of a state-operated facility in which case the evidence shall be presented by the attorney general.

(2) The petition for one hundred eighty-day commitment shall contain the following:

(a) The name and address of the petitioner or petitioners;

(b) The name of the minor alleged to meet the criteria for one hundred eighty-day commitment;

(c) A statement that the petitioner is the professional person in charge of the evaluation and treatment facility responsible for the treatment of the minor;

(d) The date of the fourteen-day commitment order; and

(e) A summary of the facts supporting the petition.

(3) The petition shall be supported by accompanying affidavits signed by two examining physicians, one of whom shall be a child psychiatrist, or by one examining physician and one children's mental health specialist. The affidavits shall describe in detail the behavior of the detained minor which supports the petition and shall state whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(4) The petition for one hundred eighty-day commitment shall be filed with the clerk of the court at least three days before the expiration of the fourteen-day commitment period. The petitioner or the petitioner's designee shall within twenty-four hours of filing serve a copy of the petition on the minor and notify the minor's attorney and the minor's parent. A copy of the petition shall be provided to such persons at least twenty-four hours prior to the hearing.

(5) At the time of filing, the court shall set a date within seven days for the hearing on the petition. The court may continue the hearing upon the written request of the minor or the minor's attorney for not more than ten days. The minor or the parents shall be afforded the same rights as in a fourteen-day commitment hearing. Treatment of the minor shall continue pending the proceeding.

(6) For one hundred eighty-day commitment, the court must find by clear, cogent, and convincing evidence that the minor:

(a) Is suffering from a mental disorder;

(b) Presents a likelihood of serious harm or is gravely disabled; and

(c) Is in need of further treatment that only can be provided in a one hundred eighty-day commitment.

(7) If the court finds that the criteria for commitment are met and that less restrictive treatment in a community setting is not appropriate or available, the court shall order the minor committed for further inpatient treatment to the custody of the secretary or to a private treatment and evaluation facility if the minor's parents have assumed responsibility for payment for the treatment. If the court finds that a less restrictive alternative is in the best interest of the minor, the court shall order less restrictive alternative treatment upon such conditions as necessary.

If the court determines that the minor does not meet the criteria for one hundred eighty-day commitment, the minor shall be released.

(8) Successive one hundred eighty-day commitments are permissible on the same grounds and under the same procedures as the original one hundred eighty-day commitment. Such petitions shall be filed at least five days prior to the expiration of the previous one hundred eighty-day commitment order. [1985 c 354 § 9.]

71.34.100 Placement of minor in state evaluation and treatment facility—Placement committee—Facility to report to committee. (1) If a minor is committed for one hundred eighty-day inpatient treatment and is to be placed in a state-supported program, the secretary shall accept immediately and place the minor in a state-funded long-term evaluation and treatment facility.

(2) The secretary's placement authority shall be exercised through a designated placement committee appointed by the secretary and composed of children's mental health specialists, including at least one child psychiatrist who represents the state-funded, long-term, evaluation and treatment facility for minors. The responsibility of the placement committee will be to:

(a) Make the long-term placement of the minor in the most appropriate, available state-funded evaluation and treatment facility, having carefully considered factors including the treatment needs of the minor, the most appropriate facility able to respond to the minor's identified treatment needs, the geographic proximity of the facility to the minor's family, the immediate availability of bed space, and the probable impact of the placement on other residents of the facility;

(b) Approve or deny requests from treatment facilities for transfer of a minor to another facility;

(c) Receive and monitor reports required under this section;

(d) Receive and monitor reports of all discharges.

(3) The secretary may authorize transfer of minors among treatment facilities if the transfer is in the best interests of the minor or due to treatment priorities.

(4) The responsible state-funded evaluation and treatment facility shall submit a report to the department's designated placement committee within ninety days of admission and no less than every one hundred eighty days thereafter, setting forth such facts as the department requires, including the minor's individual treatment plan and progress, recommendations for future treatment, and possible less restrictive treatment. [1985 c 354 § 10.]

RCW 71.34.110 Minor's failure to adhere to outpatient conditions—Deterioration of minor's functioning—Transport to inpatient facility—Order of apprehension and detention—Revocation of alternative treatment or conditional release—Hearings. (1) If the professional person in charge of an outpatient treatment program, a county-designated mental health professional, or the secretary determines that a minor is failing to adhere to the conditions of the court order for less restrictive alternative treatment or the conditions for the conditional release, or that substantial deterioration in the minor's functioning has occurred, the county-designated mental health professional, or the secretary may order that the minor be taken into custody and transported to an inpatient evaluation and treatment facility.

(2) The county-designated mental health professional or the secretary shall file the order of apprehension and detention and serve it upon the minor and notify the minor's parent and the minor's attorney, if any, of the detention within two days of return. At the time of service the minor shall be informed of the right to a hearing and to representation by an attorney. The county-designated mental health

professional or the secretary may modify or rescind the order of apprehension and detention at any time prior to the hearing.

(3) A petition for revocation of less restrictive alternative treatment shall be filed by the county-designated mental health professional or the secretary with the court in the county ordering the less restrictive alternative treatment. The court shall conduct the hearing in that county. A petition for revocation of conditional release may be filed with the court in the county ordering inpatient treatment or the county where the minor on conditional release is residing. A petition shall describe the behavior of the minor indicating violation of the conditions or deterioration of routine functioning and a dispositional recommendation. Upon motion for good cause, the hearing may be transferred to the county of the minor's residence or to the county in which the alleged violations occurred. The hearing shall be held within seven days of the minor's return. The issues to be determined are whether the minor did or did not adhere to the conditions of the less restrictive alternative treatment or conditional release, or whether the minor's routine functioning has substantially deteriorated, and, if so, whether the conditions of less restrictive alternative treatment or conditional release should be modified or whether the minor should be returned to inpatient treatment. Pursuant to the determination of the court, the minor shall be returned to less restrictive alternative treatment or conditional release on the same or modified conditions or shall be returned to inpatient treatment. If the minor is returned to inpatient treatment, RCW 71.34.100 regarding the secretary's placement responsibility shall apply. The hearing may be waived by the minor and the minor returned to inpatient treatment or to less restrictive alternative treatment or conditional release on the same or modified conditions. [1985 c 354 § 11.]

RCW 71.34.120 Release of minor—Conditional release—Discharge. (1) The professional person in charge of the inpatient treatment facility may authorize release for the minor under such conditions as appropriate. Conditional release may be revoked pursuant to RCW 71.34.110 if leave conditions are not met or the minor's functioning substantially deteriorates.

(2) Minors may be discharged prior to expiration of the commitment period if the treating physician or professional person in charge concludes that the minor no longer meets commitment criteria. [1985 c 354 § 12.]

RCW 71.34.130 Liability for costs of minor's treatment and care—Rules. (1) A minor receiving treatment under the provisions of this chapter and responsible others shall be liable for the costs of treatment, care, and transportation to the extent of available resources and ability to pay.

(2) The secretary shall establish rules to implement this section and to define income, resources, and exemptions to determine the responsible person's or persons' ability to pay. [1985 c 354 § 13.]

RCW 71.34.140 Responsibility of counties for evaluation and treatment services for minors. (1) The

county or combination of counties is responsible for development and coordination of the evaluation and treatment program for minors, for incorporating the program into the county mental health plan, and for coordination of evaluation and treatment services and resources with the community mental health program required under chapter 71.24 RCW.

(2) The county shall be responsible for maintaining its support of involuntary treatment services for minors at its 1984 level, adjusted for inflation, with the department responsible for additional costs to the county resulting from this chapter. [1985 c 354 § 14.]

RCW 71.34.150 Transportation for minors committed to state facility for one hundred eighty-day treatment. Necessary transportation for minors committed to the secretary under this chapter for one hundred eighty-day treatment shall be provided by the department in the most appropriate and cost-effective means. [1985 c 354 § 15.]

RCW 71.34.160 Rights of minors undergoing treatment—Posting. Absent a risk to self or others, minors treated under this chapter have the following rights, which shall be prominently posted in the evaluation and treatment facility:

(1) To wear their own clothes and to keep and use personal possessions;

(2) To keep and be allowed to spend a reasonable sum of their own money for canteen expenses and small purchases;

(3) To have individual storage space for private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter-writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) To discuss treatment plans and decisions with mental health professionals;

(8) To have the right to adequate care and individualized treatment;

(9) Not to consent to the performance of electroconvulsive treatment or surgery, except emergency life-saving surgery, upon him or her, and not to have electroconvulsive treatment or nonemergency surgery in such circumstance unless ordered by a court pursuant to a judicial hearing in which the minor is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, or physician designated by the minor or the minor's counsel to testify on behalf of the minor. The minor's parent may exercise this right on the minor's behalf, and must be informed of any impending treatment;

(10) Not to have psychosurgery performed on him or her under any circumstances. [1985 c 354 § 16.]

RCW 71.34.170 Release of minor—Requirements.

(1) If a minor is not accepted for admission or is released by an inpatient evaluation and treatment facility, the facility shall release the minor to the custody of the minor's parent or other responsible person. If not otherwise available, the facility shall furnish transportation for the minor to the minor's residence or other appropriate place.

(2) If the minor is released to someone other than the minor's parent, the facility shall make every effort to notify the minor's parent of the release as soon as possible.

(3) No indigent minor may be released to less restrictive alternative treatment or setting or discharged from inpatient treatment without suitable clothing, and the department shall furnish this clothing. As funds are available, the secretary may provide necessary funds for the immediate welfare of indigent minors upon discharge or release to less restrictive alternative treatment. [1985 c 354 § 17.]

RCW 71.34.180 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities. When in the judgment of the department the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that the person be transferred or moved for observation, diagnosis, or treatment to an evaluation and treatment facility, the secretary or the secretary's designee is authorized to order and effect such move or transfer for a period of up to fourteen days, provided that the secretary notifies the original committing court of the transfer and the evaluation and treatment facility is in agreement with the transfer. No person committed to or confined in any state juvenile correctional institution or facility may be transferred to an evaluation and treatment facility for more than fourteen days unless that person has been admitted as a voluntary patient or committed for one hundred eighty-day treatment under this chapter or ninety-day treatment under chapter 71.05 RCW if eighteen years of age or older. Underlying jurisdiction of minors transferred or committed under this section remains with the state correctional institution. A voluntary admitted minor or minors committed under this section and no longer meeting the criteria for one hundred eighty-day commitment shall be returned to the state correctional institution to serve the remaining time of the underlying dispositional order or sentence. The time spent by the minor at the evaluation and treatment facility shall be credited towards the minor's juvenile court sentence. [1985 c 354 § 19.]

RCW 71.34.190 No detention of minors after eighteenth birthday—Exceptions. No minor received as a voluntary patient or committed under this chapter may be detained after his or her eighteenth birthday unless the person, upon reaching eighteen years of age, has applied for admission to an appropriate evaluation and treatment facility or unless involuntary commitment proceedings under chapter 71.05 RCW have been initiated: PROVIDED, That a minor may be detained after his or her eighteenth birthday for purposes of completing the fourteen-day diagnosis, evaluation, and treatment. [1985 c 354 § 20.]

RCW 71.34.200 Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent. The fact of admission and all information obtained through treatment under this chapter is confidential. Confidential information may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of this chapter, in the

provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To persons with medical responsibility for the minor's care;

(4) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;

(5) When the minor or the minor's parent designate[s] in writing the persons to whom information or records may be released;

(6) To the extent necessary to make a claim for financial aid, insurance, or medical assistance to which the minor may be entitled or for the collection of fees or costs due to providers for services rendered under this chapter;

(7) To the courts as necessary to the administration of this chapter;

(8) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address shall be disclosed upon request;

(9) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(10) To the secretary for assistance in data collection and program evaluation or research, provided that the secretary adopts rules for the conduct of such evaluation and research. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/ "

(11) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other

information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence;

(12) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(13) Upon the death of a minor, to the minor's next of kin;

(14) To a facility in which the minor resides or will reside.

This section shall not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary. The fact of admission and all information obtained pursuant to this chapter are not admissible as evidence in any legal proceeding outside this chapter, except guardianship or dependency, without the written consent of the minor or the minor's parent. [1985 c 354 § 18.]

RCW 71.34.210 Court records and files confidential—Availability. The records and files maintained in any court proceeding under this chapter are confidential and available only to the minor, the minor's parent, and the minor's attorney. In addition, the court may order the subsequent release or use of these records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality will be maintained. [1985 c 354 § 21.]

RCW 71.34.220 Disclosure of information or records—Required entries in minor's clinical record. When disclosure of information or records is made, the date and circumstances under which the disclosure was made, the name or names of the persons or agencies to whom such disclosure was made and their relationship if any, to the minor, and the information disclosed shall be entered promptly in the minor's clinical record. [1985 c 354 § 22.]

RCW 71.34.230 Attorneys appointed for minors—Compensation. Attorneys appointed for minors under this chapter shall be compensated for their services as follows:

(1) Responsible others shall bear the costs of such legal services if financially able according to standards set by the court of the county in which the proceeding is held.

(2) If all responsible others are indigent as determined by these standards, the costs of these legal services shall be borne by the county in which the proceeding is held. [1985 c 354 § 23.]

RCW 71.34.240 Court proceedings under chapter subject to rules of state supreme court. Court procedures and proceedings provided for in this chapter shall be in accordance with rules adopted by the supreme court of the state of Washington. [1985 c 354 § 24.]

RCW 71.34.250 Jurisdiction over proceedings under chapter—Venue. (1) The superior court has jurisdiction over proceedings under this chapter.

(2) A record of all petitions and proceedings under this chapter shall be maintained by the clerk of the superior court in the county in which the petition or proceedings was initiated.

(3) Petitions for commitment shall be filed and venue for hearings under this chapter shall be in the county in which the minor is being detained. The court may, for good cause, transfer the proceeding to the county of the minor's residence, or to the county in which the alleged conduct evidencing need for commitment occurred. If the county of detention is changed, subsequent petitions may be filed in the county in which the minor is detained without the necessity of a change of venue. [1985 c 354 § 26.]

RCW 71.34.260 Transfer of superior court proceedings to juvenile department. For purposes of this chapter, a superior court may transfer proceedings under this chapter to its juvenile department. [1985 c 354 § 28.]

RCW 71.34.270 Liability for performance of duties under this chapter limited. No public or private agency or governmental entity, nor officer of a public or private agency, nor the superintendent, or professional person in charge, his or her professional designee or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person under this chapter, nor any county designated mental health professional, shall be civilly or criminally liable for performing his or her duties under this chapter with regard to the decision of whether to admit, release, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence. [1985 c 354 § 27.]

RCW 71.34.280 Mental health commissioners—Authority. The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1989 c 174 § 3.]

Severability—1989 c 174: See note following RCW 71.05.135.

RCW 71.34.290 Antipsychotic medication and shock treatment. For the purposes of administration of antipsychotic medication and shock treatment, the provisions of chapter 120, Laws of 1989 apply to minors pursuant to chapter 71.34 RCW. [1989 c 120 § 9.]

RCW 71.34.800 Department to adopt rules to effectuate chapter. The department shall adopt such rules pursuant to chapter 34.05 RCW as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality, effectiveness, efficiency, and use of services and facilities operating under this chapter, procedures and standards for commitment, and other action relevant to evaluation and treatment facilities, and establishment of criteria and procedures for placement and transfer of committed minors. [1985 c 354 § 25.]

RCW 71.34.805 Uniform application of chapter—Training for county-designated mental health professionals. The department shall ensure that the provisions of this chapter are applied by the counties in a consistent and uniform manner. The department shall also ensure that, to the extent possible within available funds, the county-designated mental health professionals are specifically trained in adolescent mental health issues, the mental health civil commitment laws, and the criteria for civil commitment. [1992 c 205 § 304.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

RCW 71.34.810 Redirection of Title XIX funds to fund placements within the state. For the purpose of encouraging the expansion of existing evaluation and treatment facilities and the creation of new facilities, the department shall endeavor to redirect federal Title XIX funds which are expended on out-of-state placements to fund placements within the state. [1992 c 205 § 303.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

RCW 71.34.900 Severability—1985 c 354. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 354 § 37.]

RCW 71.34.901 Effective date—1985 c 354. This act shall take effect January 1, 1986. [1985 c 354 § 38.]

WAC 275-57-350 Consent to treatment and access to records. This section defines the conditions for informed consent to treatment and enables a consumer to access a consumer's own records. To this end, the RSN and licensed providers shall protect and ensure the rights of all consumers and former consumers.

(1) Any minor over twelve years of age may request and receive treatment without consent of the minor's parents. Parental consent for evaluation and treatment services shall not be necessary in the case of a child referred by child protective services or other public agency because of physical, sexual, or psychological abuse or neglect by a parent or parent surrogate.

(2) The department, RSN, PHP, or provider shall presume an adult is competent to consent to treatment unless otherwise established.

(3) When the consumer, or the consumer's legally responsible other, requests review of case records, the provider shall:

(a) Grant the request within seven days, unless the provider knows or has reason to believe the parent or parent surrogate has been a child abuser or might otherwise harm the child;

(b) Review the case record in order to identify and remove any material confidential to another person;

(c) Allow the consumer sufficient time and privacy to review the record. At the request of the consumer, a clinical staff member shall be available to answer questions;

(d) Permit persons requested by the consumer to also be present; and

(e) Assess a reasonable and uniform charge for reproduction, if so desired.

(4) The department, RSN, PHP or provider shall obtain written, informed consent of the consumer or legally responsible other before:

(a) Use of medication;

(b) Use of unusual diagnostic or treatment procedures;

(c) Use of audio and/or visual device to record the consumer's behavior; and

(d) The consumer serves as a subject for research.

[Statutory Authority: Chapter 71.24 RCW, Title XIX Waiver and SSB 6547. 94-20-033 (Order 3783), § 275-57-350, filed 9/27/94, effective 10/28/94.]

WAC 275-57-360 Services administration—Confidentiality of consumer information. The RSN, PHP, and provider shall ensure information about person consumers not be shared or released except as specified under statute and rule.

The RSN and the provider shall protect the confidentiality of all information relating to consumers or former consumers under all confidentiality requirements as defined in chapters 70.02, 71.05, and 71.34 RCW.

[Statutory Authority: Chapter 71.24 RCW, Title XIX Waiver and SSB 6547. 94-20-033 (Order 3783), § 275-57-360, filed 9/27/94, effective 10/28/94.]

APPENDIX G

26.44.020 Definitions. For the purpose of and as used in this chapter:

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathy and surgery, or medicine and surgery or to provide other health services. The term "practitioner" shall include a duly accredited Christian Science practitioner: **PROVIDED, HOWEVER,** That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" shall include, but not be limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" shall mean anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" shall mean any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" shall mean any registered pharmacist under the provisions of chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" shall mean any regularly licensed or ordained minister, priest or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Abuse or neglect" shall mean the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child, adult dependent, or developmentally disabled person by any person under circumstances which indicate that the child's or adult's health, welfare, and safety is harmed. An abused child is a child who has been subjected to child abuse or neglect as defined herein.

(13) "Child protective services section" shall mean the child protective services section of the department.

(14) "Adult dependent persons" shall be defined as those persons over the age of eighteen years who have been found to be legally incompetent or disabled pursuant to chapter 11.88 RCW.

(15) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(16) "Negligent treatment or maltreatment" means an act or omission which evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety.

(17) "Developmentally disabled person" means a person who has a disability defined in RCW 71A.10.020.

(18) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard the general welfare of such children and shall include investigations of child abuse and neglect reports, including reports regarding child care centers and family child care homes, and the development, management, and provision of or referral to services to ameliorate conditions which endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(19) "Malice" or "maliciously" means an evil intent, wish, or design to vex, annoy, or injure another person. Such malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty.

(20) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a "sexually aggressive youth." [1993 c 412 § 12; 1993 c 402 § 1; 1988 c 142 § 1. Prior: 1987 c 524 § 9; 1987 c 206 § 2; 1984 c 97 § 2; 1982 c 129 § 6; 1981 c 164 § 1; 1977 ex.s. c 80 § 25; 1975 1st ex.s. c 217 § 2; 1969 ex.s. c 35 § 2; 1965 c 13 § 2.]

Reviser's note: This section was amended by 1993 c 402 § 1 and by 1993 c 412 § 12, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

RCW 26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Interviews of children—Records—Risk assessment process—Reports to legislature. (1)(a) When any practitioner, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, or juvenile probation officer has reasonable cause to believe that a child or adult dependent or developmentally disabled person, has suffered abuse or

neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child or adult dependent or developmentally disabled person, who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(c) The report shall be made at the first opportunity, but *; and in no case longer than forty-eight hours after there is reasonable cause to believe that the child or adult has suffered abuse or neglect. The report shall include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children, dependent adults, or developmentally disabled persons are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section shall apply.

(3) Any other person who has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report shall also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been

committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services or department case services for the developmentally disabled. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child or developmentally disabled person. Information considered privileged by statute and not directly related to reports required by this section shall not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview shall occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable

efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department shall use a risk assessment process when investigating child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

The department shall provide annual reports to the appropriate committees of the senate and house of representatives on the effectiveness of the risk assessment process.

(14) Upon receipt of a report of abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting. [1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1. Prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Reviser's note: *(1) The "; and" was apparently added in the Conference Report to Engrossed Substitute House Bill No. 1512, without marks indicating the addition.

(2) This section was amended by 1993 c 237 § 1 and by 1993 c 412 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1987 c 512: See RCW 18.19.901.

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

RCW 26.44.032 Legal defense of public employee.

In cases in which a public employee subject to RCW 26.44.030 acts in good faith and without gross negligence in his or her reporting duty, and if the employee's judgment as

to what constitutes reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect is being challenged, the public employer shall provide for the legal defense of the employee. [1988 c 87 § 1.]

RCW 26.44.035 Response to complaint by more than one agency—Procedure—Written records. If the department or a law enforcement agency responds to a complaint of child abuse or neglect and discovers that another agency has also responded to the complaint, the agency shall notify the other agency of their presence, and the agencies shall coordinate the investigation and keep each other apprised of progress.

The department, each law enforcement agency, each county prosecuting attorney, each city attorney, and each court shall make as soon as practicable a written record and shall maintain records of all incidents of suspected child abuse reported to that person or agency. Records kept under this section shall be identifiable by means of an agency code for child abuse. [1985 c 259 § 3.]

Legislative findings—1985 c 259: See note following RCW 26.44.030.

RCW 26.44.040 Reports—Oral, written—Contents. An immediate oral report shall be made by telephone or otherwise to the proper law enforcement agency or the department of social and health services and, upon request, shall be followed by a report in writing. Such reports shall contain the following information, if known:

(1) The name, address, and age of the child or adult dependent or developmentally disabled person;

(2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child or the residence of the adult dependent or developmentally disabled person;

(3) The nature and extent of the injury or injuries;

(4) The nature and extent of the neglect;

(5) The nature and extent of the sexual abuse;

(6) Any evidence of previous injuries, including their nature and extent; and

(7) Any other information which may be helpful in establishing the cause of the child's or adult dependent or developmentally disabled person's death, injury, or injuries and the identity of the alleged perpetrator or perpetrators. [1993 c 412 § 14; 1987 c 206 § 4; 1984 c 97 § 4; 1977 ex.s. c 80 § 27; 1975 1st ex.s. c 217 § 4; 1971 ex.s. c 167 § 2; 1969 ex.s. c 35 § 4; 1965 c 13 § 4.]

Severability—1984 c 97: See RCW 74.34.900.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

RCW 26.44.050 Abuse or neglect of child or adult dependent or developmentally disabled person—Duty of law enforcement agency or department of social and health services—Taking child into custody without court order, when. Upon the receipt of a report concerning the possible occurrence of abuse or neglect, it shall be the duty of the law enforcement agency or the department of social and health services to investigate and provide the protective services section with a report in accordance with the provi-

sion of chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child or adult dependent or developmentally disabled person for the purpose of providing documentary evidence of the physical condition of the child, adult dependent or developmentally disabled person. [1987 c 450 § 7; 1987 c 206 § 5; 1984 c 97 § 5; 1981 c 164 § 3; 1977 ex.s. c 291 § 51; 1977 ex.s. c 80 § 28; 1975 1st ex.s. c 217 § 5; 1971 ex.s. c 302 § 15; 1969 ex.s. c 35 § 5; 1965 c 13 § 5.]

Reviser's note: This section was amended by 1987 c 206 § 5 and by 1987 c 450 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1984 c 97: See RCW 74.34.900.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

STUDENTS

Child Abuse and Neglect Prevention

Prevention

Each school principal shall develop and implement an instructional program that will teach students:

- A. how to recognize the factors that may cause people to abuse others;
- B. how one may protect oneself from incurring abuse; and,
- C. what resources are available to assist an individual who does or may encounter an abuse situation.

To facilitate such a program, staff development activities may include such topics as:

- Child growth and development
- Identification of child abuse and neglect
- Effects of child abuse and neglect on child growth and development
- Personal safety as it relates to potential child abuse and neglect
- Parenting skills
- Life situations/stressors which may lead to child maltreatment
- Substance abuse

Reporting Responsibilities

Staff are expected to report every instance of suspected child abuse or neglect. Since protection of children is the paramount concern, staff should discuss any suspected evidence with the principal or nurse regardless of whether the condition is listed among the indicators of abuse or neglect.

Staff are reminded of their legal obligation to make such reports and of their immunity from potential liability for doing so. The following procedures are to be used in reporting instances of suspected child abuse:

- A. When there is reasonable cause to believe that a student has suffered abuse or neglect, staff shall immediately contact the nearest office of the child protective services (CPS) of the department of social and health services (DSHS). If this agency cannot be reached, the report shall be submitted to the police, sheriff, or prosecutor's office. Such contact must be made within forty-eight (48) hours. Staff shall also advise the principal regarding instances of suspected abuse or neglect. In his/her absence the report shall be made to the nurse.

A staff member may wish to discuss the circumstances with an employee of CPS for assistance in determining if a report should be made. The Child Protective Service has the responsibility of determining the fact of child abuse or neglect. Any doubt about the child's condition shall be resolved in favor of making the report.

B. A written report shall be submitted promptly to the agency to which the phone report was made. The report shall include:

1. the name, address and age of the child;
2. the name and address of the parent or person having custody of the child;
3. the nature and extent of the abuse or neglect;
4. any evidence of previous abuse or any other information that may relate to the cause or extent of the abuse or neglect; and
5. the identity, if known, of the person accused of inflicting the abuse.

Abuse may be indicated by:

PHYSICAL ABUSE INDICATORS:

- A. Bilateral bruises, extensive bruises, bruises of different ages, patterns of bruises caused by a particular instrument (belt buckle, wire, straight edge, coat hanger, etc.).
- B. Burn patterns consistent with forced immersion in a hot liquid (a distinct boundary line where the burn stops), burn patterns consistent with a spattering by hot liquids, patterns caused by a particular kind of implement (electric iron, etc.) or instrument (circular cigarette burns, etc.).
- C. Lacerations, welts, abrasions.
- D. Injuries inconsistent with information offered by the child.
- E. Injuries inconsistent with the child's age.
- F. Injuries that regularly appear after absence or vacation.

EMOTIONAL ABUSE INDICATORS:

- A. Lags in physical development.
- B. Extreme behavior disorder.
- C. Fearfulness of adults or authority figures.

- D. Revelations of highly inappropriate adult behavior, i.e., being enclosed in a dark closet, forced to drink or eat inedible items.

SEXUAL ABUSE INDICATORS:

Sexual abuse, whether physical injuries are sustained or not, is any act or acts involving sexual molestation or exploitation, including but not limited to incest, rape, carnal knowledge, sodomy or unnatural or perverted sexual practices. Indicators include:

- A. Child having difficulty sitting down.
- B. Child refusing to change into gym clothes (when he/she has been willing to change clothes in the past).
- C. Venereal disease in a child of any age.
- D. Evidence of physical trauma or bleeding to the oral, genital or anal areas.
- E. Child running away from home and not giving any specific complaint about what is wrong at home.
- F. Pregnancy at 11 or 12 with no history of peer socialization

Neglect may be indicated by:

PHYSICAL NEGLECT INDICATORS:

- A. Lack of basic needs (food, clothing, shelter).
- B. Inadequate supervision (unattended).
- C. Lack of essential health care and high incidence of illness.
- D. Poor hygiene on a regular basis.
- E. Inappropriate clothing in inclement weather.
- F. Abandonment.

BEHAVIORAL INDICATORS OF ABUSE:

- A. Wary of adult contact.
- B. Frightened of parents.
- C. Afraid to go home.
- D. Habitually truant or late to school.

- E. Arrives at school early and remains after school later than other students.
- F. Wary of physical contact by adults.
- G. Shows evidence of overall poor care.
- H. Parents describe child as "difficult" or "bad".
- I. Inappropriately dressed for the weather -- no coat or shoes in cold weather or long sleeves and high necklines in hot weather (possibly hiding marks of abuse).
- J. Exhibit behavioral extremes: crying often or never, unusually aggressive or withdrawn and fearful.

NOTE: Behavioral indicators in and of themselves do not constitute abuse. Together with other indicators they may warrant a referral.

Adoption Date:

121592

Child Abuse and Neglect

This policy deals with a growing problem. Certificated staff members are required to report all suspected cases of child abuse and neglect. Principals may wish to devote a faculty meeting to reviewing indicators of abuse or neglect and discussing the reporting procedures to be used. Child protective services staff as well as law enforcement officers have the authority to interrogate a child at school without the knowledge of the parent.

Every certificated staff member is required to report cases of suspected child abuse. Failure to make such a report is a misdemeanor. A report must be submitted to CPS or a law enforcement officer within 48 hours. A certificated staff member who in good faith makes a report or testifies to alleged child abuse or neglect is immune from any liability arising out of such reporting.



RECEIVED
MAY 11 1988
SUPPORT SERVICES & PROGRAMS
SP1

Ken Eikenberry

ATTORNEY GENERAL OF WASHINGTON

7th FLOOR, HIGHWAYS-LICENSES BUILDING • OLYMPIA, WASHINGTON 98504-8071

March 29, 1988

Superintendent

APR 6 1988
7:10 PM MAR 31 1988

MEMORANDUM

TO: Robert E. Patterson
Assistant Attorney General

FROM: Jerald R. Anderson
Assistant Attorney General

SUBJECT: Letter on Child Abuse from Joan
Campbell to Ruth Harms, Child Abuse
Specialist, SPI

As you requested, I have reviewed the above-referenced letter concerning child abuse. My apologies for being slow to respond to your request for comments, but the letter arrived while I was on annual leave. My comments concerning Ms. Campbell's letter are set forth below.

With respect to question 1, to the best of my knowledge there is no statute which specifically authorizes or requires a school district to place in a student's permanent record a statement that suspected child abuse has been reported. However, the lack of express authority does not, in my opinion, prevent a school district from placing such a statement in a student's permanent record. RCW 28A.58.255 requires school districts (1) to adopt written policies regarding the district's role and responsibility relating to the prevention of child abuse and neglect, (2) to participate in the primary prevention program established under RCW 28A.03.514 and (3) either to develop and implement its own child abuse and neglect education and prevention program or continue with an existing program. Keeping a record of reports of suspected child abuse could certainly form a legitimate part of a district's policy on child abuse prevention and education.

Additionally, the ability to place such a statement in a student's permanent record may also be implied from the legal duty of district personnel to report incidents of suspected child abuse. See RCW 26.44.030, -- .040, and --.050. In particular, RCW 26.44.040 provides that persons reporting suspected child

OFFICE OF THE ATTORNEY GENERAL

Mr. Patterson

-2-

Mar. 29, 1988

abuse may, upon request of DSHS, be required to make a written report of child abuse. In such a case, the district presumably will retain a copy of the report for its own files. Indeed, such a report could, if the district chooses, be placed in the student's permanent record. (Note -- I do not necessarily advocate this course of action. In some districts, a student's records are easily available to all school personnel, not just those with a "need to know." If the complete child abuse report is placed in a readily accessible student file, there is a potential for violation of the student's right of privacy.)

Question 1 goes on to raise, rather elliptically, some issues regarding the release of such information under the Family Educational Rights and Privacy Act (hereinafter referred to as the Buckley Amendment). I do not think it is possible to state, as a blanket rule, that the suspected child abuse constitutes a "health or safety emergency" which would justify the disclosure of otherwise nondisclosable information. (See 45 C.F.R. § 99.31(a)(10)). Although it may well be true that such information will be disclosable to the appropriate authorities in the vast majority of cases, a district must still follow the test set out in 45 C.F.R. § 99.36 for disclosure of information in health and safety emergencies. 45 C.F.R. § 99.36 requires that the following factors be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed:

- (1) The seriousness of the threat to the health or safety of the student or other individuals;
- (2) The need for the information to meet the information;
- (3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and
- (4) The extent to which time is of the essence in dealing with the emergency.

In question 2, Ms. Campbell asks whether there is a legal requirement that school districts get parent permission for transmitting cumulative student records to other school districts. Clearly, there is no state law establishing such a requirement. The Buckley Amendment provides that an educational agency or institution may disclose personally identifiable information from the education records of the student without the prior written consent of the parent of the student or the eligible student if the disclosure is:

OFFICE OF THE ATTORNEY GENERAL

Mr. Patterson

-3-

Mar. 29, 1988

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in § 99.34.

(Emphasis supplied.) (45 C.F.R. § 99.31(a)(2).)

45 C.F.R. § 99.34 does not require prior parental permission for transfer of records to another school district. However, it requires that a school district do one of the following two things: (1) make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student except when the transfer of the records is initiated by the parent or eligible student, or (2) include a notice in the Buckley Amendment policies of the district that it forwards educational records on request to a school in which a student intends to enroll and that the district does not have to provide any further notice of the transfer of records. Thus, unless a district has exercised option (2) above, it must provide notice of the transfer of records, although it need not obtain prior consent to the transfer of records.

Question 3 seems to me to be a gray area. RCW 26.44.030(9) authorizes DSHS or a law enforcement agency to "interview children." The interviews can take place without notification of the parents, although "(p)arental notification of the interview shall occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation." Additionally, DSHS or the law enforcement agency must determine, prior to commencing the interview, whether the child wishes a third party to be present for the interview. The question in my mind is whether RCW 26.44.030(9) is intended to apply to interviews of persons other than the child who may have been abused. On the whole, I am inclined to think that it does not expressly authorize such interviews. Also, it should be noted, that the authority conferred by RCW 26.44.030(9) rests with DSHS and law enforcement agencies, not with the school districts.

Arguably, a district may have some rather general implied authority to interview siblings and friends of possible abuse victims, but I must confess that I am uncomfortable with the notion.

I hope that these comments will be of some assistance to you. If you wish to discuss this matter further, please feel free to call me.

JRA



JRA:nst



Marysville School District

4220 80th N.E. - Marysville, Washington 98270

March 15, 1988

Ruth Harms, Child Abuse Specialist
SPI Special Services
Old Capitol Building
Mail Stop FG-11
Olympia, WA 98504

RECEIVED

MAR 15 1988

SUPPORT SERVICES & PROGRAMS
SPI

In November you and I talked on the phone about some issues related to record-keeping and reporting of child abuse. In December you kindly sent me portions of the Family Educational Rights and Privacy Act related to my questions. You also said you were waiting for a response from the legal department on my other questions, and would let me know what you found out. In case my questions have been lost in the shuffle, here they are again:

1. What specific legal citation is there for recording in a student's permanent record (the health folder, in our case) that a report of suspected child abuse has been made to CPS or law enforcement? This seems to be commonly done, but school principals would like the reassurance that legislation protects this practice.
recording could form a legit. part of a district child abuse prevention prog per 28A.55.255;
There is NO DESIRE to record the entire report, but rather the date, and the name of the caseworker if one is assigned.
(Consider page 76 of FERPA. Does potential child abuse constitute an emergency? Has the state "further limited" access beyond clause (E)?)
2. Is there a legal requirement that school districts get parent permission for transmitting cumulative student records to other school districts?
alt. could simply be implied with fr. duty to report
This is not handled consistently from one district to another.
3. What law, if any, pertains to our allowing the interviewing of siblings and friends of possibly abused children to be done at school?
26.44.030 - 26.44.050
It is logical to me that any child close to a victim may also be a victim, or may have vital information regarding an alleged victim. Does the law speak to this?

We believe that we are using good judgment, and following common practice, but would appreciate clarification of the legal issues.

Sincerely,

Joan L. Campbell
Joan Campbell, Social Worker
Special Services Department

JC:ah

APPENDIX H



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE DEPUTY UNDER SECRETARY FOR MANAGEMENT

RECEIVED
MAY 10 1990

OFFICE OF ATTORNEY GENERAL
EDUCATION DIV. - OLY.

RECEIVED
MAY - 7 1990

ATTORNEY GENERAL'S OFFICE
ECOLOGICAL DIV.
OLYMPIA

Ms. Tanya Barnett
Assistant Attorney General
Office of the Attorney General
7th Floor
Highways-Licenses Building, PB 71
Olympia, Washington 98504-8071

APR 30 1990

Dear Ms. Barnett:

This is in response to your inquiry of November 11, 1989, and your follow-up letter of January 3, 1990, in which you requested an opinion on whether a conflict exists between the Family Educational Rights and Privacy Act (FERPA) and WAC 248-100-046. The State law requires individuals, including school district personnel, to cooperate with public health personnel during the investigation of a case or suspected case of a reportable disease. You specifically asked if Washington educational agencies could disclose, consistent with FERPA, the addresses of children who are "suspected" of having a reportable disease.

FERPA generally requires consent before disclosure of information from a student's education records under section 99.30 of the regulations. FERPA defines "education records" as those records containing information directly related to the student that are maintained by an educational agency or institution. 20 U.S.C. 1233g(a) (4) (A).

Section 99.31 presents conditions under which prior consent is not required to disclose information. One of them, section 99.31(a) (11), allows disclosure of information that has been designated "directory information" under section 99.37 of the FERPA regulations. In your letter, you noted that students' addresses are generally considered "directory information" and, as such, may be disclosed without consent under FERPA. Your concern is that cases will arise in which a parent has refused to let the agency designate the student's address as directory information.

As you noted, prior written consent is not required "in connection with an emergency . . . to protect the health or safety of the student or other persons" 20 U.S.C. 1232g(b) (1) (I). The regulations provide that "(a)n institution may disclose . . . information from an education record . . . without consent . . . if the disclosure is in connection with a health or safety emergency." 34 CFR 99.31(a) (10). The exception applies when it is "necessary to protect the health or safety of the student or other individuals." 34 CFR 99.36(a).

Health Emergency Exception -- Children Suspected
of Having "Reportable" Diseases

300 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

Page 2- Ms. Tanya Barnett

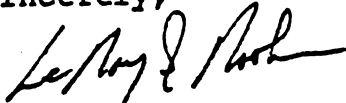
As reflected in the revised FERPA regulations, the initial determination of whether a disclosure is necessary to protect public health is appropriately made by an educational agency or institution. The preamble states, in connection with a comment regarding FERPA's health and safety exception, "If the institution determined that the circumstances of a situation were such as to constitute a health or safety emergency . . . then the disclosure could be made under the section of the regulations that provides for disclosure in those emergencies." 53 Fed. Reg. 11955 (April 11, 1988). The Department does, however, reserve the right ultimately to determine whether, as a matter of Federal law, the disclosure comes within the exception to FERPA's usual requirement of prior consent.

In the present case, WAC 248-100-011 defines "Reportable disease or condition" as a "disease or condition of public health importance, a case of which, and for certain diseases, a suspected case of which, must be brought to the attention of the local health officer." It is clear that the Washington legislature, by enacting WAC 248-100-046, has made a determination that it is necessary as a matter of public health and safety for all "persons," including officials of educational agencies and institutions, to cooperate in the investigation of cases or suspected cases of the diseases identified under WAC 248-100-076. This Office is not aware of any basis or reason to set aside that determination.

Accordingly, in these circumstances, there is no conflict between FERPA and WAC 248-100-046. As a result, school officials may disclose, pursuant to WAC 248-100-046 and section 99.31(a)(10) of the FERPA regulations, the addresses of students whose parents have refused to let the educational agencies designate their children's addresses as directory information. However, the agency or institution making such a disclosure must also fulfill the recordation requirements contained in 34 CFR 99.32 to comply with FERPA.

I trust the above satisfactorily responds to your inquiry regarding FERPA as it relates to WAC 248-100-046.

Sincerely,



LeRoy S. Rooker
Director
Family Policy and
Regulations Office

**WAC 246-100-046 Responsibilities and duties—
Cases, suspected cases, carriers, contacts, and others.** (1) Persons shall cooperate with public health personnel during:

(a) Investigation of the circumstances of a case, suspected case, outbreak, or suspected outbreak of a communicable or other disease or condition; and

(b) Implementation of infection control measures, including isolation and quarantine measures.

(2) Individuals having knowledge of a person with a reportable disease or condition may notify the local health officer as described in WAC 246-100-071.

[Statutory Authority: RCW 43.20.050. 92-02-019 (Order 225B), § 246-100-046, filed 12/23/91, effective 1/23/92; 91-02-051 (Order 124B), recodified as § 246-100-046, filed 12/27/90, effective 1/31/91; 87-11-047 (Order 302), § 248-100-046, filed 5/19/87.]

WAC 246-100-071 Responsibility for reporting to and cooperating with the local health department. (1) A principal health care provider in attendance on a case of any reportable disease or condition shall report the case to the local health department as required in this chapter.

(2) Other health care providers in attendance on a case of a reportable disease or condition shall report the case to the local health department unless the case has already been reported.

(3) Health care facilities where more than one health care provider may be in attendance on a case of a reportable disease or condition may establish administrative procedures to assure forwarding of reports to the local health department without duplication. Neither the submission of a specimen to a public health laboratory as required in WAC 246-100-231 nor the laboratory reporting a positive test result as required in WAC 246-100-236 relieves the principal health care provider or health care facility from responsibility for reporting to the local health department.

(4) Individuals knowing about a person suspected to have any reportable disease or condition may report the name, other identifying information, and other known information described in WAC 246-100-081 to the local health department.

(5) School principals, school nurses, and day care center operators knowing of a case or suspected case of a reportable disease or condition in the school or center shall notify the local health department.

(6) Each school teacher and day care worker knowing of a case or suspected case of a reportable disease or condition shall report the name and other identifying information to the principal, school nurse, or day care center operator.

(7) Medical laboratories shall report laboratory evidence of certain reportable diseases to the local or state health department as described in WAC 246-100-236.

(8) Health care providers, health care facilities, laboratory directors, and individuals shall cooperate with the local health officer in the investigation of a case or suspected case of a reportable disease or condition, and shall, when requested by the local health officer, provide in a timely manner any information related to the clinical, laboratory, and epidemiologic circumstances of the case or suspected case.

[Statutory Authority: RCW 43.20.050. 92-02-019 (Order 225B), § 246-100-071, filed 12/23/91, effective 1/23/92; 91-02-051 (Order 124B),

recodified as § 246-100-071, filed 12/27/90, effective 1/31/91; 87-11-047 (Order 302), § 248-100-071, filed 5/19/87.]

APPENDIX I

SCHEDULE TITLE HEALTH SERVICES		DISPOSITION AUTHORITY NUMBER G951-09			PAGE S46	
SCHEDULE TITLE HEALTH SERVICES		SCHEDULE APPLICABLE TO SCHOOL DISTRICTS			EFFECTIVE DATE March 30, 1994	
ITEM NO.	RECORDS SERIES TITLE & DESCRIPTION	OPR or OFM	LOCATION & RETENTION PERIOD		AR-CHIVE? FILM?	DISPOSITION/REMARKS
			PRIMARY COPY	SECONDARY COPIES		
1	MEDICATION ADMINISTRATION CASE FILES Includes physician/parent/guardian authorization and account of number and dosages administered.	OPR	8 years after last dose*	District option		*Reference RCW 4.16.350 and RCW 28A.210.260.
2	CERTIFICATE OF IMMUNIZATION DSHS 13-263	OFM	Until termination of enrollment	District option		
3	HEALTH ROOM REGISTRY Log of students reporting to health office because of illness/injury.	OFM	8 years after last entry*	1 year		*Reference RCW 4.16.350 and RCW 28A.210.260.
4	COMMUNICABLE DISEASE REPORT Includes data collected from schools and summary report.	OFM	Until summary report is submitted to local Health Department	None		
5	HEALTH SCREENING RESULTS Includes following tests: Scoliosis (Mandatory), Vision (Mandatory), Hearing (Mandatory), and Dental (Optional).	OFM	Until data transferred to Pupil Health Card or folder.	None		
FOR THE ATTORNEY GENERAL <i>R. E. B. B. B.</i>		FOR THE STATE AUDITOR <i>C. L. L.</i>			FOR THE STATE ARCHIVIST <i>L. D. M. M. M.</i>	

SCHEDULE TITLE HEALTH SERVICES		DISPOSITION AUTHORITY NUMBER GS51-09				PAGE S47
SCHEDULE APPLICABLE TO SCHOOL DISTRICTS		LOCATION & RETENTION PERIOD		AR- CHIVE? FILM?	EFFECTIVE DATE March 30, 1994	
ITEM NO.	RECORDS SERIES TITLE & DESCRIPTION	OPR or OFM	PRIMARY COPY	SECONDARY COPIES	DISPOSITION/REMARKS	
6	STUDENT HEALTH CARD OR FOLDER May include but is not limited to screening results, data recorded from information submitted by parents/doctors and record of notification to parents.	OFM	2 years after graduation or withdrawal	None		
7	CHILD ABUSE REPORTS Reports compiled by district personnel regarding students who may be victims of abuse. Submitted to DSHS Child Protective Services.	OPR	6 years	1 year		
8	APPLICATION FOR HOME/HOSPITAL TUTORING	OPR	6 years	1 year		
9	MEDICATION ADMINISTRATION DAILY LOG A chronological listing of the dosages administered.	OPR	8 years after last entry.	None		*Reference RCW 4.16.350 and RCW 26A.210.280
FOR THE ATTORNEY GENERAL		FOR THE STATE AUDITOR			FOR THE STATE ARCHIVIST	

SCHEDULE TITLE		DISPOSITION AUTHORITY NUMBER		PAGE	
SPECIAL EDUCATION STUDENT RECORDS		GS51-05I		S79	
SCHEDULE APPLICABLE TO SCHOOL DISTRICTS		EFFECTIVE DATE		March 30, 1994	
ITEM NO.	RECORDS SERIES TITLE & DESCRIPTION	OPR or OFM	LOCATION & RETENTION PERIOD		DISPOSITION/REMARKS
			PRIMARY COPY	SECONDARY COPIES	
1	SPECIAL EDUCATION STUDENT HISTORY FILE Includes psychological and IQ test results, decision packets, evaluation and other reports, final IEP report (plan), correspondence and other information regarding the student.	OFM	Final separation plus 6 years	Until final separation	Notice of disposition must be sent to the last known address of parents or guardians prior to disposing of the records. The notice must offer them the opportunity to take possession of the file or any of its contents as an alternative to destroying the record.
2	SPECIAL EDUCATION STUDENT HISTORY FILE DISPOSITION NOTICE RECORD Log of notices sent to the last known addresses of parents or guardians advising them of the pending disposal of the Student History File and offering them the opportunity to take possession of the file or any of its contents as required by the Washington Administrative Code (WAC) and the Family Education Rights and Privacy Act (FERPA). (See Appendices.)	OPR	Permanent	None	+Suggested Procedure - Microfilm: a. This records series may be retained permanently on microfilm instead of hard copy. b. Microfilming must be done according to standards issued by the State Archives and approved by the State Auditor as per RCW 40.20.020. c. Information subject to deletion as provided by the Family Educational Rights and Privacy Act should be destroyed and not filmed.
FOR THE ATTORNEY GENERAL		FOR THE STATE AUDITOR		FOR THE STATE ARCHIVIST	
<i>[Signature]</i>		<i>[Signature]</i>		<i>[Signature]</i>	

DISPOSITION AUTHORITY NUMBER GS51-051		PAGE S80									
SCHEDULE TITLE SPECIAL EDUCATION STUDENT RECORDS		EFFECTIVE DATE March 30, 1994									
ITEM NO.	RECORDS SERIES TITLE & DESCRIPTION	OPR or OFM	LOCATION & RETENTION PERIOD								
3	SUMMARY ASSESSMENT REPORT FOR STUDENT NOT ASSIGNED TO THE SPECIAL EDUCATION PROGRAM	OFM	<table border="1"> <tr> <td>PRIMARY COPY</td> <td>SECONDARY COPIES</td> <td>AR-CHIVE? FILM?</td> <td>MICRO-</td> </tr> <tr> <td>3 years</td> <td>None</td> <td></td> <td></td> </tr> </table>	PRIMARY COPY	SECONDARY COPIES	AR-CHIVE? FILM?	MICRO-	3 years	None		
PRIMARY COPY	SECONDARY COPIES	AR-CHIVE? FILM?	MICRO-								
3 years	None										
FOR THE ATTORNEY GENERAL <i>R. E. Bunkley</i>		FOR THE STATE ARCHIVIST <i>David A. McLaughlin</i>									
FOR THE STATE AUDITOR <i>C. L. L. L.</i>		DISPOSITION/REMARKS									

APPENDIX J

APPENDIX J

The Food and Consumer Service, U. S. Department of Agriculture (USDA) administers the Child Nutrition Programs. Students are determined eligible for nutrition programs in one of two ways. Students may be determined eligible for free or reduced price school meals by submitting a letter of application to their school. Students whose families are receiving food stamps or aid to families with dependent children (AFDC) may receive a letter directly certifying them for free school meals. Both the applications and the returned certifying letters contain confidential information. Disclosure is regulated by FERPA and the federal law and regulations related to USDA child nutrition programs. This information is not "health care information," but would be part of a student's educational record.

Information contained in letters of direct certification sent to parents or guardians may not be used for any purpose other than determining a student's eligibility for free meals.

Children in Washington State are directly certified under a cooperative agreement between the Office of Superintendent of Public Instruction and the Department of Social and Health Services. Letters are sent to families directly certifying children age 20 and under. If the certification letters are commingled with confidential applications that are returned by families and there is any confusion about which confidentiality restrictions apply, then the safest course is to use the information only for determining eligibility.

School districts may, beginning Fall 1994, provide low-income students greater access to other financial means-tested programs and benefits by using a multi-use free and reduced price meal application. The multi-use application must precisely identify the agencies with whom the information will be shared and for what purposes. It allows the household to specifically waive the right to confidentiality and to limit the waiver to specific programs.

References: FERPA (Appendix A); 7 CFR 245.8 Title II, Part A, Sec. 202(b)(1)(C)(iii); 42 U.S.C. 1758(b)(2)(C)(iii)

APPLICATION FOR FREE AND REDUCED PRICE MEALS

To apply for free and reduced price meals for your children, complete this application, sign your name and return the application to school. If your household receives AFDC, food stamps or FDPIR, complete only Parts 1, 4 and 5. If your household does not receive AFDC, food stamps or FDPIR complete Parts 2a, 2b, 3, 4 and 5. For assistance call _____.

PART 1 To be completed by AFDC, food stamp or FDPIR households.

Child's Name	Food Stamp or FDPIR (X)	AFDC (X)	Case Number	School	Room	Grade

PART 2a To be completed by all other households.

Child's Name	School	Room	Grade	Child's Name	School	Room	Grade

PART 2b Under NAMES list the names of EVERYONE living in your household, including yourself and any children listed above. Write the amount of income (MONEY BEFORE DEDUCTIONS) each person now gets PER MONTH on the same line as his/her name and where it comes from, such as earnings, welfare, pensions, or other. If income is received other than monthly, use the income conversion chart provided below.

NAMES of Household Members	Gross MONTHLY Earnings (before deductions) Job 1	Job 2	MONTHLY Welfare Payment, Child Support, Alimony	MONTHLY Payments from Pensions, Retirement, Social Security	Any Other MONTHLY Income
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					

MONTHLY INCOME CONVERSION: Weekly x 4.33; Every Two Weeks x 2.15; Twice a Month x 2

PART 3 To be completed for each FOSTER CHILD

Write "0" if the child has no personal income.

Child's Name	Child's Monthly Personal Use Income	School	Room	Grade

PART 4 - RACIAL/ETHNIC IDENTITY You are not required to answer this question.

☐ WHITE, Not of Hispanic Origin ☐ BLACK, Not of Hispanic Origin ☐ AMERICAN INDIAN or ALASKA NATIVE ☐ ASIAN or PACIFIC ISLANDER ☐ HISPANIC

PART 5 - SIGNATURE AND SOCIAL SECURITY NUMBER

An adult household member must sign the application before it can be approved. If you do not have a social security number write "none." If you listed a food stamp or AFDC number for your child, or are applying for a foster child, a social security number is not needed.

I certify that all of the above information is true and correct and that all income is reported. I understand that this information is being given for the receipt of federal funds; that school officials may verify the information on the application; and that deliberate misrepresentation of the information may subject me to prosecution under applicable state and federal laws.

SIGNATURE OF ADULT HOUSEHOLD MEMBER		PRINTED NAME AND ADDRESS	HOME TELEPHONE NUMBER ()
SOCIAL SECURITY NUMBER *	DATE		WORK TELEPHONE NUMBER ()

PART 6 - OTHER BENEFITS You do not have to complete this part to get free and reduced price meals☐**MEDICAID**

Yes, school officials may give my name and address to the state's Healthy Kids program so that they can contact me or send me information about health coverage for my children at no cost to my family.

☐**JOB TRAINING PARTNERSHIP ACT (JTPA)**

Yes, school officials may give my children's name to Job Training Partnership Act (JTPA) service providers to document their eligibility for services. Students eligible for FREE meals are also eligible for employment and training programs funded under JTPA.

☐**OTHER FREE OR REDUCED PRICE BENEFITS**

Yes, school officials may use the information provided on this application to determine my children's eligibility for reduced traffic safety education fees, "Choice" low-income transportation reimbursement or other school benefits at reduced price or free.

The information on this form may be used to assist in the determination of eligibility only for the programs that I have indicated. I understand that I will be releasing information that will show that I am applying for free and reduced price benefits under the National School Lunch Program. Officials from the Medicaid program may verify my name and address. School officials may verify all the information on this form. I give up my rights to confidentiality for these purposes only.

I certify that I am the parent/guardian of the child(ren) for whom application is being made.

SIGNATURE PARENT/GUARDIAN_____
DATE

* **PRIVACY STATEMENT** - If you did not give a food stamp or AFDC case number, Section 9 of the National School Lunch Act requires you to list the social security number of the adult household member who signs the application or indicate that the adult household member does not have a social security number. You do not have to give a social security number but if you do not give a social security number or indicate that the signer does not have a social security number, your child cannot receive free or reduced price meals. The social security number may be used to identify you for verifying the information you report on this application. Verification may include program reviews, audits, investigations, contacting the state employment security office, food stamp or welfare office, and employers, and checking the written information provided by the household to confirm the information received. If incorrect information is discovered, a loss of benefits or legal action may occur.

SCHOOL USE ONLY - DO NOT WRITE BELOW THIS LINE**VERIFICATION**

Date Selected for Verification		<input type="checkbox"/> Not Confirmed	<input type="checkbox"/> Confirmed	<input type="checkbox"/> Food Stamp AFDC Office Notice of Eligibility ATP Card Issued Monthly (NOT ID card w/o expiration date)
Response Due from Household				
Second Notice Sent				

Monthly Income

\$ _____

Comments**Results****Reason for Eligibility Change**

- ☐ Wage Stubs
☐ Written Documents
☐ Collateral Contact
☐ Agency Records
☐ Other _____

- ☐ No Change
☐ Free to Reduced Price
☐ Ineligible
☐ Reduced Price to Free

- ☐ Income
☐ Household Size
☐ Refuse to Cooperate
☐ Other _____

Sample Selection

- ☐ Random
☐ Focused
☐ 100%
☐ Other _____

Date of Change _____

Date Adverse Notice Sent _____

SIGNATURE OF VERIFYING OFFICIAL_____
DATE**SFA APPROVAL/DENIAL**☐

FOOD STAMP / AFDC HOUSEHOLD
INCOME HOUSEHOLD

Total Household Monthly Income \$ _____

Household Size _____

Application Approved for:

- ☐ Free Meals
☐ Reduced Price Meals

Temporary Approval for:

- ☐ Free Meals
☐ Reduced Price Meals

Application Denied Because:

- ☐ Income Over Allowed Amount
☐ Incomplete/Missing
☐ Other: _____

DATE TEMPORARY APPROVAL EXPIRES_____
DATE NOTICE SENT_____
SIGNATURE OF DETERMINING OFFICIAL_____
DATE

**PART 245—DETERMINING ELIGIBILITY
FOR FREE AND REDUCED PRICE
MEALS AND FREE MILK IN
SCHOOLS**

Sec.

- 245.1 General purpose and scope.
- 245.2 Definitions.
- 245.3 Eligibility standards and criteria.
- 245.4 Exceptions for Puerto Rico and the Virgin Islands.
- 245.5 Public announcement of the eligibility criteria.
- 245.6 Application for free and reduced price meals and free milk.
- 245.6a Verification requirements.
- 245.7 Hearing procedure for families and School Food Authorities.
- 245.8 Nondiscrimination practices for children eligible to receive free and reduced price meals and free milk.
- 245.9 Special assistance certification and reimbursement alternatives.
- 245.10 Action by School Food Authorities.
- 245.11 Action by State agencies and FNSROs.
- 245.12 Fraud penalties.
- 245.13 Special responsibilities of State agencies.
- 245.14 Information collection/recordkeeping—OMB assigned control numbers.

AUTHORITY: Secs. 3, 4, and 10 of the Child Nutrition Act of 1966, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2-12, 60 Stat. 230, as amended (42 U.S.C. 1751-60).

§ 245.1 General purpose and scope.

(a) This part established the responsibilities of State agencies, Food and Nutrition Service Regional Offices (where applicable), and School Food Authorities in providing free and reduced price meals and free milk in the National School Lunch Program (7 CFR part 210), the School Breakfast Program (7 CFR part 220), the Special Milk Program for Children (7 CFR part 215), and commodity schools. Section 9 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended, require schools participating in any of the programs and commodity schools to make available, as applicable, free and reduced price lunches, breakfasts, and at the option of the School Food Authority for schools participating only in the Special Milk Program free milk to eligible children.

appeal the adverse action within the 10 day advance notice period; and

(2) Households that are denied benefits upon application shall not receive benefits.

(44 U.S.C. 3506; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 6, 39 FR 30339, Aug. 22, 1974, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983]

§ 245.8 Nondiscrimination practices for children eligible to receive free and reduced price meals and free milk.

School Food Authorities of schools participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of commodity only schools shall take all actions that are necessary to insure compliance with the following nondiscrimination practices for children eligible to receive free and reduced price meals or free milk:

(a) The names of the children shall not be published, posted or announced in any manner;

(b) There shall be no overt identification of any of the children by the use of special tokens or tickets or by any other means;

(c) The children shall not be required to work for their meals or milk;

(d) The children shall not be required to use a separate dining area, go through a separate serving line, enter the dining area through a separate entrance or consume their meals or milk at a different time;

(e) When more than one lunch or breakfast or type of milk is offered which meets the requirements prescribed in § 210.10, § 210.15a, § 220.8 or § 215.2(1) of this chapter, the children shall have the same choice of meals or milk that is available to those children who pay the full price for their meal or milk.

[Amdt. 6, 39 FR 30339, Aug. 22, 1974]

§ 245.9 Special assistance certification and reimbursement alternatives.

(a) A School Food Authority of a school having at least 80 percent of its enrolled children determined eligible for free or reduced price meals may, at its option, authorize the school to reduce annual certification and public

notification for those children eligible for *free meals* to once every two consecutive school years. This alternative shall be known as provision 1 and the following requirements shall apply:

(1) A School Food Authority of a school operating under provision 1 requirements shall publicly notify in accordance with § 245.5, parents of enrolled children who are receiving free meals once every two consecutive school years, and shall publicly notify in accordance with § 245.5, parents of all other enrolled children on an annual basis.

(2) The 80 percent enrollment eligibility for this alternative shall be based on the school's March enrollment data of the previous school year, or on other comparable data.

(3) A School Food Authority of a school operating under provision 1, shall count the number of free, reduced price and paid meals served to children in that school as the basis for monthly reimbursement claims.

(b) A School Food Authority of a school which serves all enrolled children in that school free meals may publicly notify and certify children in accordance with § 245.5 for free and reduced price meals for up to three consecutive school years; provided that eligibility determinations shall be in accordance with § 245.3, during the first school year. This alternative shall be known as provision 2 and the following requirements shall apply:

(1) Except for assistance properly made available under parts 210, 220, 240, and 250 and by other legislation, a School Food Authority of a school operating under provision 2 requirements agrees to pay with funds from other than Federal sources for:

(i) Meals served to children not eligible, as determined by § 245.3, for free or reduced price meals, and

(ii) The differential between the per meal cost and Federal reimbursement received for each free or reduced price meal, respectively, served to children eligible to receive such meals under applicable program regulations.

(2) For the purpose of calculating reimbursement claims in the second and third consecutive school years the monthly meal counts of the actual number of meals served by type—free,

APPENDIX K

APPENDIX K

FAX COVER SHEET

SAMPLE CONFIDENTIALITY STATEMENT

The document(s) accompanying this fax transmission may contain confidential information.

This transmission is intended only for the use of the person or office to whom it is addressed.

If you are not the named recipient, you are not authorized to read, disclose, copy, distribute or take any action in reliance on the information and any action other than immediate delivery to the named recipient is strictly prohibited. If you have received this fax in error, please immediately notify sender by telephone to arrange for a return of the original documents. If you are the named recipient you are not authorized to reveal any of this information to any other unauthorized person without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is not sufficient for this purpose.

Office of Superintendent of Public Instruction
Old Capitol Building
P.O. Box 47200
Olympia, WA 98504-7200

To order more copies of this document,
please call 1-888-59-LEARN (1-888-595-3276),
or visit our Web site at <http://www.k12.wa.us>.
Please refer to the document number below for quicker service.
01-0036

OS/306/00