



Advocates for Children of New York

Protecting every child's right to learn

October 1, 2024

Dennis Doyle
Office of General Counsel, Privacy Unit
NYC Department of Education
52 Chambers Street
New York, NY 10007
Via Email: RegulationA-820@schools.nyc.gov

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Re: Proposed Amendments to Chancellor's Regulation A-820

Dear Mr. Doyle:

Advocates for Children of New York (AFC) appreciates the opportunity to submit comments regarding the proposed amendments to Chancellor's Regulation A-820. For more than 50 years, AFC has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds and those most at-risk for school-based discrimination, including students in foster care. Every year, we help thousands of New York City parents navigate the education system. As such, we are well positioned to comment on the proposed amendments.

We are pleased that New York City Public Schools (NYCPS) is making changes to A-820 to reflect the record privacy, retention, and disclosure requirements for students in foster care included in the federal Family Educational Rights and Privacy Act (FERPA) and Uninterrupted Scholars Act (USA). The privacy and information-sharing provisions in these laws and related [New York State guidance](#) protect confidential and sensitive information while promoting collaboration with foster care agencies to support school success for students who, too often, have their education disrupted, and we appreciate NYCPS's work to update the regulations to reflect these changes. However, in several places, the proposed changes to A-820 do not reflect current federal law. We are also concerned that certain changes may lead to confusion and inappropriately limit parents' access to records when their children are in foster care.

Below are our recommended changes.



Section II Definitions

We are concerned that the proposed definition of “Non-Custodial Parent” may lead to confusion, as it does not comport with schools’ understanding of the term or with the way the term is used in section V.B of this proposed amended regulation (regarding access to education records by non-custodial parents). Generally, a “non-custodial parent” is a parent who does not live with the child all or most of the time. However, the proposed definition in section II does not mention whether the child resides with the parent, merely noting that a non-custodial parent is a parent whose access “has been restricted by a legally binding document.” A school may not know up front whether any person’s access to the child or the child’s records has been restricted by a legally binding document. A later section of the proposed amended regulation (section V.B) prescribes the process the school must undertake to *determine* whether a non-custodial parent has the right to access education records or whether their access has been restricted. As such, we recommend the following changes to section II.H.:

2. Non-Custodial Parent means a Parent who does not reside with the child and whose access may be to the child or the child’s Education Records has been restricted by a legally binding document (such as a court order) or an individual who asserts that they are a Parent but who is not identified as a Parent in DOE Records.

Section V.B Access to Student Education Records by Non-Custodial Parents

As written, the definition of “non-custodial parent” in Section II.H of the proposed regulation would necessarily include *all* parents whose children are in foster care since they, by definition, have had access to their children restricted by a court order. As a result, the process for accessing education records for non-custodial parents (described in Section V.B, pages 15-16 of the proposed regulation) would apply to parents whose children are in foster care. However, this process is not appropriate for students in foster care, as schools should not be reaching out to foster parents – the custodial parent of a child in foster care – to determine the right of a birth parent to access their child’s education records. As the [NYCPS website](#) makes clear, “Birth/adoptive parents must have the chance to know about their child’s progress at school. Unless a court order says otherwise, they must be allowed to obtain records, attend parent-teacher conferences, and fully participate in the student’s education.”

NYCPS has worked with the Administration for Children’s Services to outline a separate process for schools to follow when the parent of a student in foster care seeks access to their child’s records. Upon receiving a records request from the parent of a student in foster care, schools should contact the *foster care agency* to determine if there is a court order in place limiting the parents’ right to access the information. Furthermore, a 30-day waiting period is not needed to get or seek a court order; if there are any legal limitations in place restricting the parent’s access to information, the agency should already have a copy of that court order, and such orders are rare.

To address these concerns and help ensure parents of students in foster care do not experience additional barriers to accessing their children’s educational records, we recommend the following addition to Section V.B and a new Section V.C.:



B. ...

4. This section does not apply to requests for student records from parents whose children are in foster care. See section C. below for more information about access to student records for students in foster care.

C. Access to Student Records for Students in Foster Care

1. A parent or legal guardian of a student in foster care maintains their right to access education records when their child enters foster care, unless a court order specifically states otherwise.
 - a. Schools should contact the student's foster care agency to inquire about the status of the parent's rights and if any limitation on the parent's right to access records exists prior to releasing records to the parent. Schools may also contact the NYC Administration for Children's Services at education.unit@acs.nyc.gov for support.
 - b. In some cases, a parent may have the right to access records, but the student's address may need to be redacted so that the location of the foster care placement remains confidential.

In addition, in section V.B.3, to provide additional guidance to schools, we recommend providing examples of steps schools can take to provide records to non-custodial parents while protecting the family's safety and confidentiality. We recommend adding the following language to section V.B.3:

Schools may discuss options with Senior Field Counsel or the Office of General Counsel, such as redacting information that could compromise the safety or confidentiality of the Student or a family member.

Section VIII.C Disclosures pursuant to judicial orders or lawfully issued subpoenas.

As written, the proposed regulation requires written notice to parents, including parents of children in foster care, before any disclosure of educational records in accordance with a judicial order or subpoena. However, under the federal Uninterrupted Scholars Act, notice to the parent is *not* required when a parent is a party to a court proceeding involving child abuse and neglect or dependency matters, and the order is issued in the context of that proceeding.

To ensure the regulation comports with the Uninterrupted Scholars Act (Public Law 112-278 §2.224(b)(2)(B)), we recommend section VIII.C be changed to read as follows:

- C. Disclosures pursuant to judicial orders or lawfully issued subpoenas. Prior to any Disclosure, the Parent or Eligible Student shall be notified in writing of the subpoena or judicial order to give the Parent or Eligible Student a reasonable opportunity to contest the subpoena or judicial order or seek protection action unless the contents of the subpoena or judicial order are ordered not to be Disclosed. When a Parent is a party to a court proceeding involving child abuse and neglect or



dependency matters, and the order is issued in the context of that proceeding, notice to the Parent is not required.

Section VIII.E. Disclosures pursuant to a health or safety emergency

To comport with Chancellor's Regulation A-750, Child Abuse and Maltreatment Prevention, the description of when NYCPS employees may disclose a student's personally identifiable information (PII) to appropriate parties needs to be amended to include maltreatment in addition to child abuse.

We recommend section VIII.E of the proposed regulation be changed as follows:

2. DOE employees may Disclose Student PII to appropriate parties where necessary to report suspected cases of child abuse or maltreatment pursuant to Chancellor's Regulation A-750.

Section VIII.H Disclosures Permitted Without Consent that Do Not Require a Written Agreement

This section correctly states that under the Uninterrupted Scholars Act, schools may disclose education records without consent of the parent or eligible student to foster care agency staff. However, the section says that schools may also make disclosures without consent to "other representatives who need the Education Records to administer the Student's case plan." Without clarifying which "other representatives" qualify, schools will be left to guess and make their own judgements. Additionally, the language "who need the Education Records to administer the Student's case plan" differs from federal law, which provides that any "agency caseworker or other representative of a state or local child welfare agency . . . who has the right *to access* a student's case plan" is permitted to receive the disclosure (emphasis added). Public Law 112-278 §2.224(b)(1)(L). Schools are not in a position to determine which agency staff *need* education records to administer a student's case plan, and the law doesn't require that determination.

To clarify this provision and support school staff tasked with interpreting the regulation, we recommend the following change to section VIII:

- H. Pursuant to the Uninterrupted Scholars Act, schools may Disclose Education Records without consent of the Parent or Eligible Student to foster care agency staff or other representatives of the state or local child welfare agency who have access to a student's case plan ~~who need the Education Records to administer the Student's case plan~~ while the Student is in the care or protection of that agency.

Thank you for your consideration of our comments. If you have any questions or would like to discuss these issues further, please do not hesitate to contact us.



Advocates for Children
of New York
Protecting every child's right to learn

Sincerely,

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