



Community Services: Education

Argyll House
Alexandra Parade
Dunoon PA23 8AJ

To: Heads of all Educational Establishments

Dear Colleague

Access to pupil and student records

1 Introduction

- 1.1 Regulation 10 of the Schools General (Scotland) Regulations 1975 requires that an educational record be kept for every school pupil. The information which must be held in this record is detailed in education management circular 3.10.
- 1.2 The introduction of the Data Protection Act 1998, which came into force in March 2000, created a situation where parents did not have an independent right of access to their child's school educational records unless the child did not have legal capacity to exercise their rights under the 1998 Act, or had capacity and had either given their consent or that capacity could be implied.
- 1.3 Section 4 of the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 made provision for the enactment of regulations relating to the keeping, transferring and disclosure of educational records about pupils. These regulations came into force on 5 January 2004 by means of the Pupils' Educational Records (Scotland) Regulations 2003. These regulations reinstate a parents' right of independent access to their child's educational records.
- 1.4 This revised education management circular 3.11 supersedes previous circulars and associated supplementary material.

2 What is an educational record?

2.1 The Pupils' Educational Records (Scotland) Regulations 2003 define an educational record as any record of information, which

- is processed by or on behalf of the responsible body;
- relates to any person who is or has been a pupil at the school;
- relates to the school education of that person;
- originated from or was supplied by a teacher, the pupil to whom the information relates, a parent of the pupil or any other employee of the responsible body.

Educational records include information held in manual and electronic formats. This would include such items as attendance and other reports, correspondence, minutes of meetings and reviews of progress. All staff in the education service should maintain their records on the understanding that access will be available to parents and pupils or students.

2.2 Please note that any information which is kept or created by a teacher or employee of the responsible body which is intended solely for his or her own use in the course of his or her duties is excluded from the 2003 Regulations. This could include such things as lesson plans or records of work. However, it is important to consider best practice at all times. In many cases, the contents of child specific documents such as ISPs or pupil planners will already involve parental participation in their creation and review.

2.3 Any information contained in a coordinated support plan is excluded from these rules of disclosure. This also applies to coordinated support plans in draft form. Parents are provided directly with a copy of their child's coordinated support plan when it is formally opened and a copy of any changes whenever it is reviewed.

2.4 In legal terms the responsible body is defined as the education authority. However, in practical terms, the vast majority of requests will be made at school level and the power to respond to a request for information is delegated to head teachers. This is in keeping with previous practice but it is important to ensure that schools respond to requests within the time constraints imposed by the regulations (see 5.1 below).

3 Who can make a request for information?

The 2003 Regulations allow a child with capacity or his/her parents to request information contained within the child's educational records. The Age of Legal Capacity (Scotland) Act 1995 regards a child normally to have capacity at age 12. However, younger children may be judged to have the necessary capacity to

understand what is meant by exercising that right and therefore could be allowed to make a request for information.

- 3.2 The definition of 'parent' in these regulations is the one set out in section 135 of the Education (Scotland) Act 1980. It is a broad definition and includes carers, those who are liable to maintain or with parental responsibilities and persons who have care of the child or young person, such as other relatives or foster parents. However, unmarried fathers do not have automatic right of access to information. It depends on whether they meet the definition in terms of the act (see appendix 1). Legal and Protective Services or the Data Protection Officer should be consulted when such requests are received.
- 3.3 In certain circumstances, such as situations involving potential or actual domestic violence, the responsible body will need to ensure that allowing access to the record does not involve putting any other person at risk (see 8.1 below). This need not be the child or young person whose records are being requested.
- 3.4 A request for information by a parent must
- be in writing or an equivalent text format or in an alternative form which can be used as a reference source e.g. video or audio tape;
 - state the name of the applicant and an address for correspondence;
 - provide a description of the information requested.

Requests for access to information will be directed in the first instance to the head teacher or head of service. A form which can be issued to requesters if required is attached as appendix 2. The responsible body should record all requests for access to pupil records and, if appropriate, any reasons for refusal.

- 3.5 A responsible body does not require to disclose information unless supplied, on request, with information which satisfies the responsible body as to the identity of the person making the request and that this is sufficient to locate the information which that person seeks.

4 Alternative languages or formats

- 4.1 All requests by parents for information to be provided in an alternative language or format should be granted unless, in the opinion of the responsible body, the request is not reasonable.
- 4.2 If a request for information in alternative language or format is made, then translation facilities can be accessed through Social Work (see 12 below).

- 4.3 If a request is made for information in an alternative language format all efforts must be made to comply with the 15 day time limit (see 5.1 below).
- 4.4 The cost of providing information in an alternative language or format is still subject to the maximum charge as defined by the 1998 Act (see 6.2 below).

5 Timescale

- 5.1 If a parent requests a disclosure of their child's education record, under normal circumstances, this should be provided within 15 school days of the date of request. If any correction, addition or erasure is made between that time and the time when the information is supplied, then the parent shall also be supplied with the amended information.

6 Cost of supplying information

- 6.1 If the request is for an inspection of the records then this should be provided free of charge to that parent.
- 6.2 If the request is for a copy of all or part of their child's education records, then a fee may be charged, provided that the fee does not exceed the cost of supply and is subject to the maximum fee of £10 as prescribed under the Data Protection Act 1998 (but no more than the actual cost of supply).

7 Repeated requests for information

- 7.1 Where disclosure of information has already been made to a parent, the responsible body is not obliged to comply with subsequent identical or similar requests by the parent unless, in the opinion of the responsible body, there has been a change of circumstances or a reasonable interval has elapsed since the previous requests. In determining whether a reasonable interval has elapsed between requests, regard shall be had to the nature of the information requested and the frequency with which the information has altered.
- 7.2 A note of all requests should be kept in order that an audit trail can be pursued at a later date if required.

8 Circumstances where information should not be disclosed

- 8.1 In certain circumstances the responsible body shall not disclose information:
- subject to any order under ss30(2) and 38(1) of the Data Protection Act 1998; this relates to any areas which the Secretary of State declares exempt from disclosure.

- of a sensitive nature as defined in s2 of the 1998 Act; this relates to a person's
 - (a) racial or ethnic origin;
 - (b) political opinions;
 - (c) religious beliefs or other beliefs of a similar nature;
 - (d) membership of a trade union;
 - (e) physical or mental health or condition;
 - (f) sexual life;
 - (g) commission or alleged commission of any offence;
 - (h) involvement with the criminal justice system arising from offences or alleged offences, the disposal of any such proceedings or the sentence of any court in any such proceedings.
- where, in the opinion of the responsible body, disclosure would be likely to cause significant distress or harm to the pupil or any other person (see 3.3 above).
- where a Section 10 notice under the Data Protection Act has been received; any such notice should be immediately referred to the Council's Data Protection Officer.
- that consists of a reference given or to be given in confidence by the responsible body for the purposes of the education, training or employment, prospective education, training or employment, of the pupil.

8.2 Consent is required for access to information which in the opinion of the education authority would be likely to disclose personal information about a third party - that is a person other than the parent, pupil or student or professionals involved with the case. In these circumstances the education authority should ask the third party in writing for consent before the information is disclosed. Where consent is withheld or not possible to obtain the authority must give access to as much of the information as possible without disclosing personal information about the third party.

8.3 Staff should consult with Legal Services or Data Protection Officer if they have any doubt as to the validity or legitimacy of any request for information or the nature of the information being requested.

9 Rectification and erasure of inaccurate information

9.1 A parent may request that the responsible body rectify or erase any of the information in the educational records to which they would be entitled to request disclosure which they consider inaccurate.

9.2 The responsible body shall not be required to take any action to such a request unless the parent making the request:

- supplies sufficient information in order to locate that data they regard as inaccurate;
- specifies in what respect the information is inaccurate;
- specifies in what manner the parent considers the responsible body should rectify the information or what part should be erased.

9.3 Should the information be considered inaccurate by the responsible body then it can take action to rectify or erase all or part of the inaccuracies. The parent shall then be provided with a copy of the rectified information. However, if the responsible body is not satisfied that any information is inaccurate it will notify the parent of its opinion with reasons for its decision.

10 Pupil transfer

10.1 Where a pupil transfers to another school, the responsible body shall transmit a copy of the pupil's educational records to the body responsible for the management of that school, free of charge, if that body so requests, and within 15 school days of receiving the request.

10.2 Where a pupil moves to another school within Scotland they should ensure that electronic records are transferred via SEEMiS.

10.3 Date and method of transfer of individual paper PPRs should be recorded by both outgoing and incoming schools for audit purposes. If a PPR is posted schools should ensure they use a secure postal method such as special delivery.

11 Preservation of education records

11.1 Pupil education records shall be kept by the responsible body for 5 years after the pupil has stopped receiving school education.

12 Useful contacts

Legal Services, Kilmory, Lochgilphead	01546 604198
Data Protection Officer	01546 604342
Translation Facilities are available from	Glasgow Interpreting Services
	Glasgow City Council
	39 Napiershall Street
	Glasgow
	G20 6EZ
	0141-341 0019

Yours sincerely

Executive Director of Community Services

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Parental Rights and Responsibilities

Parental responsibility is a legal term that means having all the legal rights, duties, powers and responsibilities for a child (a child is a young person under the age of 16). Throughout the United Kingdom, a mother automatically acquires parental responsibility at birth.

A child's name can only be changed by someone with parental responsibility. The person(s) who has parental responsibility (sole or joint) for a child is responsible for, and has the right to be consulted about, the child's health, education, religion and welfare. Those people with parental responsibility must give consent in order to change a child's name.

Many parents believe if they have sole custody of their child they have sole parental responsibility, but this is not the case. Custody orders have been replaced by residence orders, which more accurately describe the situation i.e. with whom the child lives. If a spouse or partner had parental responsibility before a residence order was in place, they will still have parental responsibility after it is issued. Parental responsibility can only be removed from the spouse or partner by a court order.

This document describes a range of circumstances in which a person may request to change a child's surname on Council records, however in each case the request must be authorised by the relevant person delegated to do so. In addition, as far as reasonably practicable, original documentation should be produced by the person making the request, e.g. child's birth certificate, signed letters of consent, court orders or Deed Poll documentation, as discussed below.

Acquiring Parental Rights and Responsibilities

There are a number of legal processes which can be used to grant parental rights; each of these will require the grant of specific court orders. Relevant examples include applications to court by:-

- *unmarried fathers*
- *step-fathers*
- *adoptive parents* (the parents named on a child's adoption certificate acquire parental responsibility regardless of their marital status. Anyone who had parental responsibility prior to the child's adoption have their parental responsibility removed upon adoption)
- *foster carers* (if parental responsibility is awarded to the foster carers, the extent of that responsibility will depend on the particular legal process involved; although it will probably be in addition to the parents and/or the local authority. Information about who has parental responsibility will be included in the child's Essential Information Record, which is given to foster carers when the child is placed with the carers)
- *other carers* e.g. family and friends (these carers may be given parental responsibilities by specific court orders e.g. a Residence Order, a Special Education Management Circular 3.11 (November 2017))

Guardianship Order or a court order appointing that person as a testamentary guardian upon the death of the parents. The local authority may also have parental responsibility depending upon the process used to place the child. A carer appointed as a testamentary guardian upon the death of the parents will have sole parental responsibility for the child.

Loss and Modification of Parental Rights and Responsibilities

Parental responsibility is only removed when the child reaches 16 years of age, if a person with parental responsibility dies or as a result of a court order (as detailed above). However parental responsibility can be modified by a court by the issue of a Care Order, a Contact Order, a Prohibited Steps Order or a Specific Issue Order.

Status of Father

In Scotland, there are a number of legal presumptions in place for the purpose of determining paternity. If the mother is married when the child is born, unless evidence to the contrary can be produced, it is the law that a married mother's husband is presumed to be the father and has parental responsibility. This is the case even if the husband is not the biological father. Examples of the type of evidence that would be considered in these circumstances include a letter from the legal father acknowledging he is not the biological father, or the results of a DNA paternity test proving the legal father is not the biological father.

If the mother is unmarried, it is also the law that unless evidence can be produced to the contrary (as above), the person recorded on her child's birth certificate as the father is presumed to be the father. A father automatically acquires parental responsibility if he is married to the mother at the time of the child's conception or if he subsequently marries the mother. If the child's birth was registered in Scotland, an unmarried father acquires parental responsibility if he is named, or becomes named, on the birth certificate from 4th May 2006 as per section 3 of the Children (Scotland) Act 1995 as amended by section 23 of the Family Law (Scotland) Act 2006, regardless of whether or not he is the biological father. Before 4th May 2006, an unmarried father would not obtain parental responsibilities and rights only if his name is on the birth certificate, as he will also require the agreement of the mother.

For births registered out-with Scotland please refer to the relevant notes included at **Annex 1**.

Requirement for Consent to Change Child's Name

Before implementing a change of name the responsible body should take all reasonable steps to ascertain that everyone with parental responsibility for the child has consented to the name change.

If the person making the request has sole parental responsibility, they do not need anyone else's consent to change the child's name. However although a person with sole parental responsibility is legally entitled to change the child's name, the other party e.g. the father, could potentially be successful in applying to the court to have the change of name reversed. It is therefore important to confirm, as far as

possible, that no court orders have been granted in this regard.

A person may have sole responsibility if the other parent is dead, the other parent has had parental responsibility removed through a Court Order or a father was not named on the birth certificate.

If the person making the request has joint parental responsibility, they will need the consent of anyone else who has parental responsibility (usually the father) to change the child's name.

If a father has parental responsibility, his consent is required to make any change to his child's name including double-barrelling the surname. This is the case even if he and the mother have separated, divorced or remarried and if the father has no contact whatsoever with the child.

If a father, who has parental responsibility and who no longer lives with the mother and child, refuses to give his consent, the only course of action is for the mother to apply to the courts for permission to change the child's name.

Annex 1: Births registered in UK but outwith Scotland

Births registered in England or Wales

A father automatically acquires parental responsibility if he is married to the mother at the time of the child's birth or if he subsequently marries the mother. An unmarried father acquires parental responsibility if he is named, or becomes named, on the birth certificate from 1st December 2003.

Births registered in Northern Ireland

A father automatically acquires parental responsibility if he is married to the mother at the time of the child's birth. If the father marries the mother after the child's birth, the father acquires parental responsibility if the father's domicile at the time of the marriage is in Northern Ireland. An unmarried father acquires parental responsibility if he is named, or becomes named, on the birth certificate from 15th April 2002.

Births registered in the Isle of Man or in the Bailiwicks of Jersey or in the Bailiwick of Guernsey

A father automatically acquires parental responsibility if he is married to the mother at the time of the child's birth or if he subsequently marries the mother. An unmarried father does not acquire parental responsibility by being named on the birth certificate.

Births registered outside the United Kingdom

A father automatically acquires parental responsibility if he is married to the mother at the time of the child's birth or if he subsequently marries the mother. An unmarried father does not acquire parental responsibility by being named on the birth certificate.

Appendix 2: Access to pupil and student records

Formal access request

To: Head Teacher
Head of Service

Section 1

Name of pupil or student

Date of birth

Address

Telephone number

School attended

Section 2

If you are not the pupil or student named above, please complete the following.

Name

Address

Telephone number

Relationship to pupil/student

[Provide evidence]

Section 3

I would like to have access to any record which the education department holds on the pupil or student named in Section 1. I confirm that there is no court order preventing me from obtaining access to this record.

Signed

Date
