



Minnesota
STATE COLLEGES
& UNIVERSITIES

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MEMORANDUM

Date: June 19, 2008

To: Minnesota State Colleges and Universities Presidents;
Chief Student Affairs Officers;
Admissions Directors

From: Gail M. Olson, General Counsel
Kris Legler Kaplan, Deputy General Counsel 

Subject: **Parental Access to Drug/Alcohol Violation Information
FAQs and Sample Forms**

Introduction

The 2008 legislature amended the Education Data section of the Minnesota Government Data Practices Act, Minn. Stat. § 13.32, to address the issue of postsecondary institution notice to parents of certain drug or alcohol offenses. 2008 Session Laws Ch. 298, Sec. 1.¹ Somewhat inconsistently, this amendment incorporates the FERPA provisions that permit postsecondary institutions to adopt policies to disclose such discipline information without student consent, but adds requirements that disclosure is allowed only if the student has authorized disclosure by a signed release; and that colleges and universities inform parents and students about the disclosure forms.

System colleges and universities, at a minimum, must establish a procedure to notify parents and students about the purpose and availability of the forms during orientation and other appropriate times, and may additionally wish to clarify their drug/alcohol discipline process to state conditions under which notice to parents may be provided. The following FAQs and Release Authorization form are provided to assist system colleges and universities in implementing this new law, *effective August 1, 2008*.

This document and Release Authorization form will be available on the Office of General Counsel Web site: www.ogc.mnscu.edu.

¹ See complete text at:
<https://www.revisor.leg.state.mn.us/laws/?id=298&doctype=Chapter&year=2008&type=0>

**Frequently Asked Questions
on Implementing Minn. Stat. § 13.32, Subd. 3.(q)
Re: Notice to Parents of Drug or Alcohol Violations.**

1. What are the provisions of this law?

The law incorporates certain FERPA provisions into the Minnesota Government Data Practices Act (MGDPA) permitting colleges and universities to disclose information to parents about their child's violation of any federal, state or local law or of any rule or policy of the institution, governing the use or possession of alcohol or of a controlled substance to the extent authorized by applicable provisions of FERPA, *provided that* the institution has a signed release from the student.

Additionally, colleges and universities are required to inform parents and students about the purpose and availability of the information release forms; at a minimum, the institution must distribute the release forms at parent and student orientation meetings.

2. When is parental disclosure of a drug or alcohol violation permitted by FERPA?

The FERPA provisions incorporated into the MGDPA permit (but do not require) disclosure of disciplinary violations based on drug or alcohol use or possession if the student is under age 21 at the time the violation is disclosed. Permitted disclosures also include certain information that the college or university may have obtained showing that a student has violated any federal, state or local law governing the use or possession of alcohol or controlled substances; note, this does not include arrest information or charges that have not resulted in a conviction.

3. Does this law mean that notice to parents about drug or alcohol issues can never be made without the student's consent?

No. Although colleges and universities will generally disclose private data to parents only with the student's consent, schools may continue to disclose information to parents without consent under other applicable provisions of FERPA such as in a health or safety emergency. These circumstances are, however, relatively rare.

4. Do the applicable FERPA provisions require a formal disciplinary proceeding to be conducted before disclosure is made to parents?

The language of the applicable FERPA provision states simply that the college or university must make a "determination" that a "disciplinary violation" has occurred; this is substantively different from the "disciplinary proceeding" language used in other FERPA provisions that connotes a formal disciplinary process. Thus, a college or university may still utilize this parental notice provision even if they use a less formal process for handling certain drug or alcohol offenses. Even a "less formal" disciplinary procedure, however, must meet applicable due process standards of fairness; colleges or universities that wish to explore options in this regard should contact the Office of General Counsel or Attorney General's Office for assistance.

5. What new responsibilities do colleges and universities have under this law?

Under this new provision, colleges and universities are now required to notify parents and students about the purpose and availability of information release forms that students may sign to permit the schools to inform parents of drug or alcohol violations. At a minimum, the forms must be distributed at parent and student orientation meetings.

6. May colleges and universities require students to sign a release form? Does it matter if the student is under age 18?

No – a college or university may not require a student to waive his/her privacy rights regardless of the student's age.

7. Is written notice about the forms required?

The law does not specify how notice is to be provided other than distribution of the forms at orientation. Colleges and universities may wish to utilize more than one method of notice, such as posting information on Web sites; providing information in letters to students and parents; publishing information in handbooks; or other methods. We recommend that presentation of the form also be part of a larger conversation with students and parents about some of the common challenges that may be experienced adjusting to college life. Parental notice should not be presented as a part of the discipline process but

as a measure that is designed to help prevent difficulties that may interfere with a student's academic achievement.

8. Is there a preferred release form system schools should use?

Attached is a form that may be adapted for use. Colleges and universities may choose to use a release form for drug and alcohol violations that is separate from releases for other records. Any form may be used, however, so long as it includes the following: describes with specificity the data authorized to be released and to whom (preferably by name); is *signed* and dated by the student. A copy, including a faxed copy, is as valid as the original.

An e-mail alone is not sufficient to authorize release.

9. May a release form be valid to authorize disclosure of data in advance?

Yes, colleges and universities may utilize releases signed in advance of the existence of the data in question, but in such cases it is important to clearly describe the data that is authorized to be released. For example, a form signed in August by the student authorizing release of alcohol/drug violations may be relied on for the release of information later in the academic year.

10. May a college or university request a release form any time – like after a violation has been determined?

Yes, the request may be made at any time.

11. Does a college or university need to renew releases every year – or semester?

A college or university may choose its policy about this, keeping in mind its resources for handling paperwork. The MGDPA generally limits the validity of a release to one calendar year.

12. Are colleges and universities required to maintain records of disclosures made pursuant to a student's release?

If notice to the parent is provided in writing, a copy must be maintained as the student has a right to see and have a copy upon request. If notice is provided

orally, a written record may not be legally required, but would constitute a good practice.

13. Must a student be informed that the college or university has released drug/alcohol violation information to his/her parent?

Because this disclosure will generally only occur pursuant to the student's written consent, the law does not require notice to the student that the disclosure has been made. A college or university could, however, choose to make such a notice part of its procedure.

14. If a student authorizes the release of information to one parent, does the other parent also have the same right of access?

Under this law, it is up to the student to specify to whom disclosure is authorized to be made.

15. May students rescind their authorization to release? Are colleges and universities permitted to inform parents of the rescission?

Students may rescind their authorization at any time and schools should make information about that process readily available. Parents are not entitled to be informed about such a rescission without further consent from the student.

16. How does this law fit with the school's responsibilities under the federal Drug-Free Schools and Campuses Regulations?

The federal Drug-Free Schools and Campuses law does not contain any requirement about informing parents of drug or alcohol violations. A drug/alcohol violation release policy may, however, be represented as additional effort to achieve the objective of that law: to prevent or limit unlawful drug or alcohol use on campus.

MnSCU CSAOs and Admissions Directors

Page 6

June 19, 2008

Campus administrators who have additional questions about this or other issue related to data privacy compliance should contact Kris Kaplan at 651 296-3905 or Kristine.kaplan@so.mnscu.edu .

Cc: Attorney General's Office Education Division

Mike Lopez, Associate Vice Chancellor, Academic and Student Affairs

Steve Frantz, System Director, Student Affairs

Attach.

AUTHORIZATION TO RELEASE
STUDENT INFORMATION
To Parents or Guardians

I _____, (Student ID #), _____ hereby authorize (name of institution) _____ to release and/or orally discuss the education records described below about me to: (list names of both parents or guardians, if applicable) _____

The specific records covered by this release are (select with checkmark):

- All**
 - Discipline Records**
 - Drug or alcohol disciplinary violation**
 - Accounts Receivable** (itemized charges, tuition or credits)
 - Financial Aid** (itemized charges, credits, and refunds)
 - Housing** (charges, credits, and itemized damage charges)
 - Registration** (number of credit hours, add/drops)
 - Telephone or charges for other electronic resources**
 - Grade Reports** at end of semester
 - Other** – please specify: _____
- _____

I understand that the student records information listed above includes information which is classified as private on me under Minnesota Statutes § 13.32 and the federal Family Education Rights and Privacy Act. I understand that by signing this Authorization form, I am authorizing the College/University to release to the persons named above and their representatives information about me which would otherwise be private and not accessible to them.

I understand that, at my request, the College/University must provide me with a copy of any educational records it releases to the persons named above pursuant to this consent. I understand that I am not legally obligated to provide this information and that I may revoke this consent at any time. This consent expires after one year or until I withdraw my consent, whichever comes first. A photocopy of this authorization may be used in the same manner and with the same effect as the original documents.

I am giving this consent freely and voluntarily and I understand the consequences of my giving this consent.

Dated: _____

Signed: _____