

1205.0500 ACCESS TO PRIVATE DATA CONCERNING DATA SUBJECTS WHO ARE MINORS.

Subpart 1. **General.** Pursuant to Minnesota Statutes, sections 13.02, subdivisions 8 and 12; and 13.05, the responsible authority shall comply with the following rules concerning access.

In addition to the particular requirements of this part, access to private data concerning a minor data subject shall be subject to the requirements of part 1205.0400 concerning access to all private data.

Subp. 2. **Who may see private data concerning minors.** Access to private data concerning minors shall be available only to the following:

A. Those parties identified as having access to private data under part 1205.0400, subpart 2.

B. Subject to the provisions of Minnesota Statutes, section 13.02, subdivision 8, any other applicable statute, and the exception set out at subpart 3, item A, the parents of the minor data subject. For purposes of this part, the responsible authority shall presume the parent has the authority to exercise the rights inherent in the act unless the responsible authority has been provided with evidence that there is a state law or court order governing such matters as divorce, separation, or custody, or a legally binding instrument which provides to the contrary.

Subp. 3. **Access procedures for parents.** Pursuant to the provisions of Minnesota Statutes, section 13.02, subdivision 8, the responsible authority shall establish procedures to provide access by the parents of a minor data subject to private data concerning that minor, subject to the following:

A. The responsible authority may deny parental access to private data when the minor, who is the subject of that data, requests that the responsible authority deny such access. The responsible authority shall provide minors from whom the entity collects private or confidential data with a notification that the minor individual has the right to request that parental access to private data be denied. The responsible authority may require the minor data subject to submit a written request that the data be withheld. The written request shall set forth the reasons for denying parental access and shall be signed by the minor.

B. Upon receipt of such a request, the responsible authority shall determine if honoring the request to deny parental access would be in the best interest of the minor data subject. In making the determination, the responsible authority shall be guided by at least the following:

(1) whether the minor is of sufficient age and maturity to be able to explain the reasons for and to understand the consequences of the request to deny access;

(2) whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical or emotional harm;

(3) whether there is ground for believing that the minor data subject's reasons for precluding parental access are reasonably accurate;

(4) whether the data in question is of such a nature that disclosure of it to the parent could lead to physical or emotional harm to the minor data subject; and

(5) whether the data concerns medical, dental, or other health services provided pursuant to Minnesota Statutes, sections 144.341 to 144.347. If so, the data may be released only if failure to inform the parent would seriously jeopardize the health of the minor.

Subp. 4. **Parents' access to educational records.** The responsible authority shall not deny access by parents to data that is considered an "education record," as that term is defined in Code of Federal Regulations, title 45, part 99, section 99.3, unless the minor to whom the data pertains is enrolled as a full-time student in a postsecondary educational institution or the student has attained the age of 18. As of the date of the adoption of these rules, the term "education records" was defined by Code of Federal Regulations, title 45, part 99, section 99.3 as follows:

(a) "Education records" means those records which:

(1) are directly related to a student; and

(2) are 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 thereto which:

(i) are in the sole possession of the maker thereof; and

(ii) are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) maintained apart from the records described in paragraph (a) of this definition;

(ii) maintained solely for law enforcement purposes; and

(iii) not disclosed to individuals other than law enforcement officials of the same jurisdiction; provided that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3)(i) Records relating to an individual who is employed by an educational agency or institution which:

(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) This paragraph does not apply to 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.

(4) Records relating to an eligible student which are:

(i) created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) created, maintained, or used only in connection with the provision of treatment to the student; and

(iii) not disclosed to anyone other than individuals providing the treatment; provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

Subp. 5. **Denying access without a request from a minor.** Without a request from a minor, the responsible authority may deny parental access to private data on a minor, pursuant to the provisions of Minnesota Statutes, sections 144.291 to 144.298 or any other statute or federal law that allows or requires the responsible authority the authority to do so, if such state statute or federal law provides standards which limit the exercise of the discretion of the responsible authority.

Statutory Authority: *MS s 13.07*

History: *L 2007 c 147 art 10 s 15*

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