

High Green Primary School



Disclosure of Pupil Records

At High Green Primary School we have agreed the following advice and have adopted it as our policy to disclosure of pupil records. This will be amended in the light of any national or local updates.

GUIDANCE NOTE FOR HEADTEACHERS AND GOVERNING BODIES

THE DISCLOSURE OF PUPIL RECORDS

1. INTRODUCTION

This note is intended to assist schools in complying with the requirements of the law relating to disclosure of pupil records. It is not intended to provide information or guidance on the detail of the records that must be kept, reports to parents, or the transfer between schools (the assumption being that all educational and curricular records will be transferred between schools). It is intended to provide general guidance only on the main requirements and is not a substitute for the detailed provisions of the relevant Regulations. **Governing Bodies, Headteachers and other staff must always consider the welfare of the child and seek advice if necessary.**

Further information is available from:

- Advice and Conciliation Service (general matters)
 - 0114 292 2161
 - 0114 292 2163
 - 0114 292 2164
- Safeguarding Children Service (child protection issues)
 - 0114 2544365
- Legal and Governance (legal issues)
 - 0114 2734004
 - 0114 2053273
 - 0114 2053304
 - 0114 2736564
 - 0114 2053127
 - 0114 2053305
 - CorpLegalCYPD.sheffield.gov.uk

2. MEANINGS

In this document:

'Curricular record' means the formal record of a pupil's academic achievements, his other skills and abilities and his progress in School – the Regulations require that this record be kept and updated annually.

'Educational record' means any statement of special educational needs; and any personal education plan relating to the pupil and effectively any record of information (including the Curricular record) which is processed by or on behalf of the Governing Body of or a teacher at a School (not including academies), which relates to any person who is or has been a pupil of the School, and which originated from or was supplied by or on behalf of the following: -

- a. an employee of the local authority;
- b. any teacher or other employee (including an educational psychologist)

- engaged by the governing body) of a voluntary aided, foundation or foundation special school or any special school not maintained by the local authority
- c. the pupil;
 - d. a parent of that pupil.

N.B. The above definitions are different and different responsibilities apply to each.

‘Parent’ unless specifically stated otherwise means: -

- all natural parents, whether they are married or not;
- any person who, although not a natural parent has a parental responsibility for a child;
- any person who, although not a natural parent, has care of a child (i.e. the child effectively lives with them).

For more information see the separate ‘FAQ’ guidance ‘Parental Responsibility and Parents’ Rights in Relation to Education which is available from Legal and Governance (see above for contact details).

‘Regulations’ means the Education (Pupil Information) (England) Regulations 2005.

3. REQUIREMENTS TO DISCLOSE RECORDS TO PARENTS

Under the Regulations

It is the duty of the Governing Body following a written request by a parent for disclosure of a child’s educational record (including the curricular record), within 15 school days: -

- a. Where the request is for access – to allow inspection free of charge.
- b. Where the request is for a copy – to provide a copy free of charge unless the Governing Body has prescribed, in advance, fees to be paid. Fees cannot exceed the cost of supply.

When requested to release a child’s educational record under the regulations you should note the following: -

- The requirements in the Regulations only apply to written requests
- There are some exceptions – see paragraph 5 below
- The Governing Body should consider translating the information into another language if it appears appropriate to do so but this is no longer a requirement under the regulations
- Where a solicitor or other representative requests copy records, it is always good practice to request a signed form of authority from the parent. Where court proceedings have been brought or may be brought advice should be sought from Legal and Governance.
- Governing Bodies should consider whether to make a charge for copying
- Any information held by a Children and Young People’s Service separately (for example in relation to pupils subject to statements of Special Educational Needs) does not fall within the strict definition of educational records unless copies are sent to and held by the School.

Under the Data Protection Act

There is an additional right under the Act for persons with parental responsibility for a child to be able to request disclosure of data within the meaning of the Data Protection Act that relates to their child. This right is likely to be only exceptionally used given the rights under the Regulations above. However, under these circumstances if it is clear that the parent is requesting the information for their own purposes rather than on behalf of the child or if the child is mature enough to understand the nature of the request and could make it themselves, the request can be refused. Disclosure must be made within 40 days of the request being made.

N.B. The disclosure requirements of the Data Protection Act are wider than the Regulations, and cover all records/data.

4. PUPILS RIGHT TO ACCESS RECORDS

This comes again from the Data Protection Act 1998. A child may submit a written request to see records and that child should be allowed access if it is clear they understand what they are asking for unless the request is being made clearly on behalf of the third party (such as the parent) – see above.

5. EXCEPTIONS REQUESTS FOR DISCLOSURE BY PARENTS OR CHILDREN

The following paragraphs list information that should not be disclosed

N.B. The welfare of the child is the most important consideration. Where an exception applies there is no obligation to disclose that any information exists. A proper view must, however, be taken whether an exception applies.

1. Information which, if disclosed, would be likely to cause harm to the physical or mental health or condition of any person including the child (see paragraph 6).
2. If it is not covered by paragraph 1 above and where a parent makes a request, information as to whether the child is or has been subject of or may be at risk of child abuse if it is not in the best interests of the child for the information to be disclosed (see paragraph 7).
3. Any information if the request is from a child unless it is clear that they understand the nature of their request.
4. Exceptionally, any information if the request is by a parent and it is clear that they are making the request not in the interests of the child and for their own purposes (an example may be an estranged parent seeking information as to the whereabouts of their child to find out where the child's mother/carer lives).
5. Information to the extent that it identifies a third party and they do not consent to disclosure, unless it is reasonable to disclose without consent. Release without consent will generally only be reasonable where general information is being given perhaps to identify educational activities conducted with another child or children or where it can be implied from a letter from a third party that it is acknowledged that the information will be disclosed.

Where it would not be reasonable to release without consent, consent must be

requested prior to disclosure. This may well be problematic or impractical in cases such as bullying cases where even seeking the consent from the third party may cause conflict. In these circumstances it may be possible to modify the records by deletion of reference to that third party which may not only include name but also any other information which might identify that third party. In some cases it may be necessary to withhold the whole of the document.

N.B. Third parties does not include teachers or other employees of the CYPD or the Governing Body unless 1 above applies.

This is perhaps the most difficult area to work through, particularly where the third parties are other children. Particular care needs to be taken about any child abuse allegation.

6. Information processed by a teacher solely for a teacher's own use – there will only be limited circumstances in which this will apply. It may apply if the teacher is conducting some form of research or is holding some information for personal use in an employment context. It does not apply if other staff have access to it or the teacher has made the record at the request of the head teacher
7. Information contained in a report to the court in certain proceedings relating to the child.
8. References supplied to potential employers of the child, any national body concerned with student admissions, another school, an institution of further or higher education, or any other place of education and training
9. Information recorded by the pupil during an examination

6. INFORMATION RELATING TO THE PHYSICAL OR MENTAL HEALTH OR CONDITION OF A PUPIL

This is subject to special provisions.

- Before disclosure (unless the information is already known to the pupil/parent) or a conclusion that exception 1 applies, an appropriate health professional must be consulted - Data Protection (Subject Access Modification) (Health) Order 2000.
- Where a parent requests such information, if the pupil has expressly indicated or if there is an expectation by the pupil that such information should not be disclosed it should not be disclosed.

7. CHILD PROTECTION RECORDS

- Disclosure of such records
 - To the child or parent – see exceptions 1 and 2 in particular above
 - To other agencies – e.g. the Police or courts – this may be appropriate and will not breach the provisions preventing disclosure if disclosure is in the public interest or subject of a court order or other legal obligation, for example, if a crime has been or is being committed [Legal advice above

should always be sought where court proceedings are in place/anticipated]. It will normally be in the public interest for records to be disclosed for the purposes of a Children Act assessment under Section 17 or an enquiry under Section 49, but consideration should be given to each case (with advice from the Safeguarding Children Team if appropriate).

- Keeping of Child Protection records
 - Child Protection records must be kept apart from the child's other educational records but the person responsible for considering a request for general disclosure (the Headteacher or other person) must be aware of their existence, and a proper conclusion must be reached as to whether any part of them should be disclosed. The Child Protection records must be in a secure place and only the Headteacher and Child Protection Liaison Teacher should have access to them.

Please also see the separate CYPD guidance on Child Protection records and the DfES guidance at:

<http://www.teachernet.gov.uk/wholeschool/familyandcommunity/childprotection/goodpractice/recordkeeping/>

8. RETENTION OF RECORDS

See the separate CYPD guidance on record keeping and retention periods.

9. TRANSFER OF RECORDS

When a pupil is being considered for a place at another school or institution of further or higher education if they are asked, in writing, to do so the governing body must provide, free of charge, within 15 school days of the request being received a copy of the pupil's curricular record to the responsible person at that institution. The responsible person is the head teacher of an independent school, the governing body of any other school or the person responsible for the conduct of any institution of further or higher education. The record sent must not include results of any assessments of the pupil's achievements.

When a pupil transfers from one school to another (in Wales, Scotland or Northern Ireland) the Governing Body must send to the new school, within 15 school days of the pupil being removed from the register:

- All educational records relating to the pupil
- The common transfer file¹

The common transfer file is sent through the secure file transfer service on the Teachernet website (<http://www.teachernet.gov.uk/management/ims/datatransfers/s2s/>). If the school does not know the identity of the new school to which a pupil has transferred, although

¹ All maintained schools that have capability to transfer defined items of pupil data (see above) electronically when children change schools are expected to do so. This is known as the common transfer file. Schools without the capability to transfer data electronically should use alternative means.

it is not a requirement that they should do so, schools should send a common transfer file for that pupil, via the Teachernet website (see link above) identifying the destination school as unknown². The information will then be stored in the Lost Pupil Database and schools that do not receive common transfer files for new pupils can ask their local authority to search the database to see if the files are there.

The data that must be included in the common transfer file is:

- Pupil's unique pupil number (UPN)
- Pupil's surname and where known, former surname
- Pupil's forename(s)
- Pupil's date of birth
- Pupil's gender
- Pupil's ethnic group (using latest ethnic codes used in PLASC)
- Pupil's first language (using latest codes used in PLASC).
- Where the pupil has special educational needs, the type of special educational provision that is being made for him e.g. "School Action", "School Action Plus" or "Statement".
- the total number of sessions (half days) in the school year that the pupil could have attended thus far
- the total number of sessions (half days) in that school year actually attended by the pupil
- the total number of unauthorised absences (half days) for that pupil in that school year
- The DfES number and name of the old (transferring) school.
- The DfES number and name of the new (destination) school.
- Achievement/assessment data
 - **Key Stage 1 (KS1)**
 - Teacher assessment levels (statutory or latest assessments)
 - End of Key Stage 1 task/test information
 - **Key Stage 2 (KS2)**
 - End of KS1 assessment information
 - KS2 teacher assessment levels (statutory or latest assessments)
 - End of KS2 test information

If a pupil transfers to an institution of further or higher education or any other place of education or training other than a school the data need not be sent and the record should only be transferred if it is requested in writing.

² A school only has to transfer a pupil's record where they know the new school or where it is reasonably practicable for them to find it out. What is reasonably practicable will depend on circumstances, but schools might, for example, be expected to telephone and write to a pupil's parents.