

GETTING MILITARY HEALTH AND EDUCATION RECORDS

by Mark E. Sullivan*

Mr. Sullivan is a retired Army Reserve JAG colonel and a board-certified specialist in family law who practices in Raleigh, NC. He is the author of [The Military Divorce Handbook](#) (American Bar Association, 2nd Ed., 2011), from which portions of this article are adapted. He serves as a consultant to attorneys nationwide on military divorce and pension division issues.

Obtaining Documents from the Government

When requesting government records, remember that personnel records are governed by the Privacy Act of 1974. Be prepared to jump over some hurdles to get what you want, and don't expect results overnight. When requesting personnel records, you will usually need to obtain consent of the individual concerned or else an order from a court of competent jurisdiction. This order could be a subpoena, but it still must be signed by a judge, and it is recommended that the records be returnable to the court.

An example that the author used in a custody case (with fictitious names and other information) is found at Attachment A. This is a motion to obtain Department of the Navy disciplinary and investigative records, along with a subpoena and a letter to the Office of General Counsel, Department of the Navy. All these documents were prepared pursuant to the regulations cited therein and with unofficial guidance by a command judge advocate at the installation involved, who knew the contents of the records and was willing to point out what needed to be done to obtain their release. Despite all these precautions, the Navy denied the request and directed the author to federal court if he wanted to challenge the ruling! Based on this experience, the author cautions that one should not assume that every document request, even when done properly, will result in compliance; some cases are just too sensitive for release of their documents to a court in a divorce case without the intervention of a federal district court judge, which most clients cannot afford.

The Department of Defense has established its own regulations, pursuant to the Act and to DoD Directive 5400.11, and this privacy publication is set out in "Department of Defense Privacy Program," DoD 5400.11-R (May 14, 2007). You can find the directives, publications, administrative instructions, memoranda, and forms you need from the "DoD Issuances" website, located at <http://www.dtic.mil/whs/directives/>. As an agency of DoD, the Defense Finance and Accounting Service is bound by these rules. The specific rules that DFAS has promulgated regarding release of information are found at DoD Financial Management Regulation, Volume 7B, Chapter 18, "Release of Information," which contains specific references to the regulations of each of the DoD branches of service. The DoDFMR can be found at <http://comptroller.defense.gov/fmr>. Rules for the Coast Guard, an agency of the Department of Homeland Security, are found at the CG-61 Reference Guide, published by the USCG Office of Information Management. Go to www.uscg.mil and type "CG-61 Reference Guide" into the SEARCH window. Extensive information about release of information from the Coast Guard may be found at the USCG's Freedom of Information & Privacy Act website located at <http://www.uscg.mil/foia>.

In addition to income documents, such as Retiree Account Statements and Leave and Earnings Statements, attorneys often need to see the discharge form of servicemembers to determine years of creditable service. The National Personnel Records Center (NPRC) has provided the following website for veterans to gain access to their DD-214s online: <http://www.archives.gov/veterans>. Military veterans and the next of kin of deceased former military members may now use a new online military personnel records system to request documents. Other individuals with a need for documents must still complete the Standard Form 180, which can be downloaded from the online website. Because the requester will be asked to supply all information essential for NPRC to process the request, delays that normally occur when NPRC has to ask veterans for

additional information will be minimized. The new web-based application was designed to provide better service on these requests by eliminating the records center's mailroom processing time. When requesting government records, remember that personnel records are governed by the Privacy Act. Be prepared to jump over some hurdles to get what you want, and don't expect results overnight. When requesting personnel records, you will usually need to obtain consent of the individual concerned or else an order from a court of competent jurisdiction. This order could be a subpoena, but it still must be signed by a judge, and it is recommended that the records be returnable to the court.

Medical and School Records

In many domestic cases involving one or both parents who are in the armed forces, it may be necessary to obtain school and medical records of the children involved. Far from being a minefield, as most civilian practitioners suspect, the procedures for access to military educational and health records are simple and straightforward.

Obtaining Health Records

Obtaining health records sometimes is necessary in a custody case. There is nothing unique about obtaining medical information from a military medical treatment facility (MTF), as opposed to a civilian facility; both are governed by HIPAA when the disclosure is voluntary. The primary legal and regulatory references pertaining to the release of medical information are the following:

1. Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d-1320d-8 (1996);
2. DoD Reg. 6025.18-R, DoD Health Information Privacy Regulation and DoD Directive 5405.2; and
3. AR (Army Regulation) 40-400, Patient Administration, AR 40-66, Medical Record Administration and Health Care Administration, and AR 27-40, Litigation.

The references in #3 above are for cases involving U.S. Army records.

Perry Wadsworth, a hospital attorney for Womack Army Medical Center at Fort Bragg, North Carolina, and an Army Reserve JAG Lieutenant Colonel,¹ describes the records access issues as follows:

The old "Privacy Act versus FOIA" analysis used to be one of our standards for determining release of medical information, but HIPAA is now the most controlling Federal legal authority. The law was not written for the military per se; this has caused some confusion in its application, particularly because military functions and command authority are fairly broad-based in comparison to civilian institutions. One key distinction between the Privacy Act and HIPAA analyses is that health information survives the death of the patient. The protections afforded by the Privacy Act for information typically do not survive the death of the subject.

Requesting records from a military treatment facility (MTF) can be both easy and hard. The request is easy but getting the records is sometimes hard. The spectrum, from easy to hard, is summarized as follows:

1. Easy. If the patient is requesting the records himself or completes a HIPAA release form giving authority to someone else to get the records, then the request is straightforward. The MTF will release copies of the records in the normal course of business. This is the preferred method. If an attorney is

¹ The text herein is solely the commentary provided by Mr. Wadsworth and does not represent the views of the U.S. Army or the Department of Defense.

representing a client whose records are needed, then he can simply have the client complete the appropriate release form with the HIPAA language. The attorney then mails the request and release form to “Medical Correspondence, Patient Administration Division, ___ MTF.” If the case involves a tort action, it may behoove the attorney to state the purpose of the request, such as the case “involves a motor vehicle accident,” or the case “involves a potential federal tort claim.” If the government has an interest in the case, whether it is the opportunity to recover money for the treatment it provided or it is likely to be accused of a tort, then the case can flow more smoothly through a forthright request. If you have points of contact in the JAG claims office, they can usually assist you in getting the records in these cases because they have an interest in obtaining the records as well.²

2. Moderately Easy. When litigation is involved and the judge signs an order or a subpoena for the release of records, the release process is relatively easy. Attorneys for the patient or party opponent often make it difficult by not getting a judge’s signature on the subpoena or order. They frequently issue subpoenas in their own names. This makes it more difficult and delays the whole process, because the MTF will contact its servicing JAG office, and the request for records will be denied. Private attorneys do not have subpoena powers over federally maintained records. The other factor that most commonly causes a denial or delay of the release is the failure to make a timely request. An Army facility needs to get the judge’s order or subpoena at least 14 days in advance of the date the materials are due. AR 27-40 details this from the Army’s perspective.

3. Hard. Whether litigation is involved or not, when there is no judge’s order and no release authorization signed by a proper representative, the analysis becomes more nuanced. We then have to look to exceptions under HIPAA and implementing agency regulations for release of medical information. Child custody disputes seem to bring out the worst case scenarios. Other common examples include criminal investigations or social service involvement (e.g., child abuse) or command-directed mental health evaluations. The main reason these types of cases can be more complicated is because often there is one party who does not want the records released; yet, the requesting party argues that some other interest is more compelling than the individual’s right to privacy, such as the best interest of a child, a government investigation, or the need for justice.³ An MTF may choose to honor the request, but if legal grounds exist to release PHI (Protected Health Information), the requestor’s desire to restrict the release of his health information is not ultimately dispositive.

4. The constraints on release of medical information also apply to conversations with or testimony of health care providers, not just the release of medical records. Some attorneys would like to get information directly from the physicians as a back-door approach to avoid requesting the records. Unfortunately, this can backfire on the attorneys. If or when the physician mentions it to his legal counsel (the JAG officer or federal attorney representing the MTF), he or she will be reminded of the rules of release and may be hesitant to cooperate in the future. AR 27-40 provides a great deal of leeway in allowing a military command (through its attorney) to determine whether a physician can provide testimony and, if so, what the limits of that testimony will be. Overall, it is better for attorneys and patients to be candid and honest about their intentions in a case. Most of them are, but there are exceptions. It leaves a bad taste in one’s mouth and decreases the spirit of cooperation that might otherwise prevail. For example, I’ve seen doctors who were willing to bend over backwards just a few days before their deployment or change of duty station or discharge from service to provide testimony or talk to an attorney about the patient—even if they had not received

² Department of Defense Form 2870 “Authorization for Disclosure of Medical or Dental Information.” is the most commonly used release authorization in military facilities. MTFs may still honor other formats.

³ For an example of a way a patient can seek to restrict access to his or her health information, see Department of Defense Form 2871, “Request to Restrict Medical or Dental Information.”

timely notice. This is because they cared about their patients and the patients' attorneys were fully honest about the type of testimony they were seeking. If the providers had felt they were being tricked or misled by the patient or his/her attorney, then they would not have assisted in the legal aspects of the case. There are also patients who doggedly pursued their doctors to take sides in custody disputes or domestic cases. Rather than asking the doctor to help in providing factual information to assist in the determination of the child's best interest, these patients only succeeded in killing any interest that the doctor had to help out. In such situations, a doctor may use any excuse available, including technical regulatory excuses, to avoid testifying.

5. Note that some medical information related to children may not be protected by HIPAA if it is in the school system records. The release of this information is covered under The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99.).⁴[4]

6. It is helpful to have a copy of 32 C.F.R. §§ 516.40–46 for information on Army litigation policies regarding the release of information. Briefly summarized, this regulation provides as follows:

a. Except as provided in the regulation, Department of the Army (DA) personnel will not disclose official information in response to subpoenas, court orders, or requests.

b. The appropriate legal authority (e.g., staff judge advocate or hospital legal advisor) must approve in writing the release of information.

c. If DA personnel receive a subpoena, court order, or request for attendance at a trial, deposition, or interview that reasonably might require disclosure of official information, they should immediately contact the appropriate legal authority, who will attempt to satisfy the subpoena, order, or request informally under the regulation or will consult with the Litigation Division, Headquarters, Department of the Army.

d. Those who seek official information must submit at least 14 days before the desired date of production a specific written request setting out the nature and relevance of the official information sought, and DA personnel may only disclose those matters specified in writing and approved by the appropriate legal authority.⁵

e. DA personnel will not release originals; only authenticated copies will be provided when disclosure is authorized.

f. AR 37-60 provides a schedule of fees and charges for searching, copying, and certifying Army records for release in response to litigation-related requests.

g. If the request complies with the regulation, it is DA policy to make the information available for use in court unless the information is classified, privileged, or otherwise restricted from public disclosure.

h. There are a number of factors that must be considered in determining whether to release information; such factors are found at 32 C.F.R. § 516.44(b)

i. If the deciding official determines that all or part of the requested documents or information shall not be disclosed, then the official will promptly communicate directly with the attorney who requested the documents or information to attempt to resolve the matter informally. If the order or subpoena is invalid, the official should explain to the attorney why it is invalid and why the records requested are privileged from release. The official should try to obtain the attorney's agreement to withdraw or modify the subpoena, order, or request.

j. A subpoena duces tecum or other legal process signed by an attorney or a clerk for DA records protected by the Privacy Act, 5 U.S.C. § 552a, does not justify the release of the protected records. The deciding official should explain to the requester that the Act precludes the release of such

⁵ See United States *ex rel.* Touhy v. Ragen, 340 U.S. 462, 71 S. Ct. 416, 95 L. Ed. 417 (1951).

records without the written consent of the individual involved or “pursuant to the order of a court of competent jurisdiction.”⁶ Such an order is one signed by a judge or magistrate.

k. If the records are unclassified and are otherwise privileged from release under 5 U.S.C. § 552a, they may be released to the court if there is an order signed by a judge or magistrate directing the person to whom the records pertain to release the specific records, or that orders copies of the records to be delivered to the clerk of court and indicates that the court has determined the materiality of the records and the absence of a claim of privilege. The clerk must be empowered to receive the records under seal subject to a request that they be withheld from the parties until the court determines whether they are material to the issues and until any question of privilege is resolved.

l. A subpoena or court order for alcohol abuse or drug abuse treatment records is processed under 42 U.S.C. §§ 290dd-3 and 290ee-3 and Public Health Service regulations published at 42 C.F.R. §§ 2.1–2.67.

m. The HIPAA Privacy and Security Rules are implemented within the Military Health System (MHS) by DoD 6025.18-R, “Department of Defense Health Information Privacy Regulation,” January 24, 2003, and DoD 8580.02-R, “Department of Defense Health Information Security Regulation,” July 12, 2007. The final rule on Standards for Privacy of Individually Identifiable Health Information, published by the Department of Health and Human Services, is found at 45 C.F.R. Parts 160 and 164.

Obtaining Educational Records

Many on-base primary and secondary schools for military dependent children are run by the Department of Defense Education Activity (DoDEA). The schools operated by DoDEA in the United States are known as the Defense dependents Elementary and Secondary Schools (DDESS) and the schools operated overseas are known as the Department of Defense Dependents Schools (DODDS). As in non-DoDEA schools, parents of children under age 18 have the right to access and review the school records of their children enrolled at such facilities (including academic records, disciplinary files, and other student information). These records are available to a parent or legal guardian without regard to who has custody of the child, unless the decree of divorce or dissolution or the court-approved parenting plan (including a custody order) requires that records access be denied or denies the noncustodial parent access to the child. The requesting parent must be prepared to produce documentation to establish that he or she is the child’s parent. The documentation required is the same as that described below when the parent is requesting a copy of the records by mail.

If a child is presently in a non-DoDEA school (e.g., private school, charter school, or public school), the records from previous DoDEA schools will not be in the child’s educational records folder unless a parent copied the records and brought them to the non-DoDEA school or unless that school, with the consent of a parent, requested the DoDEA records from a previous DoDEA school. Under the Privacy Act, a non-DoDEA school cannot request prior military school records without a parental consent form accompanying the school’s request. -Conversely, on-base schools may and usually do require previous non-DoDEA schools to copy and produce the child’s records for inclusion in the child’s DoDEA educational records folder.

If a parent is not located near the school where a child is enrolled, he or she may request that a DoDEA school copy and mail the child’s records. A copy of the “systems notice” governing student

⁶ 5 U.S.C. § 552a(b)(11).

educational records is found at Appendix B. The systems notice identifies the records that the school maintains on children, the disposition of those records, and the address to which one mails a request for copies of student records. The request for student records is made under the Privacy Act of 1974, as amended. Below is a description of the information that a parent must be prepared to provide if he or she is close to the school, or that the parent must include in a written request sent by mail:

REQUEST FOR EDUCATIONAL RECORDS—DoDEA	
Full name of student	
Name used during school attendance	
Date of birth	
Dates of attendance	
Description of the records requested	
Identity and location of school	
Name of requesting party	
Address of requesting party	
Signature of requesting party	

Note: Include a certified copy of the child’s birth certificate, adoption decree, guardianship order, divorce decree, and custody order, as appropriate. Also needed, when records are requested by the noncustodial parent, is a signed statement by the custodial parent (and the child, if age 18 or over), granting the noncustodial parent access to the child’s records.

* * *

Attachment A
NORTH CAROLINA
COUNTY OF BUCKINGHAM

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 08 CV 223

ROGER K. BAIRD, JR.,
Plaintiff

v.
NANCY L. BAIRD,
Defendant

MOTION FOR NAVY RECORDS

Plaintiff hereby moves this Court pursuant to N.C.G.S. §1A and Rule 45 of the Rules of Civil Procedure for an order granting a subpoena directed to the United States Navy for the production of documents, as further explained below. The Plaintiff shows the court that:

BACKGROUND

- 1) Plaintiff is an officer in the U.S. Navy, currently stationed in Japan and the Defendant is a Navy officer, currently stationed in Florida. The parties were married to each other on April 12, 1997 and subsequently separated from each other on October 9, 2008. There are two minor children born during the parties' marriage: Ellen G. Baird, born August 2, 2001 and Lewis R. Baird, born April 19, 2003.
- 2) On November 3, 2008, Plaintiff filed his Complaint seeking, *inter alia*, child custody.

DISCOVERY REQUESTS FROM BOTH PARTIES

- 3) Both parties have asked for all documentation that the other party has related to a disciplinary hearing involving the conduct of a certain Commander John Q. Doe in December 2008. Mr. Doe is the former commander of the Navy's Far East Intelligence Group, based at Naval Air Facility Watusi in Japan. Upon information and belief, Defendant had an extramarital affair with Mr. Doe, this conduct destroyed the Baird marriage, it also destroyed Mr. Doe's career and it had an impact on the care and custody of the minor children.
- 4) Plaintiff in discovery has requested that Defendant admit this affair and explain the consequences that her behavior with Mr. Doe had on the family, including the effects on the minor children.
- 5) Then-Commander Doe was relieved of his duty as commander of the Group on December 23, 2008. He received nonjudicial punishment, referred to as "Admiral's Mast," as a direct result of his committing adultery with the wife of a fellow officer.

- 6) The parties both seek to obtain from each other all documentation about these proceedings in December 2008. Both parties have demanded, through their attorneys, to review this documentation.

RELEVANCE TO THE CASE

- 7) The Plaintiff, by way of discovery, has requested that Defendant both admit the affair and explain specific details from Defendant as to the nature of her relationship with Mr. Doe, its duration, its impact on the minor children, her absence from the children while she was with Mr. Doe, and other information.
- 8) The information in Mr. Doe's case file associated with the administrative action taken in December 2008, will tend to show that Mr. John P. Doe did, in fact, have an extramarital affair with the Defendant. It will also show the nature, frequency and duration of the Defendant's conduct with Mr. Doe, which directly correlates to her absences from the family, her distraction from parental duties, and her sense of priorities as to the children's care by Plaintiff, her absence from the family, Mr. Doe's career and her own marriage. The Plaintiff is entitled to find out from the Navy's case files the details of the Defendant's actions with Mr. Doe so as to present evidence to the court on the children being left alone while Defendant was away with Mr. Doe.
- 9) The case file will show documents, e-mails, and witness statements regarding the lapses of time in which Defendant left the minor children to be with Mr. Doe, and the times when Plaintiff had to step in to care for the minor children while Defendant was absent. The court will need to inquire into the consequences and effects on the minor children when dealing with separate families as a result of Defendant's conduct.
- 10) The case file will also assist in impeaching Defendant on her sworn statements if she denies that she had an affair, is untruthful as to its nature or duration, denies that her behavior had an impact on the children or claims that her conduct never resulted in their being left alone, with no supervision.

PROCEDURES FOR OBTAINING NAVY RECORDS

- 11) The United States Navy, pursuant to its publication, SECNAVINST 5820.8A, Enclosures (3) and (4), describes the proper procedure for obtaining Navy records. The Secretary of the Navy's sole delegate for service of process is the General Counsel of the Navy, who must be served with a subpoena by certified mail or Federal Express at the following address: General Counsel of the Navy, Navy Litigation Office, 720 Kennon Street SE, Bldg 36 Room 233, Washington Navy Yard, DC 20374-5013. The office of the General Counsel of the Navy will subsequently forward the matter to the proper determining authorities for action.

- 12) In addition to a subpoena requesting specified Navy records, a detailed written request must be submitted to the appropriate determining authority to assure an informed and timely evaluation of the request. The outline of information to be provided is included in Enclosure (4) of SECNAVINST 5820.8A. Additionally, counsel for the Plaintiff has prepared this detailed written request to accompany the court's subpoena to the General Counsel of the Navy and it is included with this motion.
- 13) The subpoena in this case should request the following:
- a) The Navy's internal investigation of the alleged inappropriate relationship between John P. Doe and Nancy L. Baird, in Japan, Okinawa, and elsewhere during and before December 2008 including witness statements, e-mails; and
 - b) The Navy's record of administrative, punitive, nonjudicial or other action against Commander Doe.

WHEREFORE the Plaintiff prays that this Court:

- 1) Sign a subpoena (copy attached hereto) for production of the United States Navy's disciplinary and investigative files for Commander John P. Doe.
- 2) Grant such other relief for Plaintiff as is just and proper.

Jack M. Wilson, Attorney for Plaintiff
9926 Greenwood Drive
Warren, NC 27604

Date: _____/09

NORTH CAROLINA
COUNTY OF BUCKINGHAM

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 08 CV 223

ROGER K. BAIRD, JR.,
Plaintiff

v.
NANCY L. BAIRD,
Defendant

SUBPOENA FOR NAVY RECORDS

Pursuant to N.C.G.S. §1A and Rule 45 of the North Carolina Rules of Civil Procedure, the court issues this subpoena:

To: General Counsel of the Navy, Navy Litigation Office, 720 Kennon Street SE, Bldg 36 Room 233, Washington Navy Yard, DC 20374-5013	Date: April 17, 2009
Documents: 1) The Navy's internal investigation of the alleged inappropriate relationship between Commander John P. Doe, SSN 432-22-5567, and Nancy L. Baird, in Japan, Okinawa, and elsewhere during and before December 2008 including witness statements, documents and e-mails; and 2) The Navy's record of administrative, punitive, nonjudicial or other action against Commander Doe.	Time: 9:00 a.m.
Place for Production: Buckingham County Courthouse, Room 141, Warren, NC 27604 (P.O. Box 355)	

Ellen G. Lindhoffer, Judge Presiding

Date: _____/09

March 1, 2009
General Counsel of the Navy
Navy Litigation Office
720 Kennon Street SE
Bldg 36 Room 233
Washington Navy Yard, DC 20374-5013

Re: SECNAVINST 5820.8A, Enclosure (4) – Subpoena for Navy Records

To Whom It May Concern:

Pursuant to SECNAVINST 5820.8A, Enclosure (4): Contents of a Proper Request or Demand, the undersigned attorney for the Plaintiff herein provides the requisite written request for documents to be produced pursuant to a *subpoena duces tecum* (attached hereto). In making said request, we disclose the following:

1. Identification of parties, their counsel, and the nature of the litigation:

- a **Case Caption:** Roger K. Baird, Jr. vs. Nancy L. Baird
- b **Docket Number:** 08 CVD 19038
- c **Court:** District Court, Buckingham County, North Carolina
- d **Plaintiff:** Roger K. Baird, Jr.
- e **Defendant:** Nancy L. Baird
- f **Attorney for Plaintiff:** Jack M. Wilson, 9926 Greenwood Drive, Warren, NC 27604; phone number - 919-999-7766; fax number - 919-233-4455
- g **Attorney for Defendant:** Janet Kelly, 208 Green Valley Ave., Warren, NC 27604; phone number - 919-334-8211; fax number – 919-243-9967
- h **Date and Time that documents must be produced:** April 17, 2009, at 9:00 a.m.
- i **Location for Production:** Clerk of Court, ATTN: District Court Judge Ellen G. Lindhoffer, PO Box 355, Warren, NC 27604 Buckingham County Courthouse, Room 141, Warren, NC 27604

2. Identification of information or documents requested

- a Documents requested are the case files associated with the administrative action taken against Commander John P. Doe, former commander of the Far East Intelligence Group based at Naval Air Facility Watusi in Japan, in December 2008.
- b The location of the requested case files associated with the administrative action taken against Commander John P. Doe in December 2008 is at Naval Air Facility Watusi Japan.

3. Description of why the information is needed

- a **Summary and Posture of Case:** Commander Roger K. Baird, Jr., the Plaintiff, filed a lawsuit in North Carolina against the Defendant, Nancy L. Baird, for claims related to child custody, child support, and equitable distribution. The assigned judge on the case is District Court Judge Ellen G. Lindhoffer. The minor children currently reside with Plaintiff in Japan. Defendant current resides in Norman, Oklahoma. On May 13, 2009 the Warren County District Court will conduct a temporary child custody hearing.
- b **Statement of Relevance:** The information in the case files associated with the administrative action taken in May 2008 against former Commander John P. Doe, former commander of the Japan-based Carrier Air Wing 5 based at Naval Air Facility Watusi in Japan, is relevant for the foregoing reasons:

- i. It will show that the Defendant carried on an extramarital affair with Commander Doe;
 - ii. It will also show that she was absent from the children during the periods of time when she was with Commander Doe;
 - iii. When she was absent, depending on the dates and times, the children were either left alone or in the care and custody of Commander Baird, who is petitioning for custody of the children.
- c **Testimony Sought:** Plaintiff seeks no factual, expert or opinion testimony from the U.S. government.

4. Additional Considerations

- a Plaintiff is willing to pay in advance all reasonable expenses and costs of searching for and producing documents associated with the administrative action taken against Commander John P. Doe in May 2008.
- b We will provide Defendant's attorney with a copy of all correspondence and documents originated by the determining authority so they may have the opportunity to submit any related litigation requests and participate in any discovery.

If the General Counsel of the Navy requires any additional information in evaluating this request, please let our office know and we shall provide same.

Sincerely,

Jack M. Wilson
Attorney at Law

Appendix B

DoDEA 26

System name:

Department of Defense Education Activity Dependent Children's School Program Files (May 3, 2007, 72 FR 24572)

System location:

DoDEA Headquarters Office DoDEA Area (DoDDS-Europe, DoDDS-Pacific, and DDESS) offices and school districts. Specific addresses for each Area office and school districts may be obtained from the DoDEA Website at <http://www.dodea.edu>. or from the DoDEA, Headquarters office, 4040 North Fairfax Drive, Arlington, VA 22203-1634, telephone 703 588-3200.

Categories of individuals covered by the system:

Current and former students in schools operated by DoDEA, world-wide.

Categories of records in the system:

School Student Record Files. Information includes records of student name, Social Security Number (SSN), date of birth, citizenship, etc. and sponsor identifiers and sponsor's permanent address, student performance, achievements and recognition (academic, citizenship, and athletic), standardized achievement tests scores and grades; reading records, letters of recommendation, parental correspondence, and similar records.

Health Record Files. Includes student health records, immunization records, parental permission forms, screening results, sports physicals, physician referrals, medication instructions, consent forms, copies of accident reports, and similar records.

School Special Education Files. Information pertaining to special education programs to include preferrals and referral forms and, when appropriate, samples of student's work; Individual Education Plans; Case Study Committee reports and minutes; test results and protocols; disciplinary records, behavior plans and related information; assessment and evaluation reports; correspondence between teachers, service providers and/or parents; file access records and cross-reference location information; results of special education administrative hearings and other informal and formal conflict resolution procedures, such as mediated agreements or settlement documents; related service-provider reports, and teacher notes relevant to the child's special education program or needs.

School Ancillary Service Files. Information on non-special education supplemental student services, such as: Gifted Program, English as a Second Language (ESL), Compensatory Education, Reading Improvement to include consultation and referrals, test protocols, assessments and evaluation plans and results, progress and evaluation reports and summaries, teachers' notes, general correspondence, and samples of student's work, and related information.

School Registration Card Files. Sponsor and/or pupil registration cards reflecting student and sponsor Social Security Numbers, grade/rank enrollment verification, sponsoring agency, emergency locator information, 'sponsors' orders, birth certificates, housing documents, court documents that document a student's relationship to the sponsor, agency certification of sponsors, housing documents, and similar files."

Teacher Class Register Files. Grade books reflecting scholastic marks and averages, teacher comments and/or notes, student attendance and withdrawal information, and similar files.

Transcript Files. Information consists solely of the student's permanent records (transcripts) reflecting student name and social security number, grades, course titles, credits, and similar related information.

Transcript Request Files and other Disclosure Files. Request forms and correspondence authorizing release of transcript and other school student record files.

Report Card Files. Report cards that reflect scholastic grades, promotion, retention.

Attendance and Discipline Files. Information reflecting attendance and disciplinary actions, to include teacher referrals, tardy and/or admission slips, correspondence to and from parents, student and/or witness statements, and school investigative files, and similar related information.

System Wide Assessment Files. System Wide Assessment results for individual students and aggregated results for classrooms, schools, districts and areas.

School Mediation Agreement and Hearing Results Files. Material on mediations and hearings other than that contained in the individual student record.

Authority for maintenance of the system:

10 U.S.C. 2164, DoD Domestic Dependent Elementary and Secondary Schools; 10 U.S.C. 113, Secretary of Defense; 20 U.S.C. 921-932, Overseas Defense Dependent's education; and E.O. 9397 (SSN).

Purpose(s):

The purpose of this system is to determine enrollment eligibility and tuition status in DoDEA and DoDEA funded non-DoD schools; schedule children for classes and transportation; record attendance, absence and withdrawal; record and monitor student progress, grades, course and grade credits, services, school activities, student awards, special interests, hobbies and accomplishments; develop an appropriate educational program, services and placement; provide information for enrollment and student financial aid for post-DoDEA education and employment; obtain and preserve school academic and athletic accreditation; to provide directory information to military recruiters; and to perform other related authorized educational duties required.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C.552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a non-DoD school, upon request, when the child is enrolled in the school at DoD expense.

To Federal and State educational agencies and public and private entities as needed to complete a student's application for or receipt of financial aid.

To Federal, State, and local governmental officials to protect health and safety in the event of emergencies.

To public and private organizations conducting studies on or on behalf of DoDEA.

To State and local social service offices relative to law enforcement inquiries and investigations and child placement/support proceedings.

To private individuals, who have been appointed to DoDEA school Boards, advisory committees, student disciplinary committees, school improvement teams, and similar committees established by DoDEA, to perform authorized DoDEA activities or functions.

To a non-DoD school receiving a student who is transferring from a DoD school, upon request from the school. Only academic and attendance records will be release.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and electronic storage media.

Retrievability:

By student surname, Social Security Number (SSN), date of birth, and student number.

Safeguards:

Access is provided on a 'need-to-know' basis and to authorized authenticated personnel only. Records are maintained in controlled access rooms or areas. Computer terminal access is controlled by terminal identification and the password or similar system. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers.

Retention and disposal:

School Student Record Files. Destroy/delete files other than secondary transcripts of all information except, report cards or other records of academic promotion or retention data after 1 year. Destroy or delete all non secondary transcript files 3-5 years after graduation, transfer, withdrawal, or death of student. Secondary School Transcripts will be cut off upon transfer, withdrawal, or death of student. Secondary Transcript files are destroyed when 50 years old. DoDDS student records are retained at the school for four years following the graduation, transfer, withdrawal, or death of student or until school closure whichever occurs first, and are then transferred to the Area for one year, and then are transferred to the DoDEA Records Center at Fort Benning, Georgia, until destroyed. DDESS student records are stored at the school until destroyed. Panama student records are stored at the DoDEA Records Center at Fort Benning, Georgia, until destroyed. All other records included in this database follow the disposition schedules of the following files:

Secondary School transcripts will be cut off upon transfer, withdrawal, or death of student. Secondary Transcript files are destroyed when 50 years old. DoDDS transcripts are retained at the school for four years following the graduation, transfer, withdrawal, or death of student or until school closure whichever occurs first, and are then transferred to the Area for one year, and then are transferred to the Thompson Learning Center, Lawrenceville, NJ, until destroyed. DDESS transcripts are stored at the school until destroyed. Panama transcripts are stored at the DoDEA Records Center at Fort Benning, Georgia, until

destroyed. All other records included in this data base follow the disposition schedules of the following files:

Health Record Files. Place in student record file upon transfer, withdrawal, or death of student.

School Special Education Files. Destroy/Delete when 5 years old. Cut off on graduation, transfer, withdrawal or death of student.

Ancillary Service Files. Transfer to student record file upon transfer, withdrawal, or death of student.

Registration Card Files. Transfer current card to student record file upon graduation, transfer, withdrawal, or death of student. Supporting documents used to determine eligibility, such as sponsor's orders, birth certificates, custody documents, housing documents (CONUS), and similar documents may be destroyed). A copy of current card is maintained in the student record file to authorize release of records. Destroy when superseded.

Teacher Class Register Files. Destroy/Delete when 1 year old. Cut off at end of school year.

Master Student List Files. Destroy/Delete when 25 years. Cut off at end of school year and retain in the CFA.

Transcript Files. Maintain transcripts IAW School Student Record Files.

Transcript Request Files. Destroy/Delete when 2 years old. Cut off at end of school year.

Secondary Report Card Files. Transfer to student record file upon TWD of student.

Attendance and Discipline Files. Destroy/Delete when one year old. Cut off at end of school year.

System Wide Assessment Files. Destroy after 6 years. Individual reports maintained with the student records shall be retained in accordance with the disposition instructions in FN 1005-06 (School Student Record Files).

School Mediation Agreement and Hearing Results Files. Destroy/Delete when 20 years old. Cut off after final decision. Retire OSD-related records to the FRC when 5 years old.

Panama Student Records File. Destroy when 50 years old.

Records stored at the schools; DoDEA Records Center, 7441 Custer Road, Building 2670, Fort Benning, GA 31905; and Thompson Learning, Inc. (contractor) 2000 Lenox Drive, Lawrenceville, NJ 08648. Destroy when 50 years old.

System manager(s) and address:

Area school district system manager addresses may be obtained from the Office of the Director, DoDEA, 4040 North Fairfax Drive, Arlington, VA 22203-1634 or by visiting the Web site <http://www.dodea.edu>.

Notification procedure:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to Area or District Systems Managers or the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203-1635.

Record access procedures:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Area or District Systems Managers or the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203-1635.

Written requests for access should contain the full name, name used at time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.

Parents or legal guardians of a student may be given access to the Children's School Program Files records without regard to who has custody of the child, unless the child is age 18 or over, or a court has directed otherwise.

Contesting records procedures:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

Record source categories:

Individuals, school teachers, principals and administrators; counselors, medical personnel, parents/guardians, occupational and physical therapists, testing materials and activities, other educational facilities, medical facilities, (examinations and assessments), military commanders, and installation activities.

Exemptions claimed for the system:

None.