STUDENT RECORDS AND CONFIDENTIALITY OF INFORMATION

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PART I:
STUDENT RECORDS BASICS
There are multiple federal and State laws that govern school district practices regarding student records and confidentiality.
Federal laws in this area include FERPA, IDEA, and their implementing regulations.

State laws in this area include the ISSRA and its implementing regulations, the Mental Health and Developmental Disabilities Confidentiality Act, and the Local Records Act.
There are two primary purposes of the laws regarding student education records:

1. to ensure parent access to their child’s records; and
2. to ensure the privacy of these records.
What **IS** a Student Education Record?
Under FERPA, “education records” are records that are:

- directly related to a student; and
- maintained by an educational agency or institution or by someone acting for the agency or institution.
A “record” is any information recorded in any way, including but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.
The phrase “directly related to a student” is not defined in FERPA and tends to be used interchangeably with the notion of records that contain “personally identifiable information” ("PII") about students.
PII includes, but is not limited to:

- student name;
- name of parent or other family members;
- address of student or his/her family;
- personal identifiers (e.g., social security or student ID number, or biometric record);
- other indirect identifiers (e.g., student’s date or place of birth, mother’s maiden name);
- other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty; or
- information requested by someone who the agency or institution reasonably believes knows the identity of the student to whom the record relates.
The *ISSRA* uses the term “school student record” and defines it in a less detailed but similar and equally broad manner.
In Illinois, a school student record is any writing or other information concerning a student and by which he/she can be individually identified, that is maintained by a school or at its direction or by an employee of the school, regardless of where or how the information is stored.
FERPA and the ISSRA do not define what it means for a school district to “maintain” a student’s education record. However, in *Owasso Independent School District v. Falvo* (2002), the U.S. Supreme Court determined that it means that a record “will be kept in a filing cabinet at the school or on a permanent secured database.”
What ISN’T a Student Education Record?
The term does **not** include items such as:

- records that are kept in the sole possession of the maker, used only as personal memory aid, and are not accessible or revealed to anyone except a temporary substitute for the maker (aka “exclusive use” records);
• records of the law enforcement unit of an educational agency or institution;

• grades on peer-graded papers before they are collected and recorded by a teacher;
• video or other electronic recording created and maintained by law enforcement professionals working in the school for security or safety purposes – except and to the extent school officials use and maintain them for a particular reason;

• electronic recordings made on buses – except and to the extent that school officials use and maintain them for a particular reason; and
information reported by the courts or law enforcement agencies to the principal of a school regarding a student who has been detained for proceedings under the Juvenile Court Act due to any criminal offense.
Within the broad scope of what may be part of a student education record, the ISSRA divides these records into two types:

- Permanent records; and
- Temporary records.

Permanent and temporary records must be kept separately.
“Student permanent records” must be maintained for 60 years and consist of:

- basic identifying information, e.g., student’s name, address, birth date and place, and gender, and parents’ names and addresses;
- academic transcript, including grades, class rank, graduation date, grade level achieved;

- scores on college entrance examinations, except that parents may request that these scores be removed from a student’s transcript;

- the unique student identifier assigned and used by the SIS;

- as applicable, designation of the student’s achievement on the State Seal of Biliteracy or State Commendation Toward Biliteracy;
- attendance record;
- health record;
- record of release of permanent record information; and
- scores received on all State assessment tests administered at the high school level (i.e., grades 9 through 12).
If not maintained in the temporary record, the permanent record may also consist of:

- honors and awards received; and

- information concerning participation in school-sponsored activities or athletics, or offices held in school-sponsored organizations.

No other information may be placed in the student permanent record.
“Student temporary records” means all information not required to be in the student permanent record, must be maintained for 5 years, and consist of:

- a record of the release of temporary record information;
- scores received on the State assessment tests administered in the elementary grade levels (i.e., kindergarten through grade 8);

- the completed home language survey form;

- information regarding serious disciplinary infractions (i.e., those involving drugs, weapons, or bodily harm to another) that resulted in expulsion or the imposition of punishment or sanction;
- information provided under Section 8.6 of the *Abused and Neglected Child Reporting Act*, as required by Section 2(f) of the Act;

- any biometric information that is collected by the school district;

- health-related information; and

- accident reports.
Temporary records may also consist of:

- family background information;
- intelligence test scores (group and individual);
- aptitude test scores;
- reports of psychological evaluations, including information on intelligence, personality and academic information obtained through test administration observation, or interviews;
- elementary and secondary achievement level test results;
- participation in extracurricular activities, including any offices held in school-sponsored clubs or organizations;
- honors and awards received;
- teacher anecdotal records;
- other disciplinary information;
- special education records;
- records associated with plans developed under Section 504 of the Rehabilitation Act of 1973; and
- any verified reports or information from non-educational persons, agencies or organizations of clear relevance to the education of the student.
Practical Application:

List at least 10 examples of student records that you generate or come into contact with in the course of your daily job duties.
Temporary records must be reviewed by the principal of each school (or person with like responsibilities) every 4 years or when a student changes attendance centers (whichever occurs first) to verify entries and eliminate or correct all out-of-date, misleading, inaccurate, unnecessary, or irrelevant information.
Overall, however, it is a school district’s designated “official records custodian” who is responsible for the maintenance, care and security of all school student records, whether or not they are under his or her personal custody and control.

The official records custodian is also required to take all reasonable measures to protect student records through administrative, technical, and security safeguards against potential risks, e.g., unauthorized access, release, or use.
When a student transfers into a school district, the new/receiving district must request a copy of the student’s records from the former/sending district:

- within 14 days for a non-disabled student; or

- no later than the next business day after the date of enrollment for a student with a disability.
The former/sending district must forward the records to the new/receiving district within 10 days after receiving notice of the student’s transfer. However, prior to sending the records to the new/receiving district, the former/sending district must notify the parents in writing and give them an opportunity to inspect, copy, and challenge the records.
If a release of student record information is related to more than 25 students, the required prior written notice to parents (i.e., of the nature and substance of the information to be released and an opportunity to inspect, copy, and challenge that information) may be given in a local newspaper of general circulation or other publication directed generally to parents.
When a student graduates, transfers or permanently withdraws from a school, the school must notify the parents and student of the destruction schedule for the student permanent and temporary records and of their right to request a copy of the student’s records at any time prior to their destruction.
Notification must consist of:

- date of notification,
- name of parent,
- name of official records custodian,
- name of student, and
- the scheduled destruction date of temporary and permanent records.
When a student with a disability graduates or permanently withdraws, special education records and other information contained in the student temporary record that may be of continued assistance to the student may, after 5 years, be transferred to the custody of the parent or to the student if the student has succeeded to the rights of the parents. The school is also required to explain the future usefulness of these records to the student and parents.
The *Local Records Act* addresses the requirements for destruction of student records once it is time to do so. These requirements include final notification to parents and eligible students, listing the student records to be destroyed, and seeking permission from the Local Records Commission. The *Local Records Act* also addresses the circumstances in which a school district may electronically store student records and destroy the originals/hard copies.
PART II:
PARENT/ELIGIBLE STUDENT RIGHTS
FERPA and ISSRA grant parents certain rights with regard to their child’s records.

These rights transfer to the student when he or she becomes an “eligible student.”
Parents: Natural parents or other person who has responsibility for the care and upbringing of the student

Eligible Students: Those who have turned 18, graduated from secondary school, married, or entered military service, whichever occurs first (though students may access their permanent records at any time)
Key rights of parents and eligible students with respect to records include:

- the right to inspect and copy the records within 15 school days after submitting a written request (note: schools may charge up to $0.35 per page to copy the records unless the parent or eligible student is unable to bear the cost);
the right to challenge any entry in the records on the basis of accuracy, relevance, or propriety – except academic grades (note: if a challenge is made at the time a student is transferring to another school, then parents or eligible students may not challenge either grades or references to expulsions or out-of-school suspensions);
the right to give a district their written consent to release any information from the records, unless one of the exceptions to this consent requirement applies;

the right to file a records-related complaint with the U.S. Department of Education’s Family Policy Compliance Office (“FPCO”); and

the right to receive annual written notice of their records-related rights.
Districts may release student records without parent or eligible student consent in several situations, including but not limited to:

- to employees or officials of the school, school district, or ISBE who have a current, demonstrable educational or administrative interest in the student, in furtherance of such interest;
to the official records custodian of another school district to which the student has enrolled, or intends to enroll, upon the request of the records custodian in the new district;

as required by specific federal or State law (e.g., the Abused and Neglected Child Reporting Act);

to specified officials or organizations for certain audit, evaluation, research, or accrediting purposes;
- pursuant to a court order, after parents have been provided with written notice;

- to juvenile authorities (e.g., judges, state’s attorneys and public defenders, probation officers, court-appointed advocates, law enforcement officers, etc.) under certain circumstances;

- to appropriate persons in cases of health and safety emergencies if knowledge of the information is needed to protect the health or safety of the student or others; and

- to governmental agencies in connection with student truancy investigations.
“Directory information” may also be released without parent or eligible student consent if they have been given proper notice and an opportunity to “opt out” of having their information included in such directory.
Directory information is limited to:

- identifying information—student’s name, address, gender, grade level and birth date and place, and parents’ names, mailing addresses, electronic mail addresses, and telephone numbers;
- photographs, videos, or digital images used for informational or news-related purposes (whether by a media outlet or by the school) of a student participating in school or school-sponsored activities, organizations, and athletics that have appeared in school publications, such as yearbooks, newspapers, or sporting or fine arts programs, except that:
no photograph highlighting individual faces shall be used for commercial purposes, including solicitation, advertising, promotion or fundraising without the prior, specific, dated and written consent of the parent or student, as applicable; and

no image on a school security video recording shall be designated as directory information;
- academic awards, degrees and honors;
- information about school-sponsored activities, organizations, and athletics;
- major field of study; and
- period of attendance in the school.
No student social security number (SSN) or student identification (ID) or unique student identifier may be designated as directory information.
PART III:

THE ILLINOIS MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CONFIDENTIALITY ACT
Another State law, the *Mental Health and Developmental Disabilities Confidentiality Act*, applies to records (including but not limited to student records) that contain mental health or developmental disability information.
A “record” under this Act means any record kept by a therapist or by an agency in the course of providing mental health or developmental disability services (including examinations, diagnosis, evaluations, treatment, training, etc.) to a person about that person and the services provided.
“A therapist’s personal notes” do not fall within the scope of mental health/developmental disability records.
The requirements for authorization for releases of information under this *Act* are more stringent than under *FERPA* and the *ISSRA*, *e.g.*:

- student age 12 or older must consent to releases of information, although if the student does not consent the release may still occur if the therapist does not find that there are compelling reasons to deny the release;
- an adult witness must also sign the release form;
- no “blanket” release forms are permitted; and
- release form must be dated or the release form expires on the day the consent form is received.
PART IV:

TOP 10 STUDENT RECORDS
QUESTIONS AND ISSUES
1. What do we do if a parent tells us not to give student record information to the child’s non-custodial parent?
2. How do we handle communications or requests for student record information from people like parent advocates, stepparents or parent paramours, grandparents, etc.?
3. If we receive a phone call or subpoena from an attorney who claims to be representing a student or one of his or her parents, how should we respond?
4. Where should staff keep records like IEPs or Section 504 plans of students that they work with?
5. Aren’t student test protocols covered by the copyright laws and exempt from disclosure to parents?
6. Does HIPAA restrict the medical information about students that school nurses can share with other school staff members?
7. If a parent gives a verbal OK or sends an e-mail or note giving permission to disclosure student records to someone, is this sufficient?
8. What happens if we inadvertently release a student record to someone without proper legal authority to do so?
9. What do we do with a student’s records when a staff member is no longer working with the student (e.g., at the end of a school year, when a child transfers out of the class or district, etc.)?
10. Are records that are generated outside of our school district (e.g., records from previous districts, private therapy or evaluation reports, hospital records, etc.) part of student’s education records once we are given copies? What if these materials say that they should not be redisclosed? What if the parent tells staff not to share them with anyone?