Quick Reference Guide:

Maintaining the Confidentiality of Student Information

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Table of Contents

Introduction p.4

Definitions p.4
• Who is a “parent” for purposes of FERPA?
• What if the parents are divorced or never married? Does this affect the parent’s rights under FERPA?
• What is an “education record” under FERPA?
• Are medical and health records included in the definition of education records?
• What is personally identifiable information?

Parents’ Right To Review Documents p.6
• If a parent asks for access to his/her child’s records, when must the school comply with the request?
• What procedure should be followed to process a parent’s request to access his/her child’s records?

Parents’ right to request correction of records p.7
• What is the procedure the school should follow if the parent indicates that records are inaccurate or misleading?

Parent’s right to control access to student education records p.8

Releasing Student Information p.8
• When may student information be released?
• What is directory information?
• Is the parent entitled to access or copies of the records?
• What if someone other than the parent is requesting the education records?
• What do I do if I receive a subpoena for student records?
• How do I determine if a school official has a legitimate educational interest in accessing a student’s education records?
• Does FERPA obligate the district or school to create documents?
• What happens if the parent of a student who is 18 years old wants access to the student’s education records?

Record Keeping Obligation

• What records do I have to maintain concerning who has accessed a student’s records?
• Are there specific requirements for special education records?
• Sample Form
Introduction

This reference guide is designed to give an overview of the relevant laws protecting the disclosure of student information and answer frequently asked questions. When faced with a question concerning access to or disclosure of a student’s education records, the Family Educational Rights and Privacy Act (FERPA) will apply.

FERPA is the federal law that protects the privacy of student education records. This statute is incorporated in Board Policy FL. FERPA gives parents certain rights regarding their child’s education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are referred to as "eligible students." For purposes of this reference guide, the rights referenced will be referred to as “parental rights,” however, please keep in mind that the rights also belong to eligible students.

There are three basic rights parents and eligible students have under FERPA:

- Inspect and review the student's education records maintained by the school;
- Request that a school correct records which they believe to be inaccurate or misleading; and
- Require the district to obtain prior written consent to release the student’s personally identifiable information unless a specific exception applies.

Definitions

Who is a “parent” for purposes of FERPA?

Understanding who is a “parent” will assist you in identifying who has rights under FERPA. FERPA defines a parent as “a guardian, natural parent, or an individual acting as a parent in the absence of a parent or a guardian.” When a student with a disability is involved, you must also follow the requirements of the Individuals with Disabilities Education Act (IDEA).
According to IDEA, a parent is (1) a natural or adoptive parent; (2) a guardian; (3) a person acting in the place of a parent, such as a grandparent or step-parent with whom the child lives or a person who is legally responsible for the child’s welfare; or (4) a surrogate parent who has been appointed in accordance with IDEA regulations. In some cases, a foster parent may act as the parent of a child with a disability.

**What if the parents are divorced or never married? Does this affect the parent’s rights under FERPA?**

Unless a court order specifically terminates parental rights or limits the parent’s right of access to information, the fact that the parents are divorced or were never married will have no bearing on the rights conferred under FERPA. If you have a parent who indicates he/she does not want the other parent to have access to the student’s records, you will need to inform that parent you cannot honor the request without a court order limiting that other parent’s right of access.

**What is an “education record” under FERPA?**

The term “education record” is broadly defined under FERPA. It includes any “records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution.” This includes video and audio recordings, emails, and traditional written documentation (i.e. hardcopy documentation).

**Are medical and health records included in the definition of education records?**

Yes. Medical and health records are included in the definition of education records. For example, if the school conducts a hearing exam, this exam becomes part of the student’s education record. Further, documentation from school psychologists, nurses and similar positions, as well as the Youth and Family Centers constitute education records.

**What is personally identifiable information?**

Personally identifiable information is the information about a student that may not be released without complying with the requirements of FERPA.
Maintaining the Confidentiality of Student Information

(see Releasing Student Information section below). It includes, but is not limited to, the following information:

- The student's name;
- The name of the student's parent or other family member;
- The address of the student or student's family;
- A personal identifier, such as the student's social security number or student number;
- A list of personal characteristics that would make the student's identity easily traceable (i.e. race, ethnicity, gender, disability); or
- Other information that would make the student's identity easily traceable (i.e. name of student’s home room class or home room teacher).

**Parents’ Right To Review Documents**

**If a parent asks for access to his/her child’s records, when must the school comply with the request?**

The school is obligated to provide access to the information within a reasonable timeframe. Access must be provided by no later than 45 days from when the request was made. Practically, the school should make every attempt to comply with the parent’s request before 45 days. However, the school is not required by FERPA to provide immediate access.

Note, under IDEA, the school must respond to the request for access to the records prior to conducting any meeting to consider the student’s IEP or any due process hearing or resolution session.

**What procedure should be followed to process a parent’s request to access his/her child’s records?**

At a minimum, the school should do the following:

- Ensure that records are not destroyed pending a request for review;
- Verify the person requesting access is the child’s parent and has the right to access the information;
• Verify that the requested information meets the definition of education record; and
• Verify that the requested information does not include information about another parent’s student (i.e. not the requesting parent’s child). If information about another child is included, the information concerning the other student will need to be redacted.

Parents’ right to request correction of records

Under FERPA, parents have the right to request that the school correct any records that the parent believes are inaccurate or misleading. This does not, however, mean that the school must change the records if the determination is made that the records are accurate. This right also does not apply to parental requests to change substantive decisions made by school officials, such as grades, unless the substantive decisions have been inaccurately recorded.

What is the procedure the school should follow if the parent indicates that records are inaccurate or misleading?

The procedure is outlined in Board Policy FL. As the principal, you are the record custodian for the records at your school. Requests for challenging contents of school records shall be submitted in writing to the principal. Upon receipt of such request, the principal shall schedule, within ten school days, a personal conference with the parent and the school's Pupil Personnel Committee. If this procedure does not result in changes to the satisfaction of the parents, the principal shall, at the parent’s request and within ten school days, schedule a hearing with the appropriate Area Superintendent or designee, for the purpose of appealing this decision. An opinion is to be rendered within ten school days.

Special education, health, and psychological records may not be altered without the concurrence of the psychological services director, school health services director, or special education department, as appropriate.
Parent’s right to control access to student education records

Generally, the district must have the parent’s prior written consent to release personally identifiable information about the student. There are specific exceptions that allow for the release of information without prior written parental consent. Detailed information on when the release of student information is allowed is outlined below in the Releasing Student Information section.

Releasing Student Information

When may student information be released?

Generally, schools must have prior written permission from the parent in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:

- Non-custodial parent;
- School officials (including teachers) with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.

The district may also disclose, without prior written parental consent, "directory information” provided the parents and eligible students have been given a reasonable amount of time to request that the district not disclose directory information about the student. Information concerning FERPA is outlined in the student handbook annually. Parents and eligible students are
given 15 business days at the beginning of the school year to return the form in the student handbook if they wish to block directory information from being released.

**What is directory information?**

Directory information is information contained in an education record of a student, which would not generally be considered harmful or an invasion of privacy if disclosed. Board Policy FL outlines the categories of information that are defined as directory information for Dallas ISD. Directory information is:

- Student's name, home address and home telephone listing;
- Date or place of birth;
- Major field of study;
- Dates of attendance;
  - This refers to general dates of attendance (i.e. 2004-07) not specific dates a child attended class (i.e. Johnny came to school Monday, Tuesday and Wednesday but not Thursday or Friday).
- Degrees and awards received;
  - This does not include a child’s specific grades. You may indicate that a student is on the “A” Honor Roll but may not reveal the student has a 95 average.
- Participation in officially recognized activity or sport;
- Weight and height of members of the athletic teams; and
- The most recent previous educational agency or institution attended

**Is the parent entitled to access or copies of the records?**

Under FERPA, schools are not required to provide copies of the student’s education records to the parent unless, for reasons such as great distance, it is impossible for parents to review the records. Schools may charge a fee for copies in accordance with Board Policy FL (Local). The District charges in accordance with the cost guidelines established under the Texas Public Information Act. The school may charge ten cents per page for paper copies. Board Policy FL provides that, if the student qualifies for free or reduced-price lunches and the parents are unable to view the records during regular school hours, upon written request of the parent, one copy of the record shall be provided at no charge.
Note, under IDEA, parents are entitled to a copy of the special education IEP document.

**What if someone other than the parent is requesting the education records?**

You will need to determine if the individual requesting the information has written parental permission to have the records. If the requesting party has parental consent, you will need to ensure that only the information indicated in the consent form is released. You will also need to maintain a copy of the parental consent in the student’s file.

If the individual requesting the information does not have parental consent, you will need to review the list of exceptions outlined under FERPA. The most likely exception will be one of the following:

- Non-custodial parent;
- School officials (including teachers) with legitimate educational interest;
- Other schools to which a student is transferring;
- To comply with a judicial order or lawfully issued subpoena;

**What do I do if I receive a subpoena for student records?**

You will need to comply with the subpoena. Under FERPA, you are required to make a reasonable effort to notify the student’s parents of the subpoena prior to complying with the subpoena. This is to give the parents the opportunity to obtain legal counsel, if necessary, to quash the subpoena.

In most instances, if you receive a subpoena for student records, it is because the parents are in court seeking custody of the child. In these circumstances, the parents will likely have notice of the subpoena. You will still need to attempt to notify the parents to verify they are aware of the subpoena.

There may also be instances where a subpoena may be sent to the school by the local district attorney’s office due to a criminal court proceeding involving the student. The parent is unlikely to know that a subpoena has been sent for the student’s records. This would be an example of when notification to the parent would be necessary before complying with the request. If you are in doubt about what information is being requested or if
the subpoena is authentic, please contact the Office of Legal Services at 972-925-3250.

How do I determine if a school official has a legitimate educational interest in accessing a student’s education records?

“School official” is defined as any employee, Trustee, or agent of the District. The term also includes attorneys, consultants, and independent contractors who are retained by the District, by cooperatives of which the District is a member, or by facilities with which the District contracts for placement of students with disabilities. However, being a “school official” is not sufficient for access to student information. The school official must have a legitimate educational interest in accessing the information.

“Legitimate educational interest” is defined by board policy FL. School officials have a "legitimate educational interest" in a student's records when they are working with the student; considering disciplinary or academic actions, assisting with the student's case, or helping to formulate an individualized education program for a student with disabilities; compiling statistical data; or investigating or evaluating programs.

If the school official requesting access to a student’s education records and/or information does not meet this definition of “legitimate educational interest,” that individual must have prior written permission from the student’s parent to access the information.

Consider the following examples to identify when a school official has a legitimate educational interest:

Example 1.
John is a teacher at Smith High. Jill is a teacher at the rival school, Jackson High. John suspects that Jill is inflating students’ grades to make sure they are eligible to play sports. John’s best friend Andy works as the school’s registrar at Jackson High and has access to students’ grades. John asks Andy to provide him with a list of the students in Jill’s class with their six weeks grades indicated.

Example 2.
Sam is the UIL Coach on campus. Tonia is a student in George’s class and is one of the students participating in UIL. The UIL competition is next week and Tonia’s English grade has been marginal. Sam contacts George to
verify that Tonia is passing English. George informs Sam that Tonia is passing.

In example 1, if Andy provides John with the requested information, he has violated FERPA. Although John is a “school official,” he does not have a legitimate educational interest in accessing particular students’ information at Jackson High. John works at a different school and is not providing any educational services to the students whose information he is requesting. If there is a concern that Jill has acted inappropriately, the appropriate method of addressing this concern is by notifying the appropriate district officials not accessing the student’s records. By contrast, in Example 2, Sam is the UIL Coach. He is working with Tonia and has a legitimate educational interest in verifying that she has met the eligibility requirements. Under these circumstances, he can have access to Tonia’s information to verify she has a passing grade.

**Does FERPA obligate the district or school to create documents?**

No. FERPA simply addresses what must be done to protect access to and disclosure of existing education records. This statute does not require that a school or the district create a particular type of record.

**What happens if the parent of a student who is 18 years old wants access to the student’s education records?**

Generally, FERPA rights transfer to the student once he or she reaches 18. This includes the right to control who has access to the student’s education records. However, if the student is a dependent for tax purposes, the parent is still entitled to access the student’s records. The best practice is to have the parent of a student who is 18 years old provide verification that the student is a dependent for tax purposes.

**Record Keeping Obligation**

**What records do I have to maintain concerning who has accessed a student’s records?**

All persons, agencies or organizations desiring access to the records of a student shall be required to sign a written form, which shall be kept
permanently with the file of the student, to be inspected only by the parents or student, indicating specifically the legitimate educational or other interests that each person, agency, or organization has in seeking such information. This form shall be available to parents and to the school official responsible for record maintenance as a means of auditing the operation of the system. A sample form is included in this reference guide.

This recordkeeping requirement does not apply if the request was from, or the disclosure was made to:
- The parent or eligible student,
- A properly designated school official for a legitimate educational purpose,
- A party with written consent from the parent or eligible student (the consent will serve as your record),
- A party seeking directory information, or
- A party with a law enforcement subpoena or court order, which specifies that the existence or contents of the subpoena or court order must not be disclosed.

**Are there specific requirements for special education records?**

Yes. Unlike FERPA, IDEA requires specific action be taken by the campus to safeguard the confidentiality of personally identifiable information. IDEA requires that the confidentiality of personally identifiable information of special education students be protected at the collection, storage, disclosure, and destruction stages. In addition, a current listing of the names and positions of those employees who may have access to personally identifiable information of the students must be made available for public inspection.

**For assistance with FERPA questions, please contact:**

Office of Legal Services at:
972-925-3250
972-925-3251 (fax)