

FAMILY EDUCATIONAL RIGHTS and PRIVACY ACT (FERPA)

FERPA: Family Educational Rights and Privacy Act, refers to educational records that are maintained on a student during their public education years. Student records are sources of information specific to individual students that are maintained by an educational agency or by a person acting for the school.

Confidentiality: The level of confidentiality is the same for all school records. No one except designated district personnel should have access to the students' cumulative records. Under no circumstances should students, volunteers or parents have access to or be allowed to file, purge or organize student records.

The following types of files shall be considered educational records and shall be included in the cumulative file:

- 1) Identification information, including name, sex, race, birthplace, and birth date
- 2) Family data
- 3) Medical health records and emergency medical information
- 4) Attendance records
- 5) Academic or scholastic records
- 6) Standardized test scores
 - a) LAS
 - b) CRT
 - c) DIBELS
- 7) Records of educational or vocational plans
 - a) Next step plans
- 8) Records of interests, activities and honors
- 9) Teacher evaluations, if shared with anyone else
- 10) Counselor evaluations, if shared with anyone else
- 11) Information pertaining to special services provided for students
 - a) Special education
 - b) Section 504
 - c) Counseling services
 - d) Bilingual, ELD
- 12) Records of incidents of unsatisfactory behavior or imposition of discipline

Records that may be purges shall be removed from the record and properly disposed of unless a request for a review by a parent or student (when 18) is pending. At a minimum, the student's records shall be reviewed for records to be purges when the student has completed elementary school, junior high school, and high school.

Student records should be an objective record of a student's time spent in public school. **BEWARE** of putting subjective data into a student's record. Teacher comments can be a cause for concern when considering the subjectivity of the comments.

Display of any student work that has been graded (academic records) or rating students according to DIBELS scores (standardized test scores) violates FERPA.

When a district is accused of violating FERPA there is no private right of action but the complaint is usually investigated by OCR and any number of violations *not* directly related to FERPA could come from the investigation.

Schools do not have to have parent permission to request records (special education included) from another district when a child moves.

A student's cumulative file should point toward other files that are available on the child. Referrals to the SAT, counselor, Section 504 or IDEA should be noted in the cumulative record. This information will then point the person in the direction to know that there are more records in another place. Even if a child is DNQ but there is testing available it should be noted.

FERPA

Records kept by a teacher or service provider that ARE NOT SHARED with anyone else are not considered school records under FERPA but they can be subpoenaed. Once a record is shared it becomes a school record. Basically that is it.

The Cuddy Firm recommended having a records policy that charges for copies. FERPA allows a parent to view within 45 days of a written request. The Cuddy Firm suggested getting the request in writing and then to set up a time and place to view the record in the presence of a district representative who can tell the parent what the records mean and then copies issued at a price. They also recommended someone go through and purge the file as needed before the parent views it.

Parents/guardians or eligible students (over 180 can make a request for records. In a divorce the parent who has the court orders to 'make day to day decisions' is the parent under FERPA.

Presenter said do not put "modified" grades in the cumulative folder. If the child's grades are modified by the IEP or 504 plan that document specifies how they are to be modified and it does not have to be in the grades section.

When we request records and make them part of the student record then we can share those records even if we were not the originator of the records, i.e., medical or other tests.

Verbal communication is not covered by FERPA.

Educational Records does not include:

- 1) SRO Records (police)
- 2) Notes kept for the sole use of the creator of those notes – cannot be shared with anyone not accessible or revealed to any other person except a temporary substitute for the maker of the records. (Substitute teacher).
- 3) Alumni Records
- 4) Directory Information
“...The term ‘director information’ relating to a student included the following:
 - a) The student’s name, address, telephone listing
 - b) Date of birth
 - c) Major field of study
 - d) Participation in officially recognized activities and sports
 - e) Weight and height of members of athletic teams
 - f) Dates of attendance
 - g) Degrees and awards received
 - h) Most recent previous educational agency attended by the student

Retention for some of the more common student records:

Retention of Student Cumulative Education Record File

- 1) Transcript – 90 years after high school graduation or 90 years after the student should have graduated.
- 2) Health Records – 10 years after date of last entry or until individual attains age 19.
- 3) Federal Program Record – 5 years after reporting to NMPED.
- 4) Special Education Record – 5 years.
- 5) Disciplinary Records – 5 years after date of last entry or 2 years after date of students last attendance.
- 6) Guidance Folder – 5 years after date of last entry or 2 years after date of students last attendance.
- 7) Scholarship Program Records – 1 year after scholarship awarded.
- 8) Student Employment Certificate – Until student reaches age 21.
- 9) National Honor Society Student Selection Records – 1 year after end of school year.
- 10) School Census Records – 1 year after end of school year.
- 11) Students Attendance Records – 1 year after end of school year.
- 12) Parent consent for the student to participate in or be excused from a specific activity – 2 years after close of school year or until student attains age 9.
- 13) Student Organization Records – 6 years after date created.
- 14) Athletic Activities and Membership – 6 years after date created.
- 15) Athletic Activities including injuries or accident reports – 10 years after date of last entry.

Retention of Curriculum Records

- 1) Teacher Lesson Plan – 2 years after close of school.
- 2) Teacher Class Rolls and Grade Sheets File – 1 year after end of term for which created.
- 3) Examination and Test Answer Papers – 2 years after close of school year.

Under NCLB and PPRA a parent or guardian may inspect instructional materials but they may not see assignments or tests and they cannot opt their student out of portions of the curriculum they do not agree with.