

LEGAL ISSUES IN STUDENT DATA SHARING BETWEEN DISTRICTS

**Tri-Board Convening, Districts 90, 97, & 200
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I. OVERVIEW OF STUDENT RECORDS REQUIREMENTS

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There are multiple federal and State laws that govern school district policies, procedures, and practices regarding student records and the confidentiality of information contained in those records.

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Federal laws in this area include *FERPA (Family Educational Rights and Privacy Act)*, *IDEA (Individuals With Disabilities Education Act)*, and their implementing regulations.

State laws in this area include the *ISSRA (Illinois School Student Records Act)* and its implementing regulations, the *Mental Health and Developmental Disabilities Confidentiality Act*, and the *Local Records Act*.

I. OVERVIEW OF STUDENT RECORDS REQUIREMENTS

Two primary purposes of the laws regarding student records:

1. To ensure parents' access to their child's records
2. To ensure the privacy of these records and the information contained in them

I. OVERVIEW: SELECT PROVISIONS

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.

I. OVERVIEW: SELECT PROVISIONS

“Record” means any information recorded in any way, including but not limited to, hand writing, print, computer media, video or audio tape, film, microfilm, and microfiche.

I. OVERVIEW: SELECT PROVISIONS

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.

I. OVERVIEW: SELECT PROVISIONS

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);

I. OVERVIEW: SELECT PROVISIONS

- 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.

I. OVERVIEW: SELECT PROVISIONS

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.

I. OVERVIEW: SELECT PROVISIONS

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 stated that it means that a record “will be kept in a filing cabinet at the school or on a permanent secured database.”

I. OVERVIEW: SELECT PROVISIONS

FERPA and *ISSRA* grant parents certain rights with regard to their child's student records. (These rights transfer to the student when he or she becomes an "eligible student.") These rights include, but are not limited to, a **parent's right to grant or deny their written consent for the release student records or information contained in the records, unless one of the exceptions to the consent requirement applies.**

I. OVERVIEW: SELECT PROVISIONS

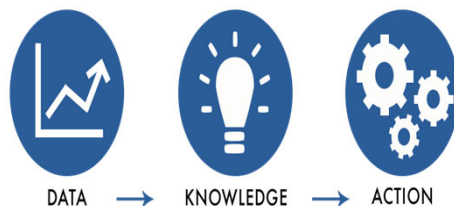
Exceptions to the parent consent requirement for the release of student record information include, but are not limited to:

- 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 (written notification to parents required prior to release);
- as required by specific federal or State law (e.g., the *Abused and Neglected Child Reporting Act*);
- to individuals or organizations for research, statistical reporting, planning, or accrediting purposes, under certain circumstances/conditions;

I. OVERVIEW: SELECT PROVISIONS

- pursuant to a court order (written notification to parents required prior to release);
- 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.

II. LEGAL CONSIDERATIONS WHEN DISTRICTS WANT TO SHARE STUDENT RECORD INFORMATION TO SUPPORT EFFECTIVE TRANSITIONS TO HIGH SCHOOL AND STUDENT ACHIEVEMENT



II. GENERAL LEGAL CONSIDERATIONS

- Achievement-related data (e.g., PARCC, NWEA/MAP, AIMSweb) and other information is part of a student's records if it contains PII.
- If the achievement-related data or other information is a part of a student's records, the *FERPA* and *ISSRA* provisions requiring written parent consent or an applicable exception to the consent requirement will apply before the data or other information may be released.
- Even if achievement-related data and other information is anonymized to remove student names and ID numbers, certain subgroups may be small enough that individual students can still be personally identified. This, too, will invoke the *FERPA* and *ISSRA* provisions requiring written parent consent or an applicable exception to the consent requirement before the data or other information can be released.

II. GENERAL LEGAL CONSIDERATIONS

- If sharing student achievement-related data and other information is within the context of a *study for the purpose of improving instruction*, the data and other information may only be disclosed:
 - If the study is conducted in a way that does not permit personal identification of parents and students by individuals other than representatives of the organization conducting the study who have legitimate interests in the information;
 - The information is destroyed when no longer needed for the purposes for which the study was conducted; and
 - The school district(s) enter into a written agreement with the organization conducting the study which meets certain *FERPA* requirements.

II. SPECIFIC TRI-BOARD CONSIDERATIONS

1. **Are Districts 90, 97 & 200 considering data sharing for purposes of a study to improve instruction or for other reasons?**
2. **What data and other information will be shared, by whom, and when?**
 - DATA DISCLOSURES BY FEEDER ELEMENTARY DISTRICTS → HIGH SCHOOL DISTRICT:
 - Prior to when students enter the 9th grade?
 - After students enter the 9th grade?
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II. SPECIFIC TRI-BOARD CONSIDERATIONS

3. **Can/will the data and other information be anonymized?**

Once these considerations are addressed, Districts 90, 97, & 200 can determine what policies, procedures, and processes will be required to share student achievement-related data and other information.



QUESTIONS?



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