



FERPA & Record Keeping



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FERPA

Family Educational Rights and Privacy Act

U.S. Regulations: 34 CFR Part 99

<http://www.ed.gov/policy/gen/guid/fpco/pdf/ferparegs.pdf>



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Essential Principles

- Records kept confidential
- Parent* can access records
- Parent* can request amendment of records

*Parent or eligible student



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What is an eligible student?

- 18 years of age

or

- attending postsecondary education institution



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What are education records?

Records that are:

- Directly related to a student
- Maintained by educational agency or institution *or* by a party acting for agency/institution



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Not a record if...

- Kept in sole possession of the maker
- Used only as a personal memory aid
- Not accessible/revealed to any other person except temporary substitute



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Test protocols are education records

Clarified in 1986 letter from FPCO
(Family Policy Compliance Office)



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Essential Principles

- A. Records kept confidential
- B. Parent can access records
- C. Parent can request amendment of records



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A. Records kept confidential

Exceptions:

- School where student seeks to enroll
- Authorized federal, state, local authorities
- Organizations conducting relevant research
- School officials, including teachers, with “legitimate educational interests”
- Health or safety emergency



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School Officials with Legitimate Educational Interests

- LEA must have criteria for determining:
 - who constitutes a “school official”
 - what constitutes a “legitimate educational interest”
- Policy must be included in annual notification to parents



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Health or safety emergency*

Agency or institution “may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.”

* This refers to emergencies, and should not be liberally interpreted to apply to non-emergent health and safety concerns.



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Record of access

LEA must keep a record of access requests

Does not apply to:

- Parent
- School officials with legitimate educational interests
- Party with written consent from parent
- Specifically protected legal inquiry (e.g., subpoena)



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B. Parent can access records

“A parent ... must be given the opportunity to inspect and review the student’s education records.”

Note: under CT special education regulations (10-76d-18), parents have the right to a free copy of “any education records relating to their child”



FERPA and CT Regulations

Recent addition to CT Regs:

“Notwithstanding the fact that a test instrument or portion of a test instrument may meet the criteria of an ‘education record’ under FERPA, any test instrument or portion of a test instrument for which the test manufacturer asserts a proprietary or copyright interest in the instrument shall not be copied. The parent retains the right to review and inspect such information...”



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C. Parent can request amendment of records

If believed to be:

- misleading
- inaccurate
- in violation of student's rights of privacy



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Requesting amendment of records

- LEA decides whether to amend
 - If LEA doesn't amend?*
- Parent has right to hearing
 - If parent loses hearing?*
- Parent may place statement in record commenting on disagreement



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Notification requirements

Must include:

- Right to inspect and review records
- Right to request amendment of records
- Criteria used to determine “legitimate “educational interests”
- Right to file a complaint



Storage of Records

What goes where?

→ Determined by LEA policy

Considerations:

Central office vs. school-based

May need multiple types of records (e.g., cum, special education, health, psych/social work) so that inappropriate access is prevented.



Storage of Records

For discussion:

- Special education records—active vs. inactive
- Report of Suspected Child Abuse/Neglect

SDE *recommendation*: keep in health record

(see <http://www.state.ct.us/sde/deps/special/abuse.pdf>,
p. 23 of 35)



Storage of Records

How long must records be kept?

Determined by *Records Retention/Disposition Schedules*, State of CT



Records Retention Schedule

Selected examples:

The following have a minimum retention requirement of 6 years after student leaves the school district:

- Child study team records
- Most health information
- Diagnostic test results, non-special ed
- Pupil services case records
- Most special education records



Records Retention Schedule

Other examples:

- Discipline reports → no requirement
- Test protocols → at discretion of school administration



Records Retention

Discarding protocols “at discretion of school administration”

- Must allow opportunity for parent to request
- Should have district policy, and apply policy consistently



Records Retention

“School districts must procure prior approval from the Office of the Public Records Administrator before destroying any records whether or not they appear on this retention schedule.”