



Privacy of Student Information

Family Educational Rights and Privacy Act
Individual with Disabilities Education Act

Health Insurance Portability
and Accountability Act

As an employee of the Davis School District, you may sometimes access individual student records while performing your official duties. Under federal and state law, you are legally and ethically obliged to safeguard the confidentiality of any information they contain.

FERPA and Its Protections

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy interests of students. It affords parents the right to access and request their children's education records be amended, and gives them some control over the disclosure of the information in these records. FERPA generally prevents schools or the District from sharing student records, or personally identifiable information in these records, without the written consent of a parent, except as provided by law.

Education Records

The term "education records" is defined as all records, files, documents, and other materials containing information directly related to a student; and maintained by the education agency or institution, or by a person acting for such agency or institution. This includes all records regardless of medium, including, but not limited to, handwriting, videotape or audiotape, electronic or computer files, film, print, microfilm, and microfiche.

Personal notes made by teachers or other staff are not considered education records if they are:

- kept in the sole possession of the maker;
- not accessible or revealed to any other person except a temporary substitute, and
- used only as a memory aid.

Records created and maintained by a law enforcement unit for law enforcement purposes are also excluded.

Directory Information

The term "directory information" is used for the portion of the education record that, if disclosed, would not generally be considered harmful or an invasion of privacy. The Davis School District has designated the follow as directory information:

- name, address and, telephone number;
- date and place of birth;
- parent's email address;
- participation in officially recognized activities and sports;
- weight and height of members of athletic teams;
- dates of attendance;
- degrees and awards received;
- most recent previous education agency or institution attended; and
- photograph.

Directory information may be released at the discretion of school officials, without consent, for appropriate reasons. Under the provisions of FERPA, parents must be notified annually of their right to withhold the release of any or all directory information. Schools must honor a parent's request that their student's directory information not be released.

Annual Notification of Rights to Parents

FERPA regulations require schools to give annual notification to parents of their rights under FERPA. The annual notification must ensure that parents understand that they have the right to:

- inspect and review their student's education record;
- seek to amend the record if they believe it to be inaccurate; and
- consent to disclosures of personally identifiable information, with some exceptions as outlined in the Disclosure of Student Information section below.

Disclosure of Student Information

Generally, schools must have written parent permission to release any information from a student's education records. However, in addition to properly designated "directory information," FERPA allows disclosure, without consent, to the following parties or under the following conditions:

A legitimate educational interest

School officials with a "legitimate educational interest" may access student records under FERPA. Generally, this refers to individuals in the school district who need to know information in the student's education record in order to perform their professional responsibility.

Other schools into which a student is transferring or enrolling

Schools that submit a records request or in which a student has enrolled are eligible to receive information from that student's education records, so long as the disclosure is for purposes related to the student's enrollment, or transfer. This includes postsecondary institutions to which the student is applying.

Judicial orders or lawfully issued subpoenas

Schools must release information requested by judicial order or legal subpoena. However, the school must make a reasonable effort to notify the parent in advance of compliance, unless the court or other issuing agency has ordered that the contents of the subpoena not be disclosed, or that the protected education records not be included.

Health and safety emergencies

Disclosure to appropriate officials is valid if the information contained in the education record is necessary to protect the health or safety of the student or other individuals. This exception is limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from a student's education records. When making a disclosure under the health or safety emergency provision in FERPA, schools are specifically required to record the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure and the parties to whom the school disclosed the information.

The juvenile judicial system

Schools may release information to state and local juvenile justice authorities after receiving written certification that the information will not be disclosed to any other agency, organization, or third party without the parent's permission, except as allowed by state law.

Certain State Agencies

Schools may release information to a State agency or organization that is legally responsible for the care and protection of the student. When a child is in State custody, the agency serves as the legal custodian and/or guardian of a child who is a student. The agency, caseworkers, case managers, or foster parents may inspect and review the child's education record and has the same standing as a parent would have under FERPA.

Specified officials for audit or evaluation purposes

This exception refers to federal, state, and local education agencies that must collect data or student information to audit, evaluate, or enforce educational programs.

The Immigration and Naturalization Service (INS) for foreign students attending school under a visa

INS requires foreign students attending an educational institution under an F-1 visa to sign the Form-I-20. The form contains a consent provision allowing for the disclosure of information to INS. This consent is sufficiently broad to permit an educational institution to release personally identifiable information of a student who has signed a Form I-20 to the INS for the purpose of allowing the INS to determine the student's nonimmigrant status.

Ex Parte Orders

Schools must release information in response to an *ex parte order* from the Attorney General of the United States or his designee in connection with the investigation or prosecution of terrorism crimes. An *ex parte order* is an order issued by a court of competent jurisdiction without notice to an adverse party.

Parent Consent to Release Student Records

A parent must provide written consent before a school or school district discloses personally identifiable information from the student's education records, unless one of the exceptions to FERPA's general consent rule applies (See Disclosure of Student Information). FERPA requires that a consent be signed and dated by the parent and:

- specify the records that may be disclosed;
- state the purpose of the disclosure; and
- identify the party or class of parties to whom the disclosure may be made.

Documenting Release of Student Record

Generally, a school must maintain a record of "each request for access to and each disclosure of personally identifiable information from the education records of each student." However, a school need not maintain any information about the requests for access to or disclosures of personally identifiable information from education records to the following individuals or organizations:

- the parents of the student;
- a school official with a legitimate educational interest;
- a party who has written consent from the parent;
- a party seeking directory information; or
- a party seeking or receiving information under a subpoena in connection with which the issuing authority has ordered nondisclosure.

When a record of the disclosure is required, the school must note at a minimum; (1) the parties who have requested or received personally identifiable information from the education records; and (2) the legitimate interest the parties had in requesting or obtaining the information. Documentation should remain with the education record as long as the record is maintained.

Providing Parents Access to Their Child's Records

You may presume that either parent has authority to inspect and review the education records of their child or consent to disclosure. Evidence denying a parent's FERPA rights must be furnished to the school in the form of a court order that specifically restricts a parent's access to their child's education records.

If you are not familiar with the person, you may request identification to establish that they are in fact the child's parent with rights under FERPA. Honor any request within a reasonable time but in no case longer than 45 days. The right of parents to access information is limited to their own child or children. If the education record includes information about other students, that information must be removed prior to disclosure so that parents do not have access to any other child's records.

Transfer of School Disciplinary Records

When sending a transferring student's school records to another public or private school - a provision of the No Child Left Behind Act requires transfer of a student's disciplinary records, with respect to suspensions or expulsions of ten or more school days. When a student is suspended or expelled for ten or more school days, Case Management generates a letter to the student explaining the terms of their suspension or expulsion. A copy of this letter should be placed in the student's permanent file thereby creating a record which will follow the student when transferring to another school.

Military Recruiters

The No Child Left Behind Act and the National Defense Authorization Act both require high schools to provide military recruiters with access to directory-type information on secondary students. Upon request, and after notifying parents (through annual notification), schools must release to military recruiters the name, address, and telephone numbers of high school juniors and seniors. This disclosed information is used only for armed services recruiting and to inform high school students of scholarship opportunities.

Videotapes

For FERPA purposes, surveillance videotapes (or other media) with information about a specific student are considered education records if they are kept and maintained by the school system, and thereby subject to protection. Videotapes may be reviewed by school officials who have a legitimate educational interest. Parents have the right, upon request to inspect and review their student's education record. However, if the videotape contains personally identifiable information about a student other than the parent's own student, and the information cannot be easily separated, in order to limit access to only the relevant student's information, a school official shall summarize the contents of the videotape and inform the parents of the contents either verbally or in writing.

FERPA Definitions

disclosure: to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

legitimate educational interest: information is used within the context of official agency or school business and its use is consistent with the purpose for which it is maintained; access to the information is necessary for school officials to perform tasks related to their position.

personally identifiable information: includes, the student's name; the name of the student's parent or other family members; the address of the student; a personal identifier, such as the student's social security number or student number; other indirect identifiers, such as the student's date of birth, place of birth, and 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 a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

school official: a person employed by the District as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving as a volunteer; a person serving on the District School Board; a person or company with whom the District or school has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist), or to whom the District has outsourced institutional services or functions.

Other Federal Laws Protecting Student Privacy

Individuals with Disabilities Education Act (IDEA)

In addition to the requirements of FERPA which are restated in the IDEA, the IDEA provides additional privacy protections for students who are receiving special education and related services tailored to protect special confidentiality concerns for children with disabilities and their families. Public agencies must inform parents of children with disabilities when information is no longer needed and will be destroyed. The school district must have one official who is responsible for ensuring the confidentiality of any personally identifiable information and must train all persons who are collecting or using personally identifiable information about confidentiality and FERPA.

Health Insurance Portability and Accountability Act (HIPAA)

There is a broad exemption in HIPAA's Privacy Rules that excludes health information contained in an education record. Health records maintained by an education agency or institution subject to FERPA, including immunization records and school nurse records, would be considered "education records" and subject to FERPA because they are:

- directly related to the student;
- maintained by an education agency or institution, or a party acting for the agency or institution; and
- not excluded from the definition of education records as treatment or sole-possession records.

Sources: Code of Federal Regulations (CFR) Title 34, Part 99; *Forum Guide to The Privacy of Student Information: A Resource for Schools* (National Forum on Education Statistics); *The Answer Book on the Family Educational Rights and Privacy Act* (LRP Publications); Davis District Policy 11IR-110 Family Educational Rights and Privacy Act.