

Student Records

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Learning Objectives

- Determine what is and is not a student record;
- Determine who can have access to student records;
- Determine how to retain, amend, and destroy student records

Student Records- what's the law?

- FERPA- Family Educational Rights and Privacy Act of 1974
 - 20 U.S.C. § 1232g; 34 C.F.R. Part 99
- Massachusetts Regulations
 - 603 CMR 23.00 et seq.

What “counts” as a student record?

- FERPA says student records are records that are directly related to a student and maintained by an educational agency.
 - Definition is extremely broad
- Mass Regulations specifically indicate that the student record is made up of the **transcript** and the student’s **temporary record**.
- Temporary record includes “recording and computer tapes, microfilm, microfiche, or any other materials **regardless of physical form or characteristics concerning a student that is organized on the basis of the student's name or in a way that such student may be individually identified**, and that is kept by the [district].”

Transcript or Temporary Record?

- Transcript is “administrative records that constitute the minimum data necessary to reflect the student's educational progress... [and is] limited to the **name, address, and phone number of the student; his/ her birthdate; name, address, and phone number of the parent or guardian; course titles, grades (or the equivalent when grades are not applicable), course credit, grade level completed, and the year completed.**” See 603 CMR 23.02.
- Temporary record is everything else.

The use of “initials”

- It's a tempting conclusion to just label everything with student initials.
- If use of the student's initials still make the item individually identifiable, it isn't effective.
- Questions to ask:
 - Is this really effective communication?
 - What's the harm in creating this record? Sometimes a student record has to be created.

What about records kept in other buildings?

- Location is **completely irrelevant**
- Student record would include *at least* the following:
 - Cumulative Folder
 - Health Records
 - Special Education Records
 - Discipline Records
 - Attendance Records

Is everything a student record?

- No. And this is backed up by both FERPA and Massachusetts Regulations.
- Personal files like notes/memory joggers are specifically exempted as long as:
 - These records are maintained in a personal file of an employee AND not accessible or shared with authorized school personnel or any third party (603 CMR 23.04)
 - Consider the concept of “shared” access documents like google docs

Cases that Protect Personal Notes

- Letter to Dempsey, 110 LRP 37103 (FPCO 2009); this “memory jogger” exception was upheld when the school did not disclose personal notes of an employee taken during an IEP meeting. FPCO indicated that meeting minutes are typically a student record but in this case this employee’s notes were a “memory jogger” and had not been disclosed to anyone.
- Deer Park Community City Schools, 116 LRP 1361 (OH 2015); a speech and language pathologist’s observation information, anecdotal notes, and work samples were exempted from disclosure due to the fact that they were personal memory aids and not shared with anyone else.

Let's talk about e-mail

- Email counts if it is personally identifiable or if it specifically names the student.
- This is a necessary and critical conversation point with school personnel.
- School personnel should avoid (at all costs) using email to editorialize, vent, or complain at all times.
- Treat email as a document on school district letterhead, if it helps.
- Email itself is not the problem- it's inferred tone and word choice that is.

Checklist of Questions for Email Use

- Is this communication necessary?
- What is the purpose of this communication?
- Will this communication be offensive if reviewed by the family?
- Would you send this communication through US mail on letterhead?
- Why is “reply-all” needed here?
- Can I communicate this information orally?

Student Records- Who is a Parent?

- FERPA broadly defines the term as including natural parents, guardians, or individuals acting in the absence of a parent/guardian. See 34 C.F.R. §300.30
- MA Regulations give more guidance “a student's father or mother, or guardian, or person or agency legally authorized to act on behalf of the student in place of or in conjunction with the father, mother, or guardian.” See 603 CMR 23.02

Student Records- What can a Parent Access?

- Parents always have the right to inspect the student record regardless of student age under M.G.L. c. 71, Section 34E.
- Parents are entitled to access as soon as practicable and no later than 10 days after the initial request.
- Copies may be provided but only for the cost of reproduction and not if it will prevent the parent from inspecting/reviewing records.
- Parents/students have the right to meet with professional staff to have the record contents interpreted.
- Parent can designate access to a third party (like an advocate or attorney). See 603 CMR 23.07(2)

Students Access

- Students have the right to their own records upon reaching the age of 14 or entering ninth grade, whichever comes first. See 603 CMR 28.01
- Between the ages of 14-17, both students **and** parents have the right to student records.
- Once a student is 18, he/she has the right to student records alone if they put this request in writing to the Superintendent.

What is a Non-Custodial Parent?

- A “non-custodial parents” is a parent who, by court order, does not have physical custody of a child.
- Authorized school personnel are school staff who are employed by the school committee to provide service in some way to a student, clerical staff, and any member of the student’s evaluation team.
- Third parties are everyone else who isn’t a parent, authorized school personnel, or student.

Non-Custodial Parent Access

- There is a presumption that non-custodial parents are eligible for access to student records as a custodial parent unless there has been specific action to deny the non-custodial parent's right to access the student due to:
 - Parent being denied custody or having supervised visitation based on safety threats
 - Parent being denied visitation
 - Temporary or permanent protective order (but READ the order to see if there were exceptions)
 - Probate or family court order denying access to the records
- Get requests for access to records in writing.

Non-Custodial Access

- Once the request is received in writing, the school district then immediately notifies the custodial parent (and protects address and contact information of that custodial parent in so doing) that the non-custodial parent will have access after 21 days unless the custodial parent takes action to prevent that disclosure. Contact is in writing by certified mail/first class.
- You wait 21 days and/or communicate with the custodial parent to allow that parent to take action.
- If that access becomes limited you communicate with the non-custodial parent informing them of this refused access. See 603 CMR 23.07(5)

Exceptions to Access

- There are exceptions for access under certain circumstances:
 - Directory information with public notice and opt out (name, address, telephone, place/DOB, dates of attendance)
 - Court order or subpoena
 - DCF/DYS/or judicial request
 - Federal/State/local educational officials
 - Health and safety emergencies and cases of missing students
 - Health records for school health personnel
 - Students records in situations of transfer when that disclosure is made known to families ahead of time. See 603 CMR 23.07(4)

Keeping and Retaining Student Records

- All student records must be kept in secure locations and ensure privacy of the student information
- Schools must also keep a “log of access”
 - This includes the name, position, and signature of the person releasing the information; the name, position, and affiliation of any person receiving the information; the date of access; the parts of the record obtained; and the purpose of the access.
 - Doesn't include authorized school personnel

Amending the Student Record

- A parent or student can add comments or information to the student or request that information be deleted or changed. 603 CMR 23.08
- Schools are not required to make amendments to the student record if they follow the MA regulations.
- Parent/student must provide written notification to the Principal of the building or have a conference to discuss this with the Principal.
- Principal gives a decision within one week.
- Families have a right to appeal the Principal's decision to the Superintendent, and beyond that the school committee. See 603 CMR 23.09

Destruction of Student Records

- School districts are required to maintain the student transcript for 60 years
- Schools may destroy the **temporary record** no later than 7 years after the student transfers, withdraws, or graduates. Prior to that destruction, school districts must provide notice of the approximate date of the destruction of the record.
- 603 CMR 23.06

Common Sense Rules about Student Records

- Get requests in writing (and confirm the identity of the requesting party)
- Provide timely access
- Develop habits (and train staff accordingly) to remove fear from the process
- When in doubt, phone a friend/colleague/attorney

Questions?

- Contact Information:

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