



## SCHOOL BOARD

Board Development & Training

Board Policy Manual

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### Section 7 - Students

#### Records

Policy 7:340

#### Student Records

School student records are confidential and information from them shall not be released other than as provided by law. Any record that contains personally identifiable information or other information that would link the document to an individual student is a school student record if maintained by the District, except (1) records that are kept in the sole possession of a school staff member, are destroyed not later than the student's graduation or permanent withdrawal, and are not accessible or revealed to any other person except a temporary substitute teacher, and (2) records kept by law enforcement officials working in the school.

State and federal law grant students and parent(s)/guardian(s) certain rights, including the right to inspect, copy, and challenge school records. The information contained in school student records shall be kept current, accurate, clear and relevant. All information maintained concerning a student receiving special education services shall be directly related to the provision of services to that child.

The District may release directory information as permitted by law, but parent(s)/guardian(s) shall have the right to object to the release of information regarding their child. The Superintendent shall implement this policy with administrative procedures. The Superintendent shall also designate a records custodian who shall maintain student records. The Superintendent or designee shall inform staff members of this policy, and shall inform students and their parent(s)/guardian(s) of it, as well as their rights regarding student school records.

**LEGAL REF.:**

*Family Educational Rights and Privacy Act, 20 U.S.C. § 1232; 34 C.F.R. Part 99. 105 ILCS 5/14-1.01 et seq. and 10/1 et seq. 50 ILCS 205/7. 23 Ill. Admin. Code §§ 226 and 375.*

**ADOPTED:**

*May 20, 2002*

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## Students

### Student Records 1

School student records are confidential. Information from them shall not be released other than as provided by law. <sup>2</sup> A school student record is any writing or other recorded information concerning a student and by which a student may be identified individually that is maintained by a school or at its direction by a school employee, regardless of how or where the information is stored, except as provided in State or federal law as summarized below: <sup>3</sup>

1. Records kept in a staff member's sole possession.
2. Records maintained by law enforcement officers working in the school.
3. Video and other electronic recordings (including without limitation, electronic recordings made on school buses<sup>4</sup>) that are created in part for law enforcement, security, or safety reasons or purposes. The content of these recordings may become part of a school student record to the extent school officials create, use, and maintain this content, or it becomes available to them by law enforcement officials, for disciplinary or special education purposes regarding a particular student.

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The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>1</sup> State law requires school boards to adopt policy and procedures implementing the Illinois School Student Records Act and specifying the content of school student records (23 Ill.Admin.Code §§375.100 and 226.740). Both State and federal law address school student records. See the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and the School Student Records Act, 105 ILCS 10/, implemented by ISBE rules at 23 Ill.Admin.Code Part 375.

Confusion persists regarding the interplay between the FERPA and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Privacy Rule implementing HIPAA, issued by the U.S. Dept. of Health and Human Services, addresses the disclosure of individuals' health information by *covered entities*. Generally speaking, a school district becomes a *covered entity*, and must comply with applicable sections in the Privacy Rule, if it provides health care and transmits health information in electronic form in connection with transactions. However, *educational records* as defined by FERPA are excluded from HIPAA's definition of *protected health information* (45 C.F.R. §164.501). In most cases this exception relieves school districts of complying with burdensome privacy notices and authorization forms. The board attorney should be consulted on all HIPAA-related questions.

<sup>2</sup> A plethora of statutory and decisional law protects student records. Aside from the laws identified in f/n #1, other laws protecting student records include:

1. Schools may not provide a student's *personal information* to a business organization or financial institution that issues credit or debit cards (105 ILCS 5/10-20.37).
2. Schools may not sell personal information concerning a child under the age of 16, with a few exceptions, unless a parent has consented (Children's Privacy Protection and Parental Empowerment Act, 325 ILCS 17/).
3. The release of confidential information given by a student to a therapist, e.g., school counselor or psychologist, is governed by the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/).
4. Schools must keep a sex offender registration form received from law enforcement separately from school student records maintained on behalf of the juvenile sex offender (730 ILCS 152/121).

Allowing students to grade each other's papers does not violate FERPA; such student work is not a *school record* until it is recorded by the teacher. *Owasso I.S.D. No. I-011 v. Falvo*, 122 S.Ct. 934 (2002). School student records are *per se* prohibited from disclosure; a district is under no obligation to redact them. *Chicago Tribune Co. v. Chicago Bd. of Ed.*, 773 N.E.2d 674 (Ill.App.1, 2002).

<sup>3</sup> 20 U.S.C. §1232g(a)(4)(A); 34 C.F.R. §99.3; 105 ILCS 10/2(d); 705 ILCS 405/1-7 and 5-905; 23 Ill.Admin.Code §375.10. Rather than listing the exceptions in the policy, a school board may choose to end the sentence after the proviso "except as provided in State or federal law."

<sup>4</sup> For an explanation, see footnotes in 7:220, *Bus Conduct*.

4. Any information, either written or oral, received from law enforcement officials concerning a student less than the age of 17 years who has been arrested or taken into custody. <sup>5</sup>

State and federal law grants students and parents/guardians certain rights, including the right to inspect, copy, and challenge school student records. The information contained in school student records shall be kept current, accurate, clear, and relevant. All information maintained concerning a student receiving special education services shall be directly related to the provision of services to that child. <sup>6</sup> The District may release directory information as permitted by law, but a parent/guardian shall have the right to object to the release of information regarding his or her child. <sup>7</sup> However, the District will comply with an *ex parte* court order requiring it to permit the U.S. Attorney General or designee to have access to a student's school records without notice to, or the consent of, the student's parent/guardian. <sup>8</sup>

The Superintendent shall fully implement this policy and designate an *official records custodian* for each school who shall maintain and protect the confidentiality of school student records, inform staff members of this policy, and inform students and their parents/guardians of their rights regarding school student records. <sup>9</sup>

#### Student Biometric Information Collection <sup>10</sup>

The Superintendent or designee may recommend a student biometric information collection system solely for the purposes of identification and fraud prevention. <sup>11</sup> Such recommendation shall be consistent with budget requirements and in compliance with State law. Biometric information means any information that is collected through an identification process for individuals based on their

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<sup>5</sup> Many lawyers believe that once these records are received by a school, they are protected as *education records* under the federal Family Educational Rights and Privacy Act, 20 U.S.C. §1232g. Consult the board attorney for advice.

<sup>6</sup> 23 Ill.Admin.Code §226.740.

<sup>7</sup> This sentence is required if the board allows schools to release student directory information (20 U.S.C. §1232g; 23 Ill.Admin.Code §375.80; 34 C.F.R. §99.6(a)(4)). There is at least one instance in Illinois in which parents were upset that their school district released students' names and addresses pursuant to a Freedom of Information Act (FOIA) request. FOIA contains an exemption for home addresses. Many lawyers, however, say that a district must release student information pursuant to a FOIA request when each of the following has occurred: the FOIA request seeks information that is included in the district's definition of student directory information, the district notified parents that it releases directory information, and the parents did not opt out of allowing directory information to be released concerning their child. An opinion from the Ill. Public Access Counselor supports that a district may not rely on the FOIA exemption for home addresses (PAO 12-3). The **PRESS** policy does not identify the components of *directory information*, leaving that task to implementing material. Boards may want to discuss this quagmire with the superintendent knowing that there are good reasons to release directory information (e.g., to allow the district to publish information about specific students) and good reasons to not release directory information (e.g., to avoid releasing names and addresses pursuant to a FOIA request).

<sup>8</sup> 20 U.S.C. §1232(g)(j), as added by the Sec. 507 of the U.S.A. Patriot Act of 2001.

<sup>9</sup> Each school must have an *official records custodian* (105 ILCS 10/4(a)). Districts must notify students and parents/guardians of their rights concerning school student records (105 ILCS 10/3; 23 Ill.Admin.Code §375.30; 34 C.F.R. §99.7). Comprehensive faculty and student handbooks can provide required notices, along with other important information, to recipients. Handbooks can be developed by the building principal, but should be reviewed and approved by the superintendent and board. See exhibit 7:340-API, E1, *Notice to Parents/Guardians and Students of Their Rights Concerning a Student's School Records*, and administrative procedure 7:340-API, *School Student Records*.

<sup>10</sup> This program is optional; however, districts either wishing to implement such a program or districts that have already engaged in the collection of student biometric information must have a policy consistent with the requirements of 105 ILCS 5/10-20.40 *et seq.* This section restates the School Code's requirements for a student biometric information policy.

<sup>11</sup> For districts already collecting biometric information the following is an alternative:

The Superintendent or designee shall maintain a biometric screening program that is consistent with budget requirements and in compliance with State law.

unique behavioral or physiological characteristics, including fingerprint, hand geometry, voice, or facial recognition or iris or retinal scans.

Before collecting student biometric information, the District shall obtain written permission from the person having legal custody **12** or the student (if over the age of 18). **13** Upon a student's 18<sup>th</sup> birthday, the District shall obtain written permission from the student to collect student biometric information. **14** Failure to provide written consent to collect biometric information shall not be the basis for refusal of any services otherwise available to a student.

All collected biometric information shall be stored and transmitted in a manner that protects it from disclosure. Sale, lease, or other disclosure of biometric information to another person or entity is strictly prohibited. **15**

The District will discontinue use of a student's biometric information and destroy all collected biometric information within 30 days after: (1) the student graduates or withdraws from the School District, or (2) the District receives a written request to discontinue use of biometric information from the person having legal custody of the student or the student (if over the age of 18). **16** Requests to discontinue using a student's biometric information shall be forwarded to the Superintendent or designee.

The Superintendent or designee shall develop procedures to implement this policy consistent with State and federal law. **17**

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**12** 105 ILCS 5/10-20.40(b)(1) states the definition of legal custody is the same as the definition of legal custody for purposes of residency, payment of tuition, hearings, and criminal penalties at 105 ILCS 5/10-20.12b(2)(i)-(v). Several statutes define legal custody and when a court may grant it; the term requires statutory construction/interpretation and school boards should discuss this issue with their attorney prior to adopting a policy on collection of student biometric information.

**13** Based upon 105 ILCS 5/10-20.40, written permission is not required annually; it is valid until a request for discontinuation of the use of biometric information is received or until the student reaches the age of 18. See 7:340-AP1, E5, *Biometric Information Collection Authorization*.

**14** Districts must reissue 7:340-AP1, E5, *Biometric Information Collection Authorization* to students turning 18 years of age during the school year. This is because all rights and privileges accorded to a parent under the Ill. School Student Records Act become exclusively those of the student upon his or her 18<sup>th</sup> birthday, graduation from secondary school, marriage, or entry into military service, whichever comes first. 105 ILCS 10/2(g).

**15** State law contains two exceptions: (1) the individual who has legal custody of the student or the student (if over the age of 18) consents to the disclosure, and (2) the disclosure is required by court order. 105 ILCS 10-20.40(b)(5).

**16** 105 ILCS 5/10-20.40(d). No notification to or approval from the district's local records commission, pursuant to the Local Records Act, is required to destroy student biometric information.

**17** Whether the student biometric information is an education record under the FERPA, 20 U.S.C. §1232g, or falls under an exception to an education record under FERPA is an issue about which school boards should consult their board attorney. Protected Health Information under the U.S. Department of Health and Human Service's interpretations of the HIPAA excludes education records covered by FERPA, and thus HIPAA requirements are not expected to be triggered by districts collecting student biometric information. However, before implementing policies and procedures to collect student biometric information, a board should discuss these issues with the board attorney.

- LEGAL REF.: Chicago Tribune Co. v. Chicago Bd. of Ed., 773 N.E.2d 674 (Ill.App.1, 2002).  
Owasso I.S.D. No. I-011 v. Falvo, 122 S.Ct. 934 (2002).  
Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99.  
Children’s Privacy Protection and Parental Empowerment Act, 325 ILCS 17/.  
105 ILCS 5/10-20.21b, 20.37, 20.40, 5/14-1.01 et seq., and 10/.  
50 ILCS 205/7.  
23 Ill.Admin.Code Parts 226 and 375.
- CROSS REF.: 5:100 (Staff Development Program), 5:130 (Responsibilities Concerning Internal Information), 7:15 (Student and Family Privacy Rights), 7:220 (Bus Conduct)
- ADMIN PROC.: 7:15-E (Notification to Parents of Family Privacy Rights), 7:340-AP1 (School Student Records), 7:340-AP1, E1 (Notice to Parents/Guardians and Students of Their Rights Concerning a Student’s School Records), 7:340-AP1, E3 (Letter to Parents Concerning Military Recruiters and Postsecondary Institutions Receiving Student Directory Information), 7:340-AP2 (Storage and Destruction of School Student Records), 7:340-AP2, E1 (Schedule for Destruction of School Student Records)