

# Records

## PARENT OF ELIGIBLE STUDENT ACCESS TO EDUCATION RECORDS

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## Parent or Eligible Student Access to Education Records

### What is Required

The District must provide the parent of a student with a disability or eligible student the opportunity to examine all records relating to the student as described in the *Notice of Procedural Safeguards*. Specifically, the *Notice of Procedural Safeguards* states the following regarding the education records directly related to a student:

You [the parent or eligible student] have the right to review your child's entire education record including the parts that are related to special education. The school may presume that you have authority to inspect and review records related to your child unless advised that you do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce. You can also give permission for someone else to review your child's record. When you ask to review the records, the school must make them available without unnecessary delay and before any ARD committee meeting or any due process hearing or resolution session, and in no case more than 45 calendar days after the date of the request.

### Lists and Types and Locations of Information

Each District must provide the parent, on request, a list of the types and locations of education records collected, maintained, or used by the District.

### Right to Inspect and Review Records

The District must give full rights to the parent or eligible student to inspect and review records relating to the student, unless the District has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as guardianship, divorce, separation, or custody that specifically revoked these rights. The parent or eligible student may inspect and review any education records of the student that are collected, maintained, or used by the District, including:

- Attendance records;
- Test scores;
- Grades;
- Disciplinary records;

- Counseling records;
- Psychological records;
- Applications for admission;
- Health and immunization information;
- Teacher and school counselor evaluations;
- Reports of behavioral patterns; and
- Records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the student.

Should the parent or eligible student make a reasonable request for an explanation or interpretation of records, the District must respond to such requests. The parent or eligible student also has the right to request copies of any education records or to have a representative of the parent or eligible student inspect and review the records. Further, the parent or eligible student may have a physician or other appropriate professional of the parent or eligible student's choice review the treatment records of the student.

The District must preserve education records if there is an outstanding request by the parent or eligible student to inspect and review the records.

### **Timeline**

The District must comply with a request to inspect and review education records relating to a special education student without unnecessary delay and before any ARD committee meeting, any due process hearing, or resolution session, and in no case more than 45 calendar days after the date of the request.

### **Records on More than One Student**

If a student's education records also include information about other students, the parent or eligible student may only inspect and review or be informed of the specific information about their own student.

### **Copies Including Fees for Copies**

If circumstances effectively prevent the parent or eligible student from being able to inspect and review the student's education records, the District must provide the parent or eligible student with a copy of the records requested or make other arrangements for the parent or eligible student to inspect and review the requested records.

Unless doing so effectively prevents the parent from being able to inspect and review the student's education records, the District may charge a reasonable fee for a copy of an education record that is made for the parent or eligible student. However, the District cannot charge a fee to search for or to retrieve the records of a student.

When the District discloses confidential records for which consent for disclosure is required, the District must provide a copy of the records disclosed to the parent or eligible student upon request. For a student who has reached 18 years of age or is attending an institution of postsecondary education, the copy of the disclosed records should be provided to the student instead of the parent. Similarly, even if the District discloses confidential records to other districts and/or consent for the disclosure is not required, the District must still give the parent or eligible student a copy of the record that was disclosed upon request.

### **Student Assessment Data Portal**

The Texas Education Agency (TEA) will establish and maintain a student assessment data portal for use by the District, teachers, parents, students, and public institutions of higher education. TEA will establish a secure, interoperable system to be implemented through the portal under which:

- A student, the student's parent, or other person standing in parental relationship can easily access the student's individual assessment data;
- An authorized employee of the District, including the student's teacher, can readily access individual assessment data of students for use in developing strategies for improving student performance; and
- An authorized employee of a public institution of higher education can readily access individual assessment data of students applying for admission for use in developing strategies for improving student performance.

The secure, interoperable system will provide a means for a student, the student's parent, or other person standing in parental relationship to track the student's progress on assessment instrument requirements for graduation.

Student assessment data provided through the portal will be available on or before the first instructional day of the school year following the year in which the data is collected; and include student performance data on assessment instruments over multiple years, including any data indicating progress in student achievement.

### **Definitions**

"Eligible student" is the student who has reached 18 years of age or is attending an institution of postsecondary education.

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

“Education records” are records that are directly related to the student and maintained by the District or by a party acting for the District. This also includes records relating to an individual in attendance at the District, who is employed as a result of the student’s status. Education records do not include:

- Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
- Records of the law enforcement unit of the District;
- Records relating to an individual who is employed by the District that are made and maintained in the normal course of business, relate exclusively to the individual in that individual’s capacity as an employee, and are not available for use for any other purpose;
- Records on the student who is 18 years of age or older, or is attending an institution of postsecondary education that are:
  - Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional capacity or assisting in a paraprofessional capacity;
  - Made, maintained, or used only in connection with treatment of the student; and
  - Disclosed only to individuals providing the treatment, which does not include remedial educational activities or activities that are part of the program of instruction at the District.
- Records created or received by the District after an individual is no longer a student in attendance and that are not directly related to the individual’s attendance as a student; and
- Grades on peer-graded papers before they are collected and recorded by a teacher.

## **Additional Procedures**

### **Types and Locations of Records**

Each record custodian shall be responsible for the education records at his or her campus. These records may include:

- Admissions data, personal and family data, including certification of date of birth.
- Standardized test data, including intelligence, aptitude, interest, personality, and social adjustment ratings.
- All achievement records, as determined by tests, recorded grades, and teacher evaluation.
- All documentation regarding a student's testing history and any accelerated instruction he or she has received, including any documentation of discussion or action by a grade placement committee (GPC) convened for the student.
- Health services record, including:
  - The results of any tuberculin tests administered by the District.
  - The findings of screening or health appraisal programs the District conducts or provides, which may include vision, hearing, and scoliosis. [See FFAA]
  - Immunization records. [See FFAB]
  - Dates for any periods of exclusion from school because of a communicable disease and the name of the illness.
- Attendance records.
- Student questionnaires.
- Records of teacher, counselor, or administrative conferences with the student or pertaining to the student.
- Verified reports of serious or recurrent behavior patterns.
- Copies of correspondence with parents and others concerned with the student.
- Records transferred from other districts in which the student was enrolled.
- Records pertaining to participation in extracurricular activities.
- Information relating to student participation in special programs.
- Records required to be maintained in the Student Support Team folder.
- Records required to be maintained in the section 504 eligibility folder.
- Records of fees assessed and paid.
- Other records that may contribute to an understanding of the student.

## Right to Inspect and Review Records

A parent or eligible student has the right to review the student's entire education record including the parts that are related to special education. Records may be reviewed during regular school hours upon written request to the record custodian. The record custodian or designee shall be present to explain the record and answer questions. The confidential nature of the student's records shall be maintained at all times, and the review of the records shall be restricted to only the Superintendent's, Principal's, or Counselor's office, or other restricted area designated by the record custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school.

However, the District does not have to allow a parent or eligible student to review every single record that it has that relates to a particular student. For example, as such information is not generally directed to an individual student, and therefore does not meet the definition of an educational record, the District does not generally need to provide the parent with access to school calendars or general notices, including announcements of parent-teacher meetings or extra-curricular activities. Likewise, email correspondence that briefly references the student or is clearly not maintained as part of the student's education record may not need to be provided.

The District also is not required to provide information that is not maintained or to create education records in response to a parent's request. Additionally, while communication with the parent as to a student's progress is both necessary and appropriate under other state and federal laws, FERPA does not require the District to provide a parent with updates on the student's progress in school unless such information already exists in the form of an education record.

### **Access by School Officials**

School officials who have a legitimate educational interest in the student may have access to a student's records. "School officials" shall mean any employee, Trustee, or agent that has been designated by the District or of facilities in which the District contracts for placement of students with disabilities. The term also includes attorneys, consultants, and independent contractors who are retained by the District.

School officials have a "legitimate education interest" in a student's records when they are working with the student; considering disciplinary or academic actions, the student's case, or an IEP for a student with disabilities; compiling statistical data; or investigating or evaluating programs.

### **Record of Access**

Campus Special Education Personnel shall maintain a record of any party obtaining access to education records collected, maintained, or used under the IDEA Part B. The Access Record should include:



- The name of the person or agency accessing the records;
- The date access was given; and
- The purpose for which the person or agency is authorized to use the records.

See [RECORD OF ACCESS]

### **Copies of Education Records**

While the District is required to allow parents and eligible students to inspect and review education records, it does not need to provide copies of education records unless the circumstances effectively prevent the parent or eligible student from being able to review the records otherwise, and the District either cannot or does not wish to arrange another way for the parent or eligible student to view the records. An example of when a school may need to make other arrangements for a parent to obtain access to the student's educational records is if the parent does not live within commuting distance of the school or has a disability that effectively prohibits the parent from visiting the campus. If other arrangements are not feasible or desired, the District must provide a copy of the records to the parent.

Upon written request from the parent or adult student, Special Education Campus Personnel will provide copies of a student's records and may charge 10 cents per page. When requested, the fee must be waived if the fee would effectively prevent the parent from exercising their right to review and inspect the student's records.

### **Test Protocols**

The parent or adult student may view test protocols of the student in the presence of appropriate Special Education Assessment Personnel. Special Education Assessment Personnel shall explain the results of the test protocol to the parent and answer any questions the parent has regarding the test. However, copyright regulations prohibit the copying of any portion of a test protocol, with the exception of the front score page.

### **Complaints Regarding Request for Access**

If a parent or eligible student believes that the school has violated FERPA by failing to comply with a request for access to the student's education records, the parent should complete a parent complaint form, which includes: the date of the request for access to the student's education records; the name of the school official to whom the request was made, including a dated copy of any written request to the school where possible; the response of the school official, if any; and the specific nature of the information requested,

and follow the District's parent grievance process.

### **Languages Other than English**

The District must communicate effectively with both students and parents who do not understand English. This requires the District to provide meaningful access to the information in the students' education records and/or provide the records to the parent in their native language, in some cases. If a parent or eligible student who cannot understand English requests to view the student's education records, the District must provide meaningful assistance via a qualified interpreter or written translation to ensure that the parent or eligible student can understand the information in the education records.

### **Divorced Parents**

Under FEPR, both the custodial and noncustodial parents have the right to access their student's education records and the right to consent to the release of those records, unless a court order explicitly eliminates those rights.

### **Records Relating to More Than One Student**

Because the parent or eligible student may only inspect, review, or be informed of specific information about his or her own student, the District must redact the names of, or information directly relating to, any other student(s) mentioned in the student's education records before providing the parent or eligible student access to the education records. If joint records cannot be easily redacted or the information cannot be easily segregated out, the District may satisfy the request for access by informing the parent about the contents of the record which relates to the student. There is no exception to this requirement under the IDEA.

### **Consent to Allow Person Other Than Parent or Eligible Student to Review Education Records**

Under FERPA, the parent or eligible student may provide written consent allowing another individual to access the student's education records. Written consent must include:

- The signature of the parent or eligible student consenting to allow another person to review the records;
- The date that the consent was signed;
- The name of the person(s) who may review the education records;
- A description of the education records that may be disclosed (or the specific information from the education records that may be disclosed); and

- The reason for allowing the person to review the education records.

### **Access During School Closures**

A long-term school closure due to public health emergencies likely qualifies as a circumstance that effectively prevents a parent or eligible student from reviewing and inspecting the student's education records on school grounds. Should that situation arise, the District may need to comply with a parent's access request with FERPA's 45-day deadline by sending the parent the requested educational records via email or U.S. mail, or by allowing the parent the opportunity to inspect records through an online platform. Should the District provide the records through one of these means, it must take significant precautions to send the records to the correct location/recipient.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

### **Evidence of Implementation**

- Notice of Procedural Safeguards
- Record of Access to Records
- Consent to Disclose Student Records
- Copies of Student Records
- Student Records Provided in Parent's Native Language or Interpreted
- Alternative Arrangements to Review Student Records
- Parent Complaint Form
- [DISTRICT FORMS]

### **Resources**

[The Legal Framework for the Child-Centered Special Education Process: Parent or Eligible Student Access to Education Records - Region 18](#)

[Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools - U.S. Department of Education](#)

[FERPA General Guidance for Parents - U.S. Department of Education](#)

[OSEP Letter to Anderson \(Mar. 7, 2008\) - U.S. Department of Education](#)

[OSEP Letter to Price \(Oct. 13, 2010\) - U.S. Department of Education](#)

[OSEP Letter to Anonymous \(Apr. 9, 2012\) - U.S. Department of Education](#)

[FPCO Letter to Anonymous \(Feb. 13, 2013\) - U.S. Department of Education](#)

[FPCO Letter to Anonymous \(Feb. 27, 2015\) - U.S. Department of Education](#)

[FPCO Letter to Wachter \(Dec. 7, 2017\) - U.S. Department of Education](#)

[ADDITIONAL DISTRICT RESOURCES]

## **CITATIONS**

Board Policy FL; 34 CFR 99.3, 99.4, 99.8, 99.10–99.12, 99.30, 99.34, 300.501(a), 300.507, 300.510, 300.530–300.532, 300.611(b), 300.613, 300.615–300.617; Texas Education Code 26.004(a)–(b), 26.012, 32.258(a)–(d)