

Records

WHEN CONSENT IS NOT REQUIRED TO DISCLOSE INFORMATION

March 30, 2021

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP
ATTORNEYS | COUNSELORS

Disclaimer: This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations.

©2020 by Texas Association of School Boards, Inc.

TASB grants members/subscribers of TASB Student Solutions™ the limited right to customize this publication for internal (non-revenue generating) purposes only.

CONTENTS

When Consent Is Not Required to Disclose Information 1

 What is Required 1

 Disclosure of Information to Other Educational Agencies or Institutions..... 3

 Disclosure of Information for Federal or State Program Purposes 3

 Disclosure of Information Concerning the Juvenile Justice System..... 4

 Disclosure of Information to Organizations Conducting Studies 4

 Disclosure in Compliance with a Judicial Order or Lawfully Issued Subpoena 5

 Disclosure of Information in Health and Safety Emergencies 5

 Definitions 6

 Additional Procedures 7

 Access by Parents and Eligible Students 7

 Access by School Officials..... 7

 Access Record..... 8

 Disclosure of Information to Other Educational Agencies or Institutions..... 8

 Disclosure of Information in Health and Safety Emergencies 8

 Evidence of Implementation..... 9

 Resources..... 9

CITATIONS 10

When Consent Is Not Required to Disclose Information

What is Required

The District does not need to obtain consent for the disclosure of confidential information before releasing personally identifiable information from a student's education records in the following circumstances. See [CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION].

- The disclosure is to officials of IDEA Part B participating agencies to meet a requirement under IDEA, except as otherwise provided in this section.
- The disclosure is to other school officials, including teachers, within the District whom the District has determined to have legitimate educational interests.
- The disclosure is to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, is enrolled, or is receiving services, subject to conditions that apply to the disclosure of information to other educational agencies or institutions (see below).
- The disclosure is to authorized representatives who may have access to education records in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements which relate to those programs (see below).
- The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of or conditions for the aid, or enforce the terms and conditions of the aid.
- Unless further limited by state law, the disclosure is to state and local officials or authorities to whom this information is specifically allowed to be reported or disclosed if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released or allowed to be reported or disclosed pursuant to conditions that apply to disclosure of information concerning the juvenile justice system (see below).
- The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions, subject to the conditions that apply to disclosure of information to organizations conducting studies (see below).
- The disclosure is to accrediting organizations to carry out accrediting functions.
- The disclosure is to the parent of a dependent student, as defined by the Internal

Revenue Code.

- The disclosure is to comply with a judicial order or lawfully issued subpoena, subject to the conditions that apply to a judicial order or lawfully issued subpoena (see below).
- The disclosure is to appropriate parties in connection with a health or safety emergency under the conditions that apply to disclosure of information in health and safety emergencies (see below).
- The disclosure is to an agency caseworker or other representative of a state or local child welfare agency, or tribal organization, who has the right to access a student's case plan, as defined and determined by the state or tribal organization, when the agency or organization is legally responsible, in accordance with state or tribal law, for the care and protection of the student, provided that the education records—or the personally identifiable information contained in such records—of the student will not be disclosed by the agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by the agency or organization to receive such disclosure, and such disclosure is consistent with the state or tribal laws applicable to protecting the confidentiality of a student's education records.
- The disclosure is information that the District has designated as directory information in compliance with requirements related to the disclosure of directory information, see [DISCLOSURE OF DIRECTORY INFORMATION].
- The disclosure is to the parent of a student who is not an eligible student or to the student. An "eligible student" is a student who has reached 18 years of age or is attending an institution of postsecondary education.
- The disclosure concerns sex offenders and other individuals required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071, and the information was provided to the District under 42 U.S.C. 14071 and applicable Federal guidelines.

The District may also release records or information without the consent of the parent or eligible student after the removal of all personally identifiable information (i.e., redacted records) provided that the District has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple release, and taking into account other reasonably available information.

While the District may release student records and information in the above circumstances, except for disclosure to the parent of a student who is not an eligible student or in response to a signed consent for release from the parent, the District is not required to disclose education records or information from education records to any party.

The District must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and other parties to whom the District discloses personally identifiable information from education records.

Disclosure of Information to Other Educational Agencies or Institutions

If the District discloses an education record to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, is enrolled, or is receiving services, it must make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student. This notification is not required if the disclosure is initiated by the parent or eligible student or the District's annual notification includes a notice that the District forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll or is already enrolled, so long as the disclosure is related to the student's enrollment or transfer. See [ANNUAL NOTIFICATION].

Upon request, the District must also give the parent or eligible student a copy of the record that was disclosed and an opportunity for a hearing related to the amendment of education records. See [PROCEDURES FOR AMENDING EDUCATION RECORDS].

Disclosure of Information for Federal or State Program Purposes

The District may disclose education records to the following officials and authorized representatives in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements relating to those programs:

- The comptroller general of the United States;
- The attorney general of the United States;
- The secretary of education of the United States; or
- State and local educational authorities.

Unless there has been consent for disclosure of confidential information or if the collection of personally identifiable information is specifically authorized by federal law, the information that is collected for disclosure for federal and state program purposes must be protected in a way that does not allow personal identification of individuals by anyone except authorized individuals. See [CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION]. The information that is collected for disclosure must be destroyed when it is no longer needed for the audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements relating to those programs.

Disclosure of Information Concerning the Juvenile Justice System

The District may disclose education records where reporting or disclosure of information allowed by state statute concerns the juvenile justice system and the system's ability to effectively service the student whose records are released prior to adjudication. Should the juvenile service provider request confidential information contained in the student's educational records, the District must disclose the information if the student has been taken into custody by a law enforcement officer or probation officer in connection with a proceeding in juvenile or family court or referred to a juvenile court for allegedly engaging in delinquent conduct or conduct indicating a need for supervision.

Before disclosing confidential information, the District must obtain certification in writing from officials and authorities to whom the records will be disclosed that the information will not be disclosed to any other party, except as provided under state law, without the prior written consent of the parent of the student. Unless the parent or eligible student has given written consent for disclosure of confidential information, the District must also maintain a record of access for information disclosed to a juvenile justice provider for seven (7) years from the date the information is disclosed.

A fee equal to the fee charged under the Public Information Act ("PIA") may be charged for records provided to a juvenile service provider, unless there is a memorandum of understanding between the requesting provider and the District that prohibits the payment of a fee, provides for a waiver of a fee, or provides an alternate method of accessing a fee.

Disclosure of Information to Organizations Conducting Studies

The District may disclose information to organizations conducting studies for, or on behalf of, the District to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. Under FERPA, an organization includes, but is not limited to, federal, state, and local agencies, and independent organizations.

The District may disclose personally identifiable information to organizations conducting studies, and a state or local education authority or agency headed by the comptroller general of the United States, the attorney general of the United States, the secretary of education of the United States, or state and local educational authorities may redisclose personally identifiable information if:

- The study does not allow personal identification of parents and students by individuals other than representatives of the organization that have legitimate interests in the information;
- The information is destroyed as soon as it is no longer needed for the study; and
- The District entered into a written agreement with the organization that:

- Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;
- Requires the organization to use personally identifiable information for education records only to meet the purpose or purposes of the study as stated in the written agreement;
- Requires the organization to conduct the study in a way that does not allow personal identification of parents and students by anyone other than representatives of the organization with legitimate interests; or
- Requires the organization to destroy all personally identifiable information when the information is no longer needed for the study and specifies the time period in which the information must be destroyed.

Disclosure in Compliance with a Judicial Order or Lawfully Issued Subpoena

The District may disclose information to comply with a judicial order or lawfully issued subpoena if the District first makes a reasonable effort to notify the parent or eligible student of the order or subpoena prior to complying with the order or subpoena, so that the parent or eligible student may first seek protective action.

However, notice is not required if the disclosure is in compliance with a federal grand jury subpoena where the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed. The District also does not need to provide the notice if the disclosure is in compliance with any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed. Finally, notice is not necessary when a parent is a party to a court proceeding involving child abuse and neglect or dependency matters, and the order is issued in the context of that proceeding.

If the District initiates legal action against a parent or student, the District may disclose, without a court order or subpoena, the student's education records that are relevant for the District to proceed with the legal action as the plaintiff. Similarly, if a parent or eligible student initiates legal action against the District, the District may also disclose the student's education records that are relevant for the District to defend itself to the court without a court order or subpoena.

Disclosure of Information in Health and Safety Emergencies

The District may also disclose personally identifiable information from an education record to appropriate parties, including the parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

The District may not be prevented from including in the student's education records appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community. The District also cannot be prevented from disclosing this information to teachers or school officials within the District or in other schools who the District has determined have legitimate educational interests in the behavior of the student.

When deciding whether to disclose information in health and safety emergencies, the District may consider the totality of the circumstances related to a threat to the health or safety of a student or other individuals. If the District believes there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If there is a rational basis for the District's decision based on the information available at the time of the determination of a health or safety emergency, the U.S. Department of Education will defer to the District's judgment in evaluating the circumstances and making its determination.

Definitions

"Parent" as defined by FERPA means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

"School official" includes individuals employed by the District as well as contractors, consultants, volunteers, or other outside parties to whom the District has outsourced institutional services or functions provided that the outside party performs an institutional service or function for which the District would otherwise use employees; the outside party is under the direct control of the District with respect to the use and maintenance of education records; and the outside party is subject to the same requirements under FERPA governing the use and redisclosure of personally identifiable information from education records.

"Dependent student" is a qualifying child or relative.

- A qualifying child, with respect to any taxpayer for any taxable year, is an individual who bears a relationship to the taxpayer (i.e. is a child of the taxpayer or a descendant of such a child, or a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative); has the same principal place of abode as the taxpayer for more than one-half of such taxable year; meets the age requirements (has not reached the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins or is a student who has not reached the age of 24 as of the close of such calendar year); has not provided over one-half of such individual's own support for the calendar year in which the

taxable year of the taxpayer begins; and has not filed a joint return (other than only for a claim of refund) with the individual's spouse.

- A qualifying relative, with respect to any taxpayer for any taxable year, is an individual who bears a relationship to the taxpayer (i.e. is a child or descendant of a child; a brother, sister, stepbrother, or stepsister; the father or mother, or an ancestor of either; a stepfather or stepmother; a son or daughter of a brother or sister of the taxpayer; a brother or sister of the father or mother of the taxpayer; a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; or an individual who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household); whose gross income for the calendar year in which such taxable year begins is less than the exemption amount; with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which such taxable year begins; and who is not a qualifying child of such taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.
- It does not include an individual who is not a citizen or national of the United States, unless such individual is a resident of the United States or a country contiguous to the United States.

Additional Procedures

Access by Parents and Eligible Students

Access to the education records of a student who is or has been in attendance at a school in the District shall be granted to the parent of the student who is a minor or who is a dependent for tax purposes. A parent is entitled to access to all written records of a district concerning the parent's child, including all special education records.

Whenever a student has attained 18 years of age or is attending an institution of postsecondary education, the rights accorded to, and consent required of, parents transfer from the parents to the student. However, the District may disclose the educational records of the eligible student to the student's parent without the eligible student's consent if the disclosure meets one of the conditions above, including if the student is the parent's dependent for tax purposes or in the case of a health or safety emergency.

Access by School Officials

School officials to whom access to education records may be given without consent may include, but are not limited to the following individuals who have been determined to have

a legitimate educational interest in accessing the records: professionals, paraeducators, Campus and District Administration, Trustees, school transportation officials (including bus drivers), school nurses, consultants, contracted employees, practicum and fieldwork students, unpaid interns, student or parent volunteers over whom the District exercises direct control, and attorneys.

School officials have a “legitimate educational interest” in a student’s records when they are working with the student; considering academic or disciplinary actions, the student’s case, or an IEP for a student with disabilities; compiling statistical data; or investigating or evaluating students, staff or programs.

Members of the District’s law enforcement unit will only be considered “school officials” if the law enforcement official is an employee of the district and the District appropriately provided parents and eligible students notice that its law enforcement unit officials are school officials with legitimate educational interest in those education records.

Note that the College Board does not qualify as a school official within the District or an individual providing services on behalf of the District for FERPA purposes.

Access Record

Any disclosure of personally identifiable information other than to the student’s parent, the eligible student, or designated school district officials must be recorded in the record of access. See [RECORD OF ACCESS]. The record of access must indicate the party or parties requesting the disclosure, their legitimate interest in the disclosure, the date of access, and the purpose for which the person is authorized to use the records.

Disclosure of Information to Other Educational Agencies or Institutions

When a student’s ARD Committee searches for an appropriate placement for a student with a disability, Campus Administration may have to discuss the student’s needs with officials from other schools where the student seeks to enroll. These discussions may require the disclosure of personally identifiable information. Before doing so, the District must notify the parents that the education records will be provided to other institutions where the student seeks admission.

Disclosure of Information in Health and Safety Emergencies

The health and safety emergency exception does not provide the District the right to make a blanket release of sensitive information. For example, with respect to health concerns caused by a pandemic, the District may release only the information necessary to address those concerns.

Additionally, the requirement that there must be an “articulable and significant threat” does not mean that the threat must be verbal. It simply means that the District can

articulate what the threat is when it makes and records the disclosure.

In joint guidance, the U.S. Department of Education and U.S. Department of Health and Human Services has stated, “For example, if a student stormed out of a teacher’s office stating that, ‘I know where my parents keep their guns, and someone is going to pay’ and the teacher believes that the student is on his way home and may try to use the weapons, FERPA’s health or safety exception would permit the teacher to contact the parents, police, or others in a position to help.”

Regarding threat assessments, the District may disclose the results of a student’s threat assessment to other schools and local law enforcement without parental consent if there is an articulable and significant threat to the health or safety of the student or other individuals.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Disclosure to Authorized Parties
- Consent for Release of Confidential Information
- Record of Access
- Notice to Parents Prior to Disclosure to Other School (Where Necessary)
- Annual Notification to Parent or Eligible Student
- Destruction of Disclosed Information by Authorized Parties Once No Longer Needed
- Certification from Juvenile Service Provider Officials and Authorities
- Written Agreement with Organizations Conducting Studies
- FERPA Notice to Parent Prior to Subpoena Compliance
- [DISTRICT FORMS]

Resources

[The Legal Framework for the Child-Centered Special Education Process: When Consent Is Not Required to Disclose Information - Region 18](#)

[Dear Colleague Letter \(Dec. 17, 2008\) - U.S. Department of Education](#)

[FPCO Letter to Anonymous \(Feb. 12, 2010\) - U.S. Department of Education](#)

[FPCO Letter to Anonymous \(June 6, 2014\) - U.S. Department of Education](#)

[FPCO Notice to Chief State School Officers \(Dec. 1, 2014\) - U.S. Department of Education](#)

[Joint Guidance on the Application of HIPAA and FERPA to Student Health Records \(Dec. 19, 2019\) - U.S. Department of Education and U.S. Department of Health and Human Services](#)

[Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices \(Feb. 2014\) - U.S. Department of Education](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FL; 20 USC 1232g; 25 USC 5304(l); 26 USC 152; 34 CFR 99.31, 99.34–99.36, 99.38, 300.622(a)–(b); 73 Fed. Reg. 74,838 (2008); Texas Education Code 37.084(a); Texas Family Code 52.01(a), 58.0051(a)–(b)