



Access to Education Records

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FERPA

Family Educational Rights and Privacy Act (FERPA)

20 U.S.C. § 1233g; 34 CFR Part 99

**Purpose: to protect privacy interests of
parents and students regarding the students'
education records**

FERPA

Education Records

FERPA defines education records as those records that are:

1. Directly related to a student; and
2. Maintained by an educational agency or institution.

The term expressly does *not* include:

1. Records kept in the sole possession of the maker, 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;
2. Records of the law enforcement unit of an educational agency or institution;
3. Records relating to an individual who is employed by an educational agency or institution;
4. Medical treatment records of a student who is 18 years of age or older or is attending an institution of postsecondary education, made only in connection with treatment of the student, and disclosed only to individuals providing treatment;
5. Records created or received by an educational agency or institution 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
6. Grades on peer-graded papers before they are collected and recorded by a teacher.

FERPA

Photos and Videos

A photo or video of a student is an education record when the photo or video is directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.

A photo or video should not be considered “directly related” to a student if the student’s image is incidental or captured only as part of the background, or if a student is shown participating in school activities that are open to the public and without a specific focus on any individual.

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Student Health Records

In November 2008, the U.S. Department of Education and the U.S. Department of Health and Human Services issued joint guidance on the application of FERPA and HIPAA to student health records.

“[I]n most cases, the HIPAA Privacy Rule does not apply to an elementary or secondary school because the school either: (1) is not a HIPAA covered entity or (2) is a HIPAA covered entity but maintains health information only on students in records that are by definition ‘education records’ under FERPA and, therefore, is not subject to the HIPAA Privacy Rule.”

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Parents have the right to inspect and review and seek amendment to the education records of their child, and consent to the disclosure of information from those education records.

- **Parent 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.**

Parental rights under FERPA transfer to their child when the child turns 18 years of age or is attending an institution of postsecondary education.

- **For purposes of FERPA, a child is referred to as a student. When the student becomes entitled to assert FERPA rights in lieu of their parents, the term “eligible student” is used.**

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Access to Education Records

The only individuals with automatic access to education records are the parent and eligible student.

Generally, under FERPA, a parent or eligible student must provide a signed and dated written consent before a school can disclose personally identifiable information from education records.

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Access vs. Copies

Under FERPA, parents only have a right to in-person review of education records.

FERPA requires school districts to afford parents the opportunity to inspect and review their child's education records within 45 days after receipt of a request. A district is not required to provide copies of education records unless the failure to do so would effectively prevent the parent from exercising the right to inspect and review the records.

School districts may adopt a policy of providing copies to parents upon request.

Office of Special Education Programs (OSEP) has interpreted the right to copies of education records under IDEA similarly to FERPA, except in regard to IEPs. Under IDEA, the parents of a student with a disability always have a right to request a copy of their child's IEP.

Uninterrupted Scholars Act

Permits educational agencies and institutions to disclose education records of students in foster care, without parental consent, to a caseworker or other representative of a State or local child welfare agency or tribal organization authorized to access a student's case plan when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student.

Permits educational agencies and institutions to disclose a student's education records pursuant to a judicial order without requiring additional notice to the parent by the educational agency or institution.

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FERPA Exceptions; Prior Consent Not Required

Other school officials, including teachers, with legitimate educational interest in the child;

In connection with an emergency, to protect the health and safety of the student or other individuals;

Officials of other schools where the student seeks or intends to enroll;

State and local authorities within department of juvenile justice;

To comply with judicial order or lawfully issued subpoena.

TREx

•TREx is a web-based application hosted by the Texas Education Agency (TEA) for transferring student records electronically between Texas public school districts and open enrollment charter schools.

•The TEA Student Attendance Accounting Handbook describes the following minimum information that must be transmitted when a student transfers from one Texas public school district or open enrollment charter school to another:

- Student ID (Social Security Number or State-Approved Alternate ID);
- Prior ID (Social Security Number or State-Approved Alternate ID, if different from above);
- Local Student ID Number, if used;
- County-District-Campus Number;
- Campus Name and Phone Number;
- First, Middle, and Last Name and Suffix of the student;
- Gender, Ethnicity, and Date of Birth of the student;
- Current Grade Level for the student;
- Immunization Records.

Texas Education Code (TEC) §25.002(a)(3).

TREx

- **Additionally, section 7.010 of the Education Code requires the following information to be included with the student records sent through TREx. (Note that the IEP may be scanned and sent as an attached file.)**
 - **Student Course or Grade Completion;**
 - **Teachers of Record;**
 - **Student Assessment Results;**
 - **Receipt of special education services, including placement in a special education program and development of an individualized education program (IEP); and**
 - **Student’s Personal Graduation Plan.**

- **Registrars are encouraged to send all relevant information that is available through TREx when a student transfers from one school to another. While schools are not required to send copies of birth certificates or social security cards through TREx when a student transfers, these documents may be scanned and transmitted as attachments if the registrar chooses.**

TREx

Enrollment by a student in a school district constitutes authority for the sending district to release the education records of that student, regardless of whether parental authority has been received. (FERPA 34 CFR §§ 99.31(a)(2) and 99.34.)

By law (TEC § 25.002(a-1)), a district must respond to a request for a student record from the receiving district within 10 working days after the date the request for information is received. The timely transfer of a student record is important for a student's appropriate instructional placement for continued education as well as for various reports and entries on the state assessment forms. TREx facilitates the process of responding to and fulfilling requests for records within the required timeframe.

TEC § 25.002 and FERPA 34 CFR §§ 99.31(a)(2) and 99.34 protect the right of access to the student record. Districts must protect the private information on student records and transcripts from unauthorized individuals. TREx encryption ensures protection of the data during transmission and within the TREx process; however, once the data are downloaded, data security becomes the responsibility of the receiving school district/campus.

Individuals with Disabilities Education Act (IDEA)

20 U.S.C. §§ 1400, *et seq*

IDEA addresses access to and confidentiality of education records of students with disabilities. The IDEA regulatory scheme is generally a restatement of the FERPA regulations with extended protections to parents.

Texas Government Code

§ 552.026

The Public Information Act (PIA) does not require the release of information contained in education records of an educational agency or institution except in accordance with FERPA.

§ 552.114

Information is confidential and excepted from the requirements of the PIA if it is information in a student record at an educational institution funded by state revenue, but it does not prohibit a disclosure of such information authorized by FERPA or other federal law.

Texas Education Code

§ 26.005

A parent is entitled to access to all written records of a school district concerning the parent's child, 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 child.