

FERPA & The Illinois School Student Records Act A Principal's Manual

Dealing with student records has always been an important part of every school administrator's job. However, revisions to existing law, expanded administrative Rules and new court cases have made the maintenance and dissemination of student records an increasingly arduous and time consuming process.

For reasons outlined herein, it is particularly important for building principals to know the intricate details of all applicable student record laws. Furthermore, an Illinois statute provides that the "principal of each school shall take all action necessary to assure that school personnel are informed of the provisions of...[the student records] Act." Therefore, this Bulletin provides a comprehensive look at both State and federal law regarding student records and reviews the responsibilities of the school and the school administrator in collecting, safeguarding and maintaining these records.

I. Overview:

Basically, there are two separate and distinct laws governing student records: The Family Educational Rights and Privacy Act (FERPA) and the Illinois School Student Records Act (ISSRA). Both Acts essentially give parents (and eligible students) the right to access and to control their child's educational record. School officials must take care to follow each law that is applicable to their school. The scope of each Act is as follows:

- Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 12.32g): Passed in 1974, this Act applies to all schools and colleges, public and private, which receive federal funding. Federal funding is broadly interpreted and includes not only the direct receipt of federal funds, but also includes cases where students use federally-backed loans or other federal money to pay tuition and fees.
- Illinois School Student Records Act (ISSRA) (105 ILCS 10/1): Passed in 1975, this Act applies to all public elementary and secondary schools, preschools, day care centers and vocational schools. This Act does not apply to private or non-public schools.

Recently, the Illinois General Assembly has taken steps to amend the State Act so as to make it substantially similar to the federal Act. However, there are still a handful of places where the Acts differ. When State and federal law differ regarding student records, it is always advisable to follow the most restrictive of the two. For example, under FERPA, parents must be granted the right to inspect and review their child's record within 45 days of any request. ISSRA provides that such access must be granted within 15 days. For schools that are subject to both laws, the more restrictive State law would take precedence. This publication will attempt to point out areas where State law and federal law differ as to the responsibilities of the school and school administrator. Unless

expressly noted, the information in this article reflects the requirements of both ISSRA (State law) and FERPA (federal law).

II. What is a “School Student Record” or “Educational Record”?

Recently, much attention has focused on what is and what is not a student or educational record within the context of FERPA and ISSRA. Essentially, both Acts govern any writing or other recorded information concerning a student and by which the student may be **individually identified** and which is **maintained by the school** or school employee, regardless of where the information is kept. In an elementary and secondary education setting, the definition of student or educational record does not include the following:

- Personal notes that are in the sole possession of the maker of the notes and are not accessible to anyone except a classroom substitute teacher. (Such notes must be destroyed when the student graduates or otherwise leaves school); or
- Records maintained by law enforcement professionals working in the school.

Recently, the United States Supreme Court helped to further clarify the definition of educational record. In *Owasso Independent School District v. Falvo*, the Court addressed the age-old practice of peer grading. The Court found that the practice of students exchanging papers and having another student grade such paper and call out the grade did not violate FERPA. According to the Court, documents are not “maintained” by the school until the school takes actual possession of such documents. Erroneously, the *Falvo* case has been widely interpreted to give teachers broad authority to disclose documents that individually identify students as long as these documents are not kept in the student’s official file. However, *Falvo* only applies to the concept of peer grading and should not be overly relied upon in other areas.

It should also be stressed at this point that FERPA and ISSRA regulations govern all student records, not just those records kept in the student’s file. For example, many school districts in Illinois and throughout the Country have placed security cameras on school busses and in public areas of the school. These tapes meet the definition of a student or educational record, as they personally identify students and are maintained by the school. Therefore, schools must not disclose the contents of these tapes without following the dictates of FERPA and ISSRA.

Additionally, many schools now store records and other documents on computers or by other electronic means. To the extent that these documents identify students and are maintained by the school, they are student records. Schools and especially the school records custodian must take great care to safeguard these documents and make sure that any disclosure meets FERPA and ISSRA guidelines. School administrators are advised to double-check their computer systems to assure that adequate safeguards are in place.

These safeguards include password protecting files and limiting access in accordance to the guidelines herein.

III. Who Has Rights Under FERPA and ISSRA?

Rights under FERPA and ISSRA belong to the student's parent or guardian until the student becomes "eligible" to assume those rights. (Although under ISSRA, students must be allowed access to their permanent and temporary records. Under FERPA, this student access is discretionary.) A student becomes eligible when the student turns 18 years of age or enters an institution of post-secondary education. Once a student becomes eligible, all rights transfer to the student and may no longer be exercised by the parent. However, note that the records of an eligible student may be disclosed to a student's parents if the student is still claimed as a dependant for federal income tax purposes.

IV. Who is the Records Custodian and What Are His/Her Duties?

Under both FERPA and ISSRA, each school must appoint an official records custodian, who shall have the primary responsibility for maintenance, care and security of student records, whether or not such records are in his/her personal custody and control. It is further the responsibility of the official records custodian to take all reasonable measures to prevent the unauthorized access or dissemination of student records.

In most cases, the official records custodian will be the building principal or an assistant principal. It is crucial that the official records custodian understand the applicable student record Acts. Under ISSRA, failure to safeguard student records is a petty offense and willful or malicious falsifying of documents is a Class A misdemeanor.

Under both ISSRA and FERPA, the official records custodian must keep a master record custodian log indicating generally every student record that has been accessed, date of access, why it was accessed and who viewed the information. Additionally both Acts require each student file must contain a records release form indicating: the nature and substance of information released, the name and signature of the official records custodian releasing the information, the name of the person requesting the information and the capacity in which the request was made, the date of the release and a copy of any consent to such release.

All information that is added to a student's temporary record under ISSRA must include the name, signature and position of the person who has added such information and the date of its entry into the record.

Also, under ISSRA, it is the responsibility of the records custodian to make sure that a student's record is reviewed every 4 years or upon the student's change in attendance centers, whichever occurs first. During such review, the records custodian

must verify all entries and eliminate or correct all out-of-date, misleading, inaccurate, unnecessary or irreverent information.

V. What Rights do FERPA and ISSRA Provide to Parents and Eligible Students?

Under FERPA and ISSRA, parents and eligible students have important rights, which they must be notified of each year. Notice must be given in a way that is reasonably likely to inform parents and eligible students, such as personal written notice or notice in a school publication or student handbook. Notice must also be provided in the parent and student's primary language, if other than English.

As a practical matter, common practice is to place all mandatory notices and other important information regarding student records in the student handbook, and to then distribute the handbook to all students and parents. By placing all necessary information into one central document, it saves the school the time and expense of sending home multiple letters each year. Additionally, it is strongly suggested that both students and parents sign documentation indicating that they have read the handbook, understand the document and agree to abide by its terms and conditions. This practice eliminates the need of schools to prove that parents and students were notified of their rights if the school is ever challenged on its policies and notification procedures.

Specifically, parents and eligible students must be notified of the following each year:

A. **Right to Inspect and Review the Record:** Upon request, parents must be granted access to their child's record. Requests must be honored within a reasonable time. For schools governed only by FERPA, the request must be granted within 45 days. For schools that fall under the regulations of ISSRA, this request must be granted within 15 days. Under ISSRA, this right also includes the right to have a reasonable explanation of the general content of the record. Both Acts provide that parents must also be given a copy of the record upon request. Schools may charge a reasonable fee for reproduction (not to exceed \$.35 per page), although copying costs must be waived for parents who cannot afford to pay such fees. Both State and federal law provide for non-disclosure of certain confidential information.

B. **Right to Challenge and Amend the Record:** If a parent believes their child's record to be inaccurate, misleading or in violation of the applicable student record's Act, the parent has the right to challenge the record and request that the record be amended. Under ISSRA and FERPA, parents cannot challenge academic grades of their child, as there is a separate procedure for making such challenge. Also under ISSRA, parents cannot challenge references to suspensions or expulsions at the time their child is transferring out of the school.

Under FERPA, parents' have a right to a full hearing on record discrepancy matters and the right to place a written explanation in the record if the matter is not

resolved to the parents' satisfaction. Under ISSRA, these same rights exist, although the hearing process is spelled out in far greater detail. Upon the parents' request, they must be granted an initial informal conference with school officials. If matters cannot be resolved through the informal conference, formal procedures must be initiated, which include a hearing on the matter before a neutral hearing officer. At such hearing, parents have the right to present evidence, call witnesses, cross-examine evidence and opposing witnesses and be represented by counsel. If parents are still aggrieved after the hearing officer's written decision, they have the right to appeal to the Regional Superintendent and eventually to the courts. At any time in the process, the parents also have the right to place a written explanation in their child's record file. Such explanation must be attached to the disputed document.

C. Right to Prevent Disclosure: This is one of the most widely used rights under FERPA and ISSRA. Essentially, this requirement provides that personally identifiable information regarding a child cannot be released without written permission of the parent or eligible student. Over the years, this right has been subject to various exceptions, which are outlined below:

- Directory Information: Certain very general information can be released about a student without the parents' permission. At the elementary and secondary level, this so-called "directory information" is limited to a child's name, address and phone number, date and place of birth, participation in athletics or school events, awards received and major field of study. Under FERPA directory information also includes student pictures and e-mail addresses. However, it is extremely important to note that a parent must be notified regarding the extent of directory information and be given a chance to object to this information being released. Upon such objection, the school must not release directory-type information regarding that child.
- School Employees: A student's record may be released to a school employee with a current demonstrable interest in the student. This does not include all school employees, but rather only current teachers, coaches, guidance counselors and other staff directly working with the student. With respect to special education students, the school must maintain a specific list of those persons eligible to access the student's record.
- Other Schools Upon Transfer: Records can be released without consent to another school where the student seeks or intends to enroll. However, this exception is conditioned upon the right of parents to be notified prior to the record being sent and being given the opportunity to challenge and amend the record.
- Research and Statistics: Information can be released for research and statistical purposes, provided that any personally identifiable information is removed prior to being disclosed.

- Court Order: Information must be disclosed pursuant to an order by a court of competent jurisdiction. However, school officials should note that this exception does not include a subpoena sent by an attorney. If an attorney issues a subpoena for records, such records cannot be released without parental permission. Additionally, under Illinois law, parents must be notified prior to such information being sent to the court and be given a chance to challenge and amend the record.
- Juvenile Authorities: Records may be released to juvenile authorities when necessary to discharge their duties. This includes SHOCOP committees.
- Emergency Circumstances: Record information should never be withheld if doing so would jeopardize the child's health or safety or the health or safety of others.
- Other minor exceptions exist, but are generally not applicable in an elementary and secondary education setting.

D. Right to Complain / Sue: Under FERPA, parents must be notified of their right to complain to FERPA officials for violations of the Act. There is no private cause of action for violations of FERPA. Parents and eligible students are limited to complaining to FERPA officials, who may withhold federal funding to the school for serious violations of the Act.

For violations of ISSRA, parents may sue the school and school officials in State court. However, court cases have emphasized that parents must exhaust all of the remedies available to them under ISSRA before filing an action in circuit court.

VI. Temporary and Permanent Records:

Under FERPA, there are few requirements regarding maintenance of student records. However, ISSRA requires that records be divided into two categories: permanent records and temporary records.

Permanent records must include:

- Basic Identifying Information
- Academic Transcripts
- Attendance Records
- Accident Reports and Health Records
- Scores on State Assessment Tests (in grades 9 through 12 only)
- A Record Release Form

Permanent records may also include:

- Honors and Awards
- Participation in School Events

No other information may be placed in the permanent record.

Temporary records must include:

- Information Regarding Suspensions and Expulsions for Drugs, Weapons or Bodily Harm to Another
- Scores on State Assessment Tests (in grades K through 8 only)
- A Record Release Form

Temporary records may also include:

- Family Background Information
- Intelligence Scores
- Aptitude Tests
- Honors and Awards
- Participation in School Events
- Teacher Notes
- Other Disciplinary Information
- Special Education Information
- Other relevant information

Under both State and federal law, a school is prohibited from adding any information to a student record unless it has a clear relevance to the education of the student.

In addition, ISSRA requires that permanent records be kept for a minimum of 60 years and temporary records be kept for a minimum of 5 years after the student graduates or otherwise leaves the school. However, ISSRA provides that a student's permanent and temporary records do not need to be kept separate once the student graduates, transfers or withdraws from the school. Under federal guidelines, record documents must generally be kept for at least 3 years.

VII. Student Enrollment, Transfer and Graduation Guidelines:

At the outset, it must be noted that no school may refuse to admit or enroll a student because of the student's failure to present his/her student record from the school previously attended.

Under ISSRA, when a new student applies for admission to a school and does not present his/her school student record, the receiving school may notify the school or school district the student attended previously and requests a copy of the student's record.

The prior district must honor such request within 10 days after such request is received. If the student did not pay the prior school district all fees and fines owed, the school may send to the receiving school an unofficial grades transcript until such time as all fees and fines are paid.

In general the following requirements apply under ISSRA and Illinois law when a student transfers to a new school:

Responsibilities of the Prior School:

- Review the student's record and eliminate or correct all out-of-date, misleading, inaccurate, unnecessary or irreverent information. Also, notify parents of the record destruction schedule.
- Send a transcript of the student's grades. (Official transcripts may be withheld until all fees and fines are paid.)
- Send the remainder of the student's record within 10 days of a request to do so. Note: Do not forward original records, they must be maintained by your school district. Send copies of records only.
- Prepare a Student in Good Standing Form if the student is transferring to an Illinois public school

Responsibilities of New School:

- Check proof of residency
- Make sure the student has proper medical immunization
- Review the Student in Good Standing Form if the student comes from another Illinois public school. If the student is subject to a suspension from the school last attended for drugs, weapons or battery against a staff member, the student cannot be admitted. If the student is subject to a suspension or expulsion for any other reason, school board policy determines admission criteria. (If the student comes from a private school or a non-Illinois school, parent must certify in writing that the student is not currently subject to a suspension or expulsion from the school last attended.)
- Request a birth certificate or other reliable proof of identity to assure that the child has not been kidnapped or is not a missing child
- Request Records from the prior school, including the IEP if applicable.

VIII. Destruction of Records:

Destruction of student records continues to be an area of great confusion. At the outset, it is important to note that both ISSRA and the Illinois Local Records Act must be followed before an Illinois public school can destroy student records. (FERPA does not specifically address records destruction.)

Under ISSRA, when a student graduates, transfers or withdraws from the school, the school must notify parents and the student of the destruction schedule for the student's permanent and temporary record and of the right to request a copy of such record at any time prior to destruction.

Then, before a student's record is actually destroyed, the parent or eligible student must be notified and be given reasonable time to inspect the record. Notice must be sent to the last known address of the parent or eligible student. For mass record destruction, notification by publication is sufficient to meet this requirement.

Note again that under ISSRA, a student's permanent record must be maintained for at least 60 years and a student's temporary record must be maintained for at least 5 years before such records may be destroyed.

Under the Illinois Local Records Act, the following procedures must be taken:

- The Secretary of State's local records unit must be contacted
- The above office must visit the school and inventory all records to be destroyed
- A records disposal certificate must be prepared by the Secretary of State's office
- The above certificate must be submitted to the local records commission for approval 60 days in advance of record destruction
- Upon approval by the local records commission, the records may be destroyed

IX. Special Education Students and Records:

The rules and regulations of ISSRA and FERPA apply generally to the student records of regular and special education students alike. However, the federal Individuals with Disabilities Education Act (IDEA) and Illinois law often require additional safeguards with respect to special education records and related documents. Additionally, it is unclear whether a special education student's record information can ever be released without the parents' consent.

When dealing with questions specific to the maintenance and release of special education records, please consult with your school district's attorney or IPA legal staff.

X. Divorced Families and Non-Custodial Parents:

Often times, schools are placed squarely in the middle of child custody battles and other disputes between parents. At the outset, it is important to note that the school and school officials should not be the arbitrator of issues between a student's parents.

In a student records context, the following general guidelines apply when dealing with divorced parents:

- The custodial parent has the right to make educational decisions for the child; and
- Both parents (custodial and non-custodial) have the right to review the child's records.

In the above context, non-custodial parents have the same rights as custodial parents to review their child's records and receive notices, unless specifically prohibited by a court of competent jurisdiction. Often times a parent will insist that the child's other parent no longer has parental rights or is no longer allowed to access the child's records. In these cases, it is the parent's responsibility – not the responsibility of the school – to resolve this matter. The parent making the claim must present the school with court documentation that verifies such claim. Otherwise, the school has no choice but to release the student's record to the non-custodial parent. Remember also, that decisions need not be made in haste, as the school has 15 days (or 45 days if only FERPA applies) to make a decision regarding the release of a student's record.

Additionally, if a certified copy of an order of protection is filed with the school, the school may not release the protected child's records to the person against whom the order was issued.

XI. Practice Tips

- Keep accurate records, and place a responsible person in the position of official records custodian.
- Know whether FERPA, ISSRA or both Acts apply to your school.
- Make sure that your faculty knows about rules and regulations under FERPA and ISSRA. Hold regular in-service workshops on student records. Notify staff regarding who has the right to access certain records and the procedures for doing so.
- At the beginning of every school year, provide all parents (and students) with your school's policy on student records and their rights under FERPA and ISSRA. Notification must include:

- Right to inspection
 - Right to amend the record if there are errors
 - Right to control the release of student record information
 - Right to Complain to FERPA officials (for schools subject to the federal Act)
- Publication of student record rules and regulations should be made where all parents and students will be sure to have access to them, such as a student handbook. All information must be given in English and the parents' native language if they do not understand English.
 - Clearly delineate the difference between directory information (which can be released unless there is a written objection) and personal record information (which usually cannot be released without written permission).
 - List school staff members and other professions that have a "legitimate educational interest" in a student's record and therefore have ongoing access to such records.
 - For schools subject to ISSRA, maintain separate permanent and temporary records.
 - Properly obtain the written permission from parents or eligible students before any non-exempt information is given out. Permission should include: the parent and student names, date the information is being released, type of information released and name of person or group to whom the information is being released.
 - If there is ever a question as to whether written permission is needed, error on the side of caution and obtain permission.
 - Keep a general records custodian log and also a records release form in each student's permanent and temporary files.
 - Establish an informal procedure whereby parents and eligible students can seek changes and revisions to records.
 - For discrepancies that cannot be resolved through the informal procedure, set up the procedures for a formal hearing process consistent with ISSRA (if applicable).
 - Review the student's record every 4 years or when he/she changes attendance centers.

- When a student transfers or otherwise leaves the school district, the district must maintain a copy of the student's record for the requisite period of time.
- When sending student record information to a new school district, send a copy of the information only. Do not send original records.
- Illinois public schools must take proper steps under ISSRA and the Illinois Local Records Act before destroying any student record.