

Student Records Guidance



This guidance document reviews parents' and students' rights regarding student records and privacy, as well as education officials' obligations in implementing these rights. New Jersey's State imposed rules, policies and regulations are noted where applicable.

GUIDING REGULATIONS

The Family Educational Rights and Privacy Act, FERPA, is a federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to consent to the disclosure of personally identifiable information from education records, except as provided by law. FERPA applies to schools that receive funds under any program administered by the Department of Education.

The Individuals with Disabilities Education Act, IDEA, amended in 2004, includes regulations regarding the confidentiality of information and pupil records requirements. Section 617(c) of the IDEA requires the Secretary of Education to take appropriate action, in accordance with FERPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by state educational agencies, or SEAs, and local educational agencies, or LEAs, under Part B of the IDEA.

New Jersey Administrative Code 6A:32, School District Operations, requires that each district board of education compile and maintain student records and regulate access, disclosure, and communication of information contained in student records in a manner that assures the security of the records in accordance with FERPA, 20 U.S.C. § 1232g, and 34 CFR Part 99.

New Jersey Administrative Code 6A:14, Special Education, ensures the provision of special education and related services, as well as ensuring that the rights of students with disabilities and their parents are protected, including student records.

Understanding the definitions and requisites in FERPA – as well as in the IDEA and N.J.A.C 6A:32 and 6A:14– will help understand how to apply the requirements of these regulations to particular situations.

DEFINITIONS

What is FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that grants parents the right to access their children's education records, request amendments to those records, and exercise some control over the disclosure of personally identifiable information from the records. [34 CFR Part 99]

What is "Directory Information?"

Under FERPA, "directory information" is defined as information in a student's education records that is not generally considered harmful or an invasion of privacy if disclosed. This typically includes details such as name, address, telephone number, date and place of birth, participation in officially recognized activities and sports, and dates of attendance. [[34 CFR §99.37](#)]

DEFINITIONS CONTINUED

What is an “Eligible Student?”

FERPA defines an "eligible student" as a student who is either 18 years old or attending a postsecondary education institution. [34 CFR §99.3]

What is an “Education Record?”

Education records are those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. [20 U.S.C. §1232g(a)(4)(A)] and [34 CFR §99.3.]

What is an “Educational Agency?”

Educational agency or institution, also referred to as school, refers to any public or private agency or institution to which funds have been made available under any program administered by the Secretary, if the educational institution provides educational services or instruction, or both, to students; or the educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions. [34 CFR §99.1.]

What is “Personally Identifiable Information (PII)?”

Personally identifiable information (PII) includes information that can be used to distinguish or trace an individual’s identity either directly or indirectly through linkages with other information. [34 CFR §99.3]

What is “Personally Identifiable Information for Education Records?”

Personally identifiable information for education records is a FERPA term referring to identifiable information that is maintained in education records and includes direct identifiers, such as a student’s name or identification number, indirect identifiers, such as a student’s date of birth, or other information which can be used to distinguish or trace an individual’s identity either directly or indirectly through linkages with other information. [34 CFR §99.3]

NOTIFICATION

How are parents/eligible students notified about rights under FERPA?

Educational agencies and institutions must inform parents and eligible students about their rights under FERPA every year, as specified in [34 CFR §99.7]. A sample notification can be found on the Family and Policy Compliance Office (FPCO) website under: [FERPA Model Notification of Rights for Elementary and Secondary Schools](#)

How does a school provide this annual notification to parents/eligible students?

Schools are not required to notify parents and eligible students individually. However, they must notify them using methods that are reasonably likely to inform them of their rights. [34 CFR §99.7(b)]

N.J.A.C. 6A:32-7.1 (d) General Considerations

- (d) The district board of education shall provide annual, written notification to parents, adult students, and emancipated minors of their rights in regard to student records and student participation in educational, occupational, and military recruitment programs. Copies of the applicable State and Federal laws and district board of education policies shall be made available upon request. The district board of education shall make every effort to notify parents and adult students in their dominant language.

COLLECTION AND STORAGE

Can records be scanned and stored in lieu of paper copies of records?

Electronic copies are considered equivalent to the original documents as long as they accurately capture any handwritten notes and signatures.

Are student health records protected under HIPAA?

No, the HIPAA Privacy Rule does not apply to primary and secondary schools. A student's health records are classified as education records protected under FERPA when the records are released to and maintained by the school. [In re: Student with a Disability, 40 IDELR 119 (SEA NM 2003)]. However, HIPAA and FERPA may overlap at higher education institutions.

N.J.A.C. 6A:32-7.4 (b) Maintenance and Security of Records

(b) District boards of education may store all student records either electronically or in paper format.

1. When student records are stored electronically, proper security and backup procedures shall be administered.

ACCESS TO STUDENT RECORDS

How quickly must a school respond to a request for access to records?

Schools are required to provide access to records within a reasonable amount of time, and no later than forty-five (45) days after the request is made. [34 CFR §99.10(b)]. Please note in New Jersey, each district board of education shall establish written policies and procedures for student records that guarantee access to persons authorized under this subchapter within 10 days of a request, but prior to any review or hearing conducted.

The IDEA states that a school must comply with a request to review records "without unnecessary delay" and before any meeting regarding an IEP, or any hearing, or resolution session, and in no case more than 45 days after the request has been made. [34 CFR §300.613(a)]

N.J.A.C. 6A:14-2.9 (b) Student Records

(b) The parent, adult student, or designated representative shall be permitted to inspect and review the contents of the student's records maintained by the district board of education pursuant to N.J.A.C. 6A:32-7 without unnecessary delay and before any meeting regarding the IEP.

Must a school provide actual copies of student records if requested?

Generally, no. However, if circumstances prevent parents from exercising their right to inspect and review the student's education records, the school must provide a copy of the requested records. [34 CFR §300.613(b)(2)].

The IDEA requires a school to provide copies of the Eligibility Report and related documentation, IEP, and any revised IEP after an amendment. [34 CFR §§ 300.306(a)(2), 300.322(f), & 300.324(a)(6)]

What accommodations are provided for parents or adult students who don't speak English or are deaf when accessing student records?

When a parent's or adult student's dominant language is not English, or if the parent or adult student is deaf, the school district is required to provide interpretation of the student records in the dominant language of the parent or adult student.

N.J.A.C. 6A:32-7.1(k) General Considerations

(k) When the parent's or adult student's dominant language is not English or the parent or adult student is deaf, the district board of education shall provide interpretation of the student records in the dominant language of the parent or adult student

May a school charge a fee for copies of educational records?

Yes. However, the fee for copies must be waived when the charge would effectively prevent the parent from exercising the right to review and inspect the records. [34 CFR §99.11(a)]

N.J.A.C. 6A:32-7.5 (b) Access to student records

(b) The district board of education may charge a reasonable fee for reproduction of student records, not to exceed the schedule of costs set forth at N.J.S.A. 47:1A-5, provided that the cost does not effectively prevent parents or adult students from exercising their rights under this subchapter or other Federal and State rules and regulations regarding students with disabilities, including N.J.A.C. 6A:14.

May a school charge a fee to search for or retrieve records?

No. [34 CFR §99.11(b)]

Can parents/eligible students review and inspect test protocols?

Parents do not have the right to review and inspect documents such as test instruments, test protocols, question booklets, or interpretive materials that do not include personally identifiable information about their child. [*Pasadena Unified Sch. Dist.*, 114 LRP 49748 (SEA CA 2014); *Montgomery County Pub. Schs.*, 15 FAB 17 (SEA MD 2011); *Letter to Anonymous*, 14 FAB 32 (FPCO 2010); *Letter to Shuster*, 11 FAB 30 (OSEP 2007); *Letter to MacDonald*, 20 IDELR 1159 (OSEP 1993); *Letter to Philbin*, 115 LRP 18883 (FPCO 10/02/97)]

However, test protocols that contain personally identifiable information or are integrated with education records may qualify as education records under IDEA and FERPA. Therefore, parents may have the right to inspect and review them. [*Letter to Price*, 57 IDELR 50 (OSEP 2010); *Letter re: Westport Cent. Sch.*, 8 FAB 35 (FPCO 2005); and *Letter to Shuster*, 108 LRP 2302 (OSEP 2007)]

Does a parent still have rights if the student is a minor and taking classes at a college while still in high school?

If a student is attending a postsecondary institution, regardless of age, their rights under FERPA have transferred to them. [34 CFR §99.5(a)(1)]. However, if the student is enrolled in both a high school and a postsecondary institution, these schools are permitted to share information about the student. [34 CFR §99.31(a)(2)]. If the student is under 18 years old, the parents still maintain their FERPA rights at the high school and may inspect and review any records sent by the postsecondary institution to the high school. [34 CFR §99.5(a)(2)]

Does a parent still have rights if the student is a college student, but still a minor?

Under FERPA, the rights transfer from parents to the student once the student turns 18 years old or enters a postsecondary institution at any age. [34 CFR §99.5(a)(1)]. Despite this transfer, a school may disclose information from an "eligible student's" education records to the parents without the student's consent if the student is claimed as a dependent for tax purposes. The age of the student or the custodial status of the parent does not matter. If either parent claims the student as a dependent for tax purposes, that parent may access the student's records under this provision. [34 CFR § 99.31(a)(8)]

In what circumstances can a parent review their adult student's records after the student becomes an adult and FERPA rights have transferred to the adult student?

- When the student is claimed as a dependent for federal income tax purposes by either parent [34 CFR §99.31(a)(8)];
- The disclosure is in connection with a health or safety emergency under [34 CFR §99.36];
- The disclosure is in regard to the student's violation of law or policy [34 CFR §§ 99.31(a)(14) & (15)]; or
- The disclosure meets any other provision of 34 CFR §99.31(a).

N.J.A.C. 6A:32-7.5 (e) 3 Access to student records

3. An adult student and/or a parent who has the written permission of an adult student, except that the parent shall have access without the adult student's consent, as long as the adult student is financially dependent on the parent and enrolled in the public school system, or if the adult student has been declared legally incompetent by a court of appropriate jurisdiction. The parent of a financially dependent adult student may not disclose information contained in the adult student's record to a second or third party without the adult student's consent;

Can the custodial parent prevent a noncustodial parent from accessing records?

No. FERPA rights are given to both parents. The school should assume that a parent has FERPA rights unless provided evidence to the contrary. [34 CFR §300.613(c)]

N.J.A.C. 6A:32-7.5 (e) 1 Access to student records

1. The student who has the written permission of a parent and the parent of a student under the age of 18, regardless of whether the child resides with the parent, except pursuant to N.J.S.A. 9:2-4;
 - i. The place of residence shall not be disclosed; and
 - ii. Access shall not be provided if denied by a court;

Can a parent designate a representative to inspect a student's record on behalf of the student's parent?

FERPA does not explicitly address this issue. Thus, a school *may* allow a person assigned by the parent as a delegate to review a student's records on behalf of the parent.

The IDEA specifically grants the right of a parent to have a representative of the parent inspect and review the records. [34 CFR §300.613(b)(3)]

N.J.A.C. 6A:14-2.9 (b) Student Records

(b) The parent, adult student, or designated representative shall be permitted to inspect and review the contents of the student's records maintained by the district board of education pursuant to N.J.A.C. 6A:32-7 without unnecessary delay and before any meeting regarding the IEP.

How do I get my child's records changed?

If a parent believes the student records contain inaccurate, improper, or irrelevant information, or do not protect their privacy or other rights of the student, they have the right to request an amendment or correction. [34 CFR §300.619] The process in New Jersey is as follows:

1. **Submit a Written Request:** Write to the chief school administrator requesting an amendment to your child's record. Clearly state why you believe the record is inaccurate, irrelevant, or improper.
2. **District Decision:** The school district will review your request and decide whether to amend the record. They will inform you of their decision in writing, or will meet with the requestor within 10 days to determine whether the change will be made.
3. **Hearing Request:** If the district decides not to amend the record, they must notify you and advise you of your right to an appeal by requesting a hearing from the Commissioner of Education pursuant to [N.J.A.C. 6A:3](#).
4. **Outcome and Right to Add a Statement:** If the Commissioner decides after a hearing that the records do not need to be changed, the school district must notify you in writing of your right to add a statement to your child's records giving the reasons you do not agree with the school's records. This statement must be maintained in your child's records as long as the relevant record is maintained, and the statement must be released whenever the relevant record is disclosed

N.J.A.C. 6A:32-7.7 (a-d) Rights of appeal for parents and adult students

- a) Student records are subject to challenge by parents and adult students on grounds of inaccuracy, irrelevancy, impermissible disclosure, inclusion of improper information, or denial of access to organizations, agencies, and persons...
- b) To request a change in the student record or to request a stay of disclosure pending final determination of the challenged procedure, a parent or adult student shall notify, in writing, the chief school administrator of the specific issues relating to the student record.
 1. Within 10 school days of notification, the chief school administrator, or the chief school administrator's designee, shall notify the parent or adult student of the school district's decision. If the school district disagrees with the request, the chief school administrator or the chief school administrator's designee shall meet with the parent or adult student to resolve the issues set forth in the request.
 2. If the matter is not satisfactorily resolved, the parent or adult student has 10 school days to appeal the school district's decision.
 3. If an appeal is made to the district board of education, the district board of education shall render a decision within 20 school days.
 4. The decision of the district board of education may be appealed to the Commissioner pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3, Controversies and Disputes. At all stages of the appeal process, the parent or adult student shall be afforded a full and fair opportunity to present evidence relevant to the issue.
 5. A record of the appeal proceedings and outcome shall be made a part of the student record with copies made available to the parent or adult student.

Note: N.J.A.C. 6A:32-7.7 (c-d) can be accessed in the link to N.J.A.C. 6A:32 at the end of the guidance.

DISCLOSURE OF STUDENT RECORDS

Under what circumstances may a school disclose information from education records without consent?

There are numerous exceptions to FERPA's general prior consent rule that are set forth in the statute and the regulations. See §99.31 of the FERPA regulations. (34 CFR §99.31)

N.J.A.C. 6A:32-7.5 **Access to student records** pgs. 23-28

N.J.A.C. 6A:32-7.6 **Conditions for access to student records** pgs. 28-30

Note: N.J.A.C. 6A:32-7.5 and 7.6 can be accessed in the link to N.J.A.C. 6A:32 at the end of the guidance.

When may a school disclose "directory information" to third parties without consent?

A school may disclose "directory information" to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." [34 CFR §99.31(a)(11)]

N.J.A.C. 6A:32-7.5 (g) **General considerations**

Provide the parent or adult student a 10-day period to submit to the chief school administrator a written statement prohibiting the inclusion of any or all types of information about the student in any student information directory before allowing access to the directory and school facilities to educational, occupational, and military recruiters pursuant to N.J.S.A. 18A:36-19.1 and P.L. 114-95, § 8528, Armed Forces Recruiter Access to Students and Student Recruiting Information of the Every Student Succeeds Act of 2015;

I received a subpoena or judicial order to produce student records. Are there any precautionary measures I should take before disclosing records in response to a subpoena or judicial order?

Yes. FERPA requires that the school make a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance. This allows the parent or eligible student an opportunity to seek protective action (e.g. file a motion to quash) prior to the disclosure of information. [34 CFR §99.31(a)(9)]

Must a school receive parental consent prior to sharing information with law enforcement authorities or probation officers?

Yes. Unless there is a court order or subpoena allowing disclosure of the student's education record—or it meets an exception under §99.31 of the FERPA regulations—schools should obtain consent prior to disclosing information to law enforcement authorities.

N.J.A.C. 6A:32-7.6 (a) 4 **Conditions for access to student records**

4. Prior to disclosure of student records to organizations, agencies, or persons outside the school district pursuant to a court order, the district board of education shall give the parent or adult student at least three days' notice of the name of the requesting agency and the specific records requested unless otherwise judicially instructed. The notification shall be provided in writing, if practicable. Only records related to the specific purpose of the court order shall be disclosed.

i. Notice to the parent shall not be required when the parent is party to a court proceeding involving child abuse and neglect or dependency matters, consistent with 20 U.S.C. § 1232g(b)(2)(B).

DESTRUCTION OF STUDENT RECORDS

When does FERPA allow a school to destroy student records?

FERPA does not require schools to destroy education records. Schools should refer to state and local record retention policies, including time frames for eventual destruction of student records. It is recommended that schools adopt an appropriate records retention policy prior to proceeding with the destruction of student records. Please note in New Jersey, student records may be disposed of, but only in accordance with the Destruction of Public Records Law, [N.J.S.A. 47:3-15 et seq.](#) See below for additional student records considerations in New Jersey.

N.J.A.C. 6A:32-7.8 (c) **Retention and disposal of student records**

(c) Student records of currently enrolled students may be disposed of after the information is no longer necessary to provide educational services to a student. The disposition shall be carried out only after the parent or adult student has been notified in writing and written permission has been granted, or after reasonable attempts to notify the parent or adult student and to secure permission have been unsuccessful.

N.J.A.C. 6A:32-7.4 (e) **Maintenance and security of student records**

(e) Mandated student records required as part of programs established through State administered entitlement or discretionary funds from the U.S. Department of Education shall be maintained for a period of five years after a student's graduation or termination from the school district, or to age 23, whichever is longer. The mandated student records shall be disposed of in accordance with N.J.S.A. 47:3-15 et seq.

Must parents/eligible student be notified before destroying special education records?

Yes. The school must document an attempt to inform a parent/eligible student that special education records are no longer needed and that they will be destroyed following a reasonable number of days after the date of the notice. [34 CFR §300.624(a)]

N.J.A.C. 6A:32-7.1 (i) **General Considerations**

(i) The chief school administrator, or the chief school administrator's designee, shall require all student records of currently enrolled students to be reviewed annually by certified school personnel to determine the education relevance of the information contained therein. The reviewer shall cause information no longer descriptive of the student or educational program to be deleted from the record, except that prior notice shall be given for students with disabilities in accordance with N.J.A.C. 6A:14, Special Education. The deleted information shall be disposed of and not be recorded elsewhere. No record of any such deletion shall be made.

A parent has requested that a student's special education records be destroyed. Should the school comply?

Yes. The local education agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The IDEA provides that the records "must" be destroyed at the request of parents. However, a permanent record of a student's name, address, and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. [34 CFR §300.624(b)]. See below for additional student records considerations in New Jersey.

N.J.A.C. 6A:32-7.8 (f) **Retention and disposal of student records**

(f) The school district of last enrollment, graduation, or permanent departure of the student shall keep, for 100 years, a mandated record of a student's name, date of birth, name of parents, gender, health history and immunization, standardized assessment results, grades, attendance, classes attended, grade level completed, year completed, and years of attendance.

Additional Guidance and Resources on Pupil Records:

- [Parent Guide to the Family Educational Rights and Privacy Act](#)
- [An Eligible Student Guide to FERPA](#)
- [Protection of Pupil Rights Amendment General Guidance](#)
- [IDEA and FERPA Crosswalk](#)
- [Intersection of FERPA and the IDEA Presentation](#)
- [Intersection of FERPA and the IDEA Webinar](#)
- [N.J.A.C. 6A:32](#)
- [N.J.A.C. 6A:14](#)

DISCLAIMER: The information in this document is based on the Family Education Rights and Privacy Act (FERPA), the Individuals with Disabilities Education Act (IDEA) and New Jersey Administrative Codes 6A:32 and 6A:14. The information is provided for general information purposes and should not be construed as legal advice, nor is it intended to be a substitute for legal counsel on any subject matter.