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**Student Confidentiality, Records and Data**

# Illinois School Student Records Act (ISSRA)[[1]](#footnote-1)

## Definition of “School”

“School” is defined as “any public preschool, day care center, kindergarten, nursery, elementary or secondary educational institution, vocational school, special educational facility or any other elementary or secondary educational agency or institution and any person, agency or institution which maintains school student records from more than one school, but does not include a private or non-public school.” 105 ILCS 10/2(b).

## Definition of School Student Record (105 ILCS 10/2(d))

* Any writing or other recorded information
* By which a student may be individually identified
* That is maintained by a school, at a school’s direction, or by a school employee
* Regardless of how or where the information is stored

## Exclusive Use Exception (105 ILCS 10/2(d))

Writings maintained by an employee of a school or other person at the direction of a school for the person’s exclusive use are not considered student records. If the writings are shared with anyone else with the exception of supervisors or attorneys) the exclusive use exception is not available. All “exclusive use” records must be destroyed no later than the student’s graduation or permanent withdrawal from the school district.

## Records Maintained by School Law Enforcement Officials (105 ILCS 10/2(d))

School records specifically do NOT include information maintained by law enforcement professionals working in the school.

New legislation (*Public Act 97-1104),* effective on January 1, 2013,Law enforcement can provide information to appropriate school officials if a student has committed certain infractions regarding drug laws, gun laws, or specific violent crimes if law enforcement believes that there is an imminent threat of physical harm to students, school personnel, or others who are present in the school or on school grounds based on the criminal act. The information provided shall consist of oral information only and shall not become part of the student’s permanent record.

## Security Videos Excluded from Student Record Definition

## (23 Ill.Adm.Code 375.10)

### Recent amendments to the student records regulations expressly exclude the following types of recordings from the definition of school student record:

### Video or electronic recordings created and maintained by law enforcement professionals working in the school or for security or safety reasons or purposes, provided the information was created at least in part for law enforcement or security or safety reasons or purposes; and

### Electronic recordings made on school buses.

## Definition of Permanent Student Record

The permanent student record *shall* contain:

* Student’s name, gender, birth date and place, and address;
* Student’s unique student identifier assigned and used by the Student Information System;
* Grades and grade level;
* Parents’ names and addresses;
* Attendance records;
* Academic transcripts, including class rank, gradation date, and scores on college entrance examinations;
* Health record (medical documentation necessary for enrollment and proof of dental examinations);
* Scores received on all State assessment tests administered at the high school level (*i.e.*, grades 9 through 12); and
* Record of release of permanent record information.

The permanent record *may* also include, at the discretion of the school district:

* Honors and awards received; and
* Information concerning the student’s participation in school-sponsored activities or athletics, or offices held in school-sponsored organizations.

Permanent school records must be maintained for at least ***60 years*** after the student has graduated, transferred, or otherwise permanently withdrawn. 105 ILCS 10/4(e); 23 Ill.Adm.Code 375.10.

## Definition of Temporary Student Record

The temporary record contains all information not required to be in the student permanent record and *shall* consist of the following:

* A record of release of temporary record information;
* Scores received on the State assessment tests administered in the elementary grade levels (*i.e.,* kindergarten through grade 8);
* Information regarding serious disciplinary infractions (i.e., those involving drugs, weapons, or bodily harm to another) that result in expulsion, suspension, or the imposition of punishment or sanction;
* A final indicated DCFS report pursuant to section 8.6 of the Abused and Neglected Child Reporting Act;
* The completed home language survey form;
* Any biometric information that is collected in accordance with the School Code;
* Health-related information (current documentation of a student’s health information including health history, results of mandated testing and screenings, medication dispensation records and logs, long-term medications administered during school hours, and other health-related information relevant to school participation);
* Accident Reports

The temporary record *may* also include, at the discretion of the school district:

* Family background information;
* Honors and awards received;
* Intelligence test scores;
* Aptitude test scores;
* Results of psychological evaluations, including information on intelligence, personality and academic information obtained through test administration, observation, or interviews;
* Elementary and secondary achievement level test results;
* Participation in extracurricular activities, including any offices held in school-sponsored clubs or organizations;
* Teacher anecdotal records;
* Other disciplinary information;
* Special education records (school records that relate to identification, evaluation, or placement of, or the provision of a free and appropriate public education to, students with disabilities under the IDEA and Article 14 of the School Code, including the report of the multidisciplinary staffing conference on which placement or nonplacement was based and all records and audio recordings in any format relating to special education placement hearings and appeals);
* Records associated with plans developed under Section 504 of the Rehabilitation Act of 1973; and
* Any verified reports or information from non-educational persons, agencies or organizations of clear relevance to the education of the student.

Temporary records must be maintained at least ***five years*** after the student has transferred, graduated, or otherwise permanently withdrawn. 105 ILCS 10/4(f) (effective January 1, 2000); 23 Ill.Adm.Code 375.10.

## The trouble with e-mail

An e-mail message becomes part of a student’s official record when it meets the definition of a student record: (1) any writing or other recorded information; (2) concerning a student; (3) by which the student is individually identified; and (4) regardless of how or where the information is stored. If staff members do not want their e-mails to become student records, they should use the student’s initials, thus, the email would not be “personally identifiable” to the student. It does not matter whether staff members intend the e-mail to be an official record – it will become a student record simply if it meets the four criteria listed above. It is best for staff members to refrain from discussing students via e-mail. With regard to in-person discussions as well as information communicated via e-mail, staff members, especially school social workers, should be careful not to release any information that is confidential pursuant to the Mental Health and Developmental Disabilities Confidentiality Act (MHDDCA).

## Notification of student and parental rights (23 Ill.Adm.Code 375.30)

### Upon initial enrollment or transfer of a student to the school, the school must notify the student and the student’s parents of their rights related to student records. This notification must be in English as well as the student’s primary language if not English. Notification may be sent by mail, e-mail, provided at parent-teacher conferences, or incorporated into a “parent-student” handbook.

## Transfer of Rights under ISSRA from Parent to Student

“Parent” means a person who is the natural parent of the student or other person who has the primary responsibility for the care and upbringing of the student. All rights and privileges accorded to a parent under this Act shall become exclusively those of the student upon his/her 18th birthday, graduation from secondary school, marriage or entry into military service, whichever occurs first. Such rights and privileges may also be exercised by the student at any time with respect to the student’s permanent school record.

## Destruction of Student Records

### The principal of each school or his/her designate shall periodically review each student temporary record for verification of entries and elimination or correction of all inaccurate, misleading, unnecessary or irrelevant information. The State Board shall issue regulations to govern the periodic review of the student temporary records and length of time for maintenance of entries to such records.

### Before any school student record is destroyed or information deleted therefrom, the parent shall be given reasonable prior notice at his or her last known address in accordance with regulations adopted by the State Board and an opportunity to copy the record and information proposed to be destroyed or deleted.

### The Local Records Commission must authorize/approve the mass destruction of student records.

## Who has access to student records? 105 ILCS 10/6; 23 Ill.Adm.Code 375.70; 23 Ill.Adm.Code 375.40(f)

### **Students** must be given an opportunity to review their permanent records. School districts are not required to, but may, allow students to inspect their own temporary school records;

### The student’s **parent or guardian**, or a person specifically designated as a representative by a parent or guardian;

### **An employee or official of the school district or State Board of Education** who has a current demonstrable educational or administrative interest in the student, in furtherance of such interest;

### The **official records custodian of another school** in which the student has enrolled, or intends to enroll, upon the request of the official or student, provided that the parent receives prior written notice of the nature and substance of the information proposed to be released, and an opportunity to inspect and copy the records and to challenge the records;

### **Anyone for the purpose of research, statistical reporting or planning**, provided that no student or parent can be identified from the information released and the person to whom the information is released signs an affidavit agreeing to comply with all applicable statutes and rules pertaining to school student records;

### **Pursuant to a court order signed by a judge** (a subpoena signed by an attorney, clerk, or administrative official is not sufficient). Provided that the student is named in the order, parents are deemed to have received the required notice. The school must respond to the order no earlier than five school days after its receipt to afford parents the opportunity to review, inspect and challenge the records if they choose;

### **Any other person as specifically required** by State or Federal law who provides appropriate identification and a copy of the statute authorizing such access. Before releasing the information, the parent must receive prior written notice of the nature and substance of the information proposed to be released, and an opportunity to inspect and copy the records and to challenge the records. If this release of information relates to more than 25 students, such prior notice may be given in a local newspaper of general circulation or other publication directed generally to parents;

### **Appropriate persons in the event of an emergency** if the knowledge of such information is necessary to protect the health or safety of the student or other persons. ISBE has developed strict rules (23 Ill. Adm. Code §375.60) governing the release of student records in emergency situations. Information can only be released to appropriate persons in connection with an articulable and significant threat to the health or safety of a student or other individual. Parents must be notified, no later than the next school day after the date the information is released, of the information released, the date of the release, the person, agency, or organization receiving the information, and the purpose of the release. Factors to be considered in determining whether records should be in an emergency include:

* + - * The seriousness of the threat to the health or safety of the student or other persons;
			* The need for such records to meet the emergency;
			* Whether the persons to whom such records are released are in a position to deal with the emergency;
			* The extent to which time is of the essence in dealing with the emergency.

### **Any person designated by the parent** with the prior specific dated written consent of the parent, provided that at the time the consent is requested or obtained, the parent shall be advised in writing that he has the right to inspect and copy the records, to challenge their contents, and to limit his consent to designated records or designated portions of the information contained therein;

### **A governmental agency or social service agency** **contracted by a governmental agency**, in furtherance of an investigation of a student's school attendance pursuant to the compulsory student attendance laws of this State, provided that the records are released to the employee or agent designated by the agency;

### To “**juvenile authorities**” when necessary for the discharge of their official duties who request information prior to the adjudication of the student and who certify in writing that the information will not be disclosed to any other party except as provided under law or court order. “Juvenile authorities” are defined as:

* A judge of the circuit court and members of the staff of the court;
* Parties to proceedings under the Juvenile Court Act of 1987 and their attorneys;
* Probation officers and court appointed advocates;
* Any individual, public or private agency having custody of the child pursuant to court order;
* Any individual, public or private agency providing education, medical or mental health service to the child when the requested information is needed to determine the appropriate service or treatment for the child;
* Any potential placement provider when release of records is authorized by the court for the limited purpose of determining the appropriateness of the potential placement;
* Law enforcement officers and prosecutors;
* Adult and juvenile prisoner review boards;
* Authorized military personnel; and
* Individuals authorized by court.

### To the **Department of Public Aid** in furtherance of the requirements of Section 2-3.131, 3-14.29, 10-28, or 34-18.26 of the School Code or Section 10 of the School Breakfast and Lunch Program Act.

### To **SHOCAP committee members** who fall within the meaning of “state and local officials and authorities” under FERPA for purposes of identifying serious habitual juvenile offenders and matching those offenders with community resources pursuant to Section 5-145 of the Juvenile Court Act of 1987, but only to the extent that the release, transfer, disclosure, or dissemination is consistent with FERPA.

### To the **Department of Children and Family Services** upon written request made pursuant to Section 8.6 of the Abused and Neglected Child Reporting Act. If the school that receives such a request from the Department has transferred the report to another school as part of the transfer of the student’s records, the sending school shall forward a copy of the Department’s request to the receiving school.

## Inspection of records by parent or student

A request by a parent, student, or his/her designee must be granted no later than 15 school days after the date of receipt of such request by the official records custodian. The school may charge reasonable copying costs up to $0.35 per page; however, no parent or student can be denied a copy of school student records due to an inability to pay for the copying costs. 105 ILCS 10/5; 23 Ill.Adm.Code 375.50.

## What if parents ask for a record to be destroyed or removed from the student’s file?

You must either 1) agree to remove it or 2) tell the parent that the record will not be removed and give them the opportunity to request a hearing to challenge the student’s records. Parents also have the option of inserting into the student’s record a statement of reasonable length setting forth their position on any disputed information contained in that record. The school shall include a copy of such statement in any subsequent dissemination of the information in dispute.

## Record of release

Whenever student records are inspected or copied, a record must be kept as a part of the school student record that contains:

* The nature and substance of the information released;
* The name and signature of the official records custodian releasing such information;
* The name of the person requesting such information, the capacity in which such a request has been made, and the purpose of such request;
* The date of the release; and
* A copy of any consent to such release.

The record of release shall be available only to the parent and the official records custodian. 105 ILCS 10/6(c).

## Maintenance of biometric information

### What is biometric information?

Biometric information means any information that is collected through an identification process for individuals based on their unique behavioral or physiological characteristics, including fingerprint, hand geometry, voice, or facial recognition or iris or retinal scans.

### What rules apply if school districts retain biometric information?

School districts that collect biometric information from students shall adopt a written policy governing the use, retention and destruction of biometric information.

### Is consent required before biometric information may be maintained?

Yes, written permission from the student’s parent/guardian or the student him/herself (age 18 and older) is required before biometric information may be maintained by a school district.

### Destruction of biometric information

Biometric information must be destroyed:

* Upon the student’s graduation or withdrawal from the school district
* If the student’s parent/guardian or student age 18 or older requests, in writing, that the biometric information be destroyed

Student biometric information may be destroyed without notification to or the approval of a local records commission under the Local Records Act if destroyed within 30 days after the use of the biometric information is discontinued.

### Uses of biometric information

Biometric information may only be used for identification purposes and/or fraud prevention. It can be released only with the consent of the parent/guardian (student age 18 or older) or pursuant to court order.

### Notification of biometric policy

Parents/guardians must be notified about their rights with respect to the collection, distribution, and retention of biometric information under Section, if the school collects student biometric information.

## Subpoenas/Court Orders for records and deposition requests

It is becoming more common for school districts to receive subpoenas for records in cases where the school district is not a party. For example, subpoenas for a student’s records are received in the context of child custody proceedings and medical malpractice actions.

* When a subpoena for a student’s school records is received from an attorney representing the parent(s) or student age 18 and above, the school district may comply with that request with simply a subpoena; it is as if the parents (student) themselves requested the records and the school district may properly comply with that request.
* When a subpoena for a student’s school records is received from an attorney who is not representing the parent(s), do not release the student’s records; a subpoena in this situation is not legally sufficient. Instead, the attorney must secure a court order authorizing the release of the student’s records OR parental consent (or from the student age 18 and above).

## Order of protection

If a certified copy of an order of protection has been given to a school or the school’s principal or person with like responsibilities have knowledge of such order of protection, the records of the student protected shall not be released against the person whom the order was issued. 105 ILCS 10/5(a).

## Student Directories

### Directory information may be released to the general public unless a parent requests that any or all of the information not be released.

### Student directory information includes: student name; address; gender; birth date; birth place; grade level; parents’ names, addresses, e-mail addresses, and phone numbers; academic awards, degrees, and honors; school-sponsored activities, organizations and athletics; major field of study; and period of attendance in school.

### Directory information also includes photographs, videos, or digital images used for informational or news-related purposes (whether by a media outlet or by the school) of a student participating in school or school-sponsored activities, organizations, and athletics that have appeared in school publications, such as yearbooks, newspapers, or sporting or fine arts programs. But not photographs used for commercial purposes and not school security videotapes.

### Social security numbers and unique student identifiers are prohibited from being included in the school district’s definition of directory information.

### Parents must be notified annually of the information that the school district has designated as directory information and of the procedures to be used by parents to request that specific information not be released.

## Transfer Students and In Good Standing Forms

A student transferring from a public school district in Illinois must present an “in good standing” form to the new school which includes a section indicating whether the student has been suspended or expelled. A student should not be accepted without this form.

Parents of a student transferring from a public or private school district *in any other state* or *from an Illinois private school* may be asked to certify in writing that their child is not currently serving a suspension or expulsion. School districts may require this letter from the parents before enrolling the student.

A school district may refuse to accept a student for the duration of a suspension or expulsion for the following three types of misconduct:

* Knowingly possessing a weapon (device which expels a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. 18 U.S.C. §921);
* Knowingly possessing, selling, or delivering a controlled substance or marijuana in a school building or on school grounds; or
* Battering a staff member.

A school district may adopt a policy providing that if a student is suspended or expelled for any reason from any public or private school in any state, the student must serve the entire length of his or her suspension or expulsion before being admitted into the new school district. 105 ILCS 5/2-3.13a.

## Unpaid Fines/Fees

If a student has unpaid fines or fees and is transferring to a public school located in Illinois or any other state, the school may elect to send the new school district the student’s unofficial record of grades in lieu of the student's official transcript of scholastic records. Within 10 calendar days after the student has paid all of his or her unpaid fines or fees, the school district shall send the student’s official transcript of scholastic records to the student’s new school.

## Release of Student Records to Another School District

When a transfer student applies for admission, the new school should within 14 days after enrolling a transfer student request a copy of the student’s records from the old school. Once the old district receives this request, it must give parents written notice of the nature and substance of the information to be released and an opportunity to inspect and copy the records and to challenge their contents. The old school district must send the records within 10 calendar days of receiving the request. Parental consent is specifically not required before the old district releases the records. Parents may not “pick and choose” which records the old school district can send. 325 ILCS 50/5(c)

Only an official transcript can be withheld if a student has outstanding fines/fees owed to the old school district. Within 10 calendar days after the fines/fees are paid, the old school district must send the official transcript to the new school district. 23 Ill.Adm.Code 375.75.

## Test Protocols

A test protocol is not considered a student record unless it personally identifies a student. If a test protocol personally identifies a student, the protocol is considered a temporary record, subject to disclosure. If a test protocol does not personally identify a student, the protocol is not considered a temporary record and is not subject to disclosure. *Letter to MacDonald*, 20 IDELR 1159 (OSEP 1993). While test protocols need not be copied and given to parents or students, they must be available to allow school personnel to offer an explanation of how the student’s answers relate to the protocol. Protocols should be made available in this limited respect for a reasonable length of time, at least until the IEP team makes a determination based on the protocols.

The *Illinois Mental Health and Developmental Disabilities Confidentiality Act* (“MHDDCA”) specifically provides that:

Psychological test material whose disclosure would compromise the objectivity or fairness of the testing process may not be disclosed to anyone including the subject of the test and is not subject to disclosure in any administrative, judicial or legislative proceeding. However, any recipient who has been the subject of the psychological test shall have the right to have all records relating to that test disclosed to any psychologist designated by the recipient. 740 ILCS 110/3(c).

## Records Custodian (105 ILCS 10/4)

Each school must designate an official records custodian who is responsible for the maintenance, care and security of all student records, whether or not the records are in his or her personal custody or control. The records custodian must:

* Take all reasonable measures to prevent unauthorized access to or dissemination of student records;
* Ensure that information contained in a student’s record is of clear relevance to the education of the student; and
* Ensure that information added to a temporary record includes the date, name, signature and position of the person adding the information.

## Responsibility of Principal or Designee

* The principal or his/her designee shall assure that school personnel are informed of the provisions of the Records Act. 23 Ill.Adm.Code 375.30.
* The principal or his/her designee shall periodically review every four years or upon a student’s change in attendance centers, whichever occurs first, each student record for verification of entries and elimination or correction of all inaccurate, misleading, unnecessary or irrelevant information from a file. 105 ILCS 10/4(g); 23 Ill.Adm.Code 375.40(b).
* Before any information from a student’s record is destroyed, removed, or deleted, the parent shall be given reasonable notice at his or her last known address and an opportunity to copy or review the records proposed to be deleted or destroyed. 105 ILCS 10/4(h).

## Special Education Records

Psychological evaluations and special education files which may be of continued assistance to a student may, after five years of the student’s graduation or permanent withdrawal, be transferred to the parent (or student if he or she has succeeded to the rights of the parent). The school must explain the future usefulness of these records to the parents and/or student. 23 Ill.Adm.Code 375.40(d).

## Missing Children Records Act (325 ILCS 50/5)

The Illinois Department of State Police is responsible for notifying school districts that a student that was previously enrolled there is missing. In these situations, the school district is required to “flag” the school records for that student in such a manner that whenever a copy of or information regarding the record is requested, the school shall be alerted to the fact that the record is that of a missing person. The school shall immediately report to the State Police any request concerning flagged records or knowledge as to the whereabouts of any missing person. Upon notification by the State Police that the missing person has been recovered, the school shall remove the flag from the person's record.

## Birth Certificates

The Missing Children Records Act also contains a provision that requires school district to notify individuals enrolling a child in school that within 30 days they must provide either (i) a certified copy of the child's birth certificate or (ii) other reliable proof of the child's identity and age and an affidavit explaining the inability to produce a copy of the birth certificate. Other reliable proof of the child's identity and age shall include a passport, visa or other governmental documentation of the child's identity. When the person enrolling the child provides the school with a certified copy of the child's birth certificate, the school shall promptly make a copy of the certified copy for its records and return the original certified copy to the person enrolling the child.

If a person enrolling a student fails to provide either a birth certificate or other reliable proof of the student’s identity and age (with an affidavit), the school must immediately notify the State Police or local law enforcement agency of such failure, and shall notify the person enrolling the child in writing that he/she has 10 additional days to comply.

The school must immediately report to the State Police any affidavit or birth certificate received which appears inaccurate or suspicious in form or content.

Within 14 days after enrolling a transfer student, the school shall request directly from the student’s previous school a certified copy of the student’s record. The requesting school shall exercise due diligence in obtaining the copy of the record requested. Any school that is requested to forward a copy of a transferring student’s record to the new school shall comply within 10 days of receipt of the request unless the record has been flagged, in which case the records shall not be forwarded and the requested school shall notify the State Police or local law enforcement authority of the request.

## Challenge to Student Records

Parents have the right to challenge any entry in their child’s school student records except for (1) academic grades and (2) references to expulsions or out-of-school suspensions (in situations where the challenge is made at the time the student’s school records are being forwarded to another school to which the student is transferring). Challenges to any other entry in a student’s school records can be made on the basis of: (1) accuracy; (2) relevance; or 3) propriety. 105 ILCS 10/7 et seq.; 23 Ill.Adm.Code §375.90.

A request for a student records hearing must be submitted in writing to the school and shall contain notice of the specific entry or entries to be challenged and the basis of the challenge. The school district must conduct an initial informal conference with the parents, within 15 school days of receipt of the request for a hearing. If the challenge is not resolved during the informal conference, a records hearing must be conducted.

A hearing officer, who is not a school district employee, shall be appointed by the school. The hearing officer shall conduct a hearing within a reasonable time, but no later than 15 days after the informal conference, unless an extension of time is agreed upon by the parents and school officials. The hearing officer shall notify parents and school officials of the time and place of the hearing in writing. At the hearing, each party shall have the following rights:

* The right to present evidence and to call witnesses;
* The right to cross-examine witnesses;
* The right to counsel; and
* The right to a written decision by the hearing officer.

A verbatim record of the hearing shall be made by a tape recorder or a court reporter. A typewritten transcript may be prepared by either party in the event of an appeal of the hearing officer’s decision; however, a typewritten transcript is not required in an appeal.

The written decision of the hearing officer shall (no later than 10 school days after the conclusion of the hearing) be transmitted to the parents and the school district. It shall be based solely on the information presented at the hearing and shall determine one of the following: (1) to retain the challenged contents of the student record; (2) to remove the challenged contents of the student record; or (3) to change, clarify or add to the challenged contents of the student record.

Any party shall have the right to appeal the decision of the hearing officer to the Regional Superintendent within 20 school days after the decision is transmitted. If the parent appeals, the parent shall inform the school and within 10 school days the school shall forward a transcript of the hearing, a copy of the record entry in question and any other pertinent materials to the Regional Superintendent. The school may initiate an appeal by the same procedures. Upon receipt of these documents, the Regional Superintendent shall examine the documents and record to determine whether the school district’s proposed action is in compliance with the Illinois School Student Records Act and its implementing regulations, make findings and issue a written decision to the parents and the school within 20 school days of the receipt of the appeal documents. If the subject of the appeal involves the accuracy, relevance or propriety of any entry in special education records, the Regional Superintendent must seek advice from special education personnel: 1) who were not authors of the entry, and 2) whose special education skills are relevant to the subject(s) of the entry in question. The school shall be responsible for implementing the decision of the Regional Superintendent. Final decisions of the Regional Superintendent may be appealed to the circuit court of the county in which the school is located.

Parents also have the right to insert in their child's school student record a statement of reasonable length setting forth their position on any disputed information contained in that record. The school shall include a copy of such statement in any subsequent dissemination of the information in dispute.

## Health Insurance Portability Accountability Act (HIPAA)

* Health Insurance Portability and Accountability Act of 1996
* “Covered Entities” may not disclose individuals’ “Protected Health Information” unless: (1) they are authorized to do so by the individual; or (2) the disclosure is explicitly permitted by the HIPAA privacy regulations.

The HIPAA privacy regulations prohibit covered entities from disclosing individually identifiable protected health information used or created by the covered entities. Health information is considered to be protected under HIPAA if it relates to: (i) the past, present or future physical or mental health or condition of an individual; (ii) the provision of health care to an individual; or (iii) the past, present or future payment for the provision of health care of an individual.

The HIPAA privacy regulations specifically exclude education records covered by the Family Educational Rights and Privacy Act (“FERPA”) from the definition of protected health information. Education records covered by FERPA are records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Even though educational records covered under FERPA are exempt from the HIPAA privacy regulations, they are still subject to extensive protections under FERPA.

## Relevant Student Data Privacy Laws

* **FERPA and ISSRA**
* **The Protection of Pupil Rights Amendment (PPRA)** includes limitations on using personal information collected from students of all ages for marketing purposes, and requires parents to be given notice and the opportunity to opt out of certain activities involving collection, disclosure, or use of personal information collected from students for marketing or to sell or otherwise distribute the information to others.
* **The Illinois Children’s Privacy Protection and Parental Empowerment Act (CPPPEA), 325 ILCS 17/,**  generally prohibits the sale of personal information concerning a child under the age of 16 unless the parent(s)/guardian(s) have consented.
* **The Children’s Online Privacy and Protection Act (COPPA)** regulates commercial websites and online services directed to children under the age of 13, and requires that such websites have consent from the child’s parent before knowingly collecting personal information from children.

The above-referenced laws govern school districts and/or third parties with respect to all educational services, including computer software, mobile applications (apps), and web-based tools, provided to students. School districts cannot contract with any third party that would improperly use a student’s data in violation of one of these laws.

**Does FERPA allow Cloud-Based Storage of Student Data?**

Generally, yes, though FERPA and its regulations require schools to manage education records and student’s personally identifiable information securely.

**Best Practices in Cloud Contracting and Data Protection**

School districts should not just simply accept existing terms. To move service providers away from take-it-or-leave-it contracts, school districts should consider declining to accept existing terms of provider-drafted standard contracts and Terms of Service Agreement. Many “standard” clauses do not provide protection for student data to the extent desired, or allow school districts to fulfill statutory obligations.

**Best Practices in Cloud Computing and District Policy**

* Adopt a comprehensive approach to protecting student privacy when using online educational services.
* Conduct an audit of all online educational services being used
* Establish policies and/or procedures for evaluation and pre-approval of Internet/Cloud-based educational services to be used by teachers and staff.
* Train staff and educate students and parents

*Cloud Computing and Student Privacy: A Guide for School Attorneys,* National School Boards Association (May 2014).

1. *Illinois School Students Records Act* (“ISSRA”), 105 ILCS 10/1 et seq. Other laws governing student records include: *Family Educational Rights and Privacy Act* (“FERPA”), 20 U.S.C. 1232g; *Freedom of Information Act* (“FOIA”), 5 ILCS 140/1 et seq.; *Open Meetings Act*, 5 ILCS 120/1 et seq.; *Illinois Mental Health and Developmental Disabilities Confidentiality Act* (“MHDDCA”), 740 ILCS 110/1 et seq.; *Abused and Neglected Child Reporting Act* (“ANCRA”), 325 ILCS 5/1 et seq.; *Individuals with Disabilities Education Act* (“IDEA”) 20 U.S.C. 1400 et seq. [↑](#footnote-ref-1)