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STUDENT RECORDS AND CONFIDENTIALITY

I. Illinois School Student Records Act (ISSRA)¹

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).

2. 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

3. Individually identified? Interestingly, the version of the proposed amendments originally adopted by ISBE effective January 24, 2012, included a definition for the phrase "individually identified." During the JCAR review process, however, this definition was removed. Had this change remained, it would have expressly included as a school student record most emails or letters containing a student's initials, a student I.D. number, and/or teacher, parent or sibling names. The final amendments keep the term "individually identified" undefined.

4. 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

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.

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.

5. 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.

6. 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:

- a. 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
- b. Electronic recordings made on school buses.

The content of a video or other electronic recording may become part of a student's school student record to the extent that school officials use and maintain this content for a particular reason (*e.g.*, disciplinary action, compliance with a student's Individualized Education Program) regarding that specific student.

7. 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, graduation 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.

8. 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.

9. **ANCRA final report:** The ISBE regulations provide that no report from DCFS regarding an abuse/neglect report, other than what is required under Section 8.6 of the Abused and Neglected Child Reporting Act (ANCRA), shall be placed in the school student record. Section 8.6 of ANCRA provides that, if a report is indicated, a copy of the final indicated report shall be sent to the school that the child-victim attends. This final indicated report is the only type of abuse/neglect record that may be included in a student's temporary record. *See* 23 Ill. Admin. Code 375.40.

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).

11. 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.

12. 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.

13. Destruction of Student Records

- a. 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.
- b. 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.

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

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

- a. **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;
- b. The student's **parent or guardian**, or a person specifically designated as a representative by a parent or guardian;
- c. **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;
- d. 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;
- e. **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;
- f. **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;
- g. **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

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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;

- h. **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.
- i. **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;
- j. **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;
- k. 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:

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- 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.
- l. 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.
- m. 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.
- n. 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.