

15. 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.

16. 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).

17. Maintenance of biometric information

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

18. 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.

- The Illinois regulations recently clarified that to release records pursuant to a court order, the order must be signed by a judge; a subpoena signed by an attorney, clerk, or administrative official is not sufficient. See 23 Ill. Admin. Code 375.40.
- However, when a subpoena for a student's school records is received from an attorney representing the parent(s) and/or student age 18 and above, the school district may comply with the subpoena; it is as if the parents (student) themselves requested the records and the school district may properly comply with that request.
- Generally speaking, before producing records pursuant to a court order, school districts must notify the student's parents that the records will be produced. The ISBE regulations provide that if a court order identifies the student by name, that the parents of the student are deemed to have

already received proper notice. School districts should nonetheless notify parents that the records will be sent, allowing at least five school days after receiving the order to afford parents the opportunity to review, inspect and challenge the records if they choose to do so. *See* 23 Ill. Admin. Code 375.70(d).

19. 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).

20. Directory information

- a. Directory information may be released to the general public unless a parent requests that any or all of the information not be released.
- b. 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.
- c. 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. The ISBE regulations continue to prohibit the release of photographs used for commercial purposes.
- d. Social security numbers and unique student identifiers are prohibited from being included in the school district's definition of directory information.
- e. 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.

21. 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.

22. 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.

23. 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.

24. 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).

25. 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.

26. 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).

27. 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).

28. 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.

29. 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.

30. What if parents ask for a record to be destroyed or removed from the student's file?

A school district must either 1) agree to remove it or 2) inform 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.

31. 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.

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ATTORNEYS & COUNSELORS

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.

32. 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.

