

## OPERATING GUIDELINE

### PARENT OR ELIGIBLE STUDENT ACCESS TO EDUCATION RECORDS

Boerne ISD

130901

Legal Framework: [Parent or Eligible Student Access to Education Records](#)

Category: Records

"[T]he purpose of [Family Educational Rights and Privacy Act] FERPA is two-fold: to assure that parents and eligible students can access the student's education records, and to protect their right to privacy by limiting the transferability of their education records without their consent." 73 Fed. Reg. 74831 (2008).

"The Part B Confidentiality of Information regulations contain many of the same privacy protections that exist in FERPA and . . . some that do not exist in FERPA or that go beyond FERPA requirements. . . . Parents have a right to access those records under both Part B of the [Individuals with Disabilities Education Act] IDEA (from a 'participating agency') and under FERPA (from an 'educational agency or institution' and an [state educational agency] SEA). However, according to 34 CFR § 300.613, each Part B participating agency must permit parents to inspect and review their children's education records 'without unnecessary delay and before any meeting regarding an individualized education program (IEP)' and certain other hearings, and in no case more than 45 days after the request has been made. In contrast, under FERPA there is no requirement that an educational agency or institution must comply with a parent's request for access to education records before an IEP meeting. Rather, the educational agency or institution must comply 'within a reasonable period of time, but not more than 45 days after it has received the request.' 34 CFR § 99.10(b)." [OSEP Letter to Anderson \(March 7, 2008\)](#).

"The following are among those provisions in the Part B of the IDEA Confidentiality of Information regulations that have no counterpart in FERPA or that provide protections beyond those provided by FERPA . . . 34 CFR § 300.613(b)(3), access rights . . ." [OSEP Letter to Anderson \(March 7, 2008\)](#).

"The right to inspect and review records includes the right to a response from the agency to reasonable requests for explanations and interpretations of the records; the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and the right to have a representative of the parent inspect and review the records." 73 Fed. Reg. 74845 (2008).

"A document such as the test protocol by itself is not part of a child's education record unless it includes personally identifiable information about a child. 'A test protocol or question booklet which is separate from the sheet on which a student records answers and which is not personally identifiable to the student would not be part of his or her "education records".' Analysis, 64 Fed. Reg. at 12641. [Florida Department of Health] FDOH's letter indicates that the child's information is integrated throughout the test protocol that is the subject of FDOH's inquiry. This child-specific information is factual, personally identifiable information and reflects the child's level of functioning in the five major developmental areas reflected in IDEA sections 632(5)(A)(i) and 636(d)(1), and 34 CFR §§ 303.322 and 303.344(a). This child-specific information is used to determine a child's eligibility and need for services under Part C of the IDEA. Thus, we conclude that as described by FDOH, the test protocol that contains personally identifiable information in this case is an 'education record' under IDEA Part C." [OSEP Letter to Price \(October 13, 2010\)](#).

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Exceptions to the term 'education record' include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. If notes by a therapist are revealed to any other person, except a temporary substitute, for any reason, those notes would no longer be in the sole possession of the maker, and would therefore meet the definition of 'education records'." [OSEP Letter to Anonymous \(April 9, 2012\)](#).

"As we explained in [Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools](#), investigative reports and other records created by an institution's law enforcement unit are excluded from the definition of education records under § 99.3 and, therefore, are not subject to FERPA requirements. Accordingly, schools may disclose information from law enforcement unit records to anyone, including local police and other outside law enforcement authorities, without consent." 73 Fed. Reg. 74815 (2008).

"FERPA does place certain limitations on a parent's right to inspect and review education records. In this regard, where education records contain information about more than one student, the parent may inspect, review, or be informed of only the specific information about his or her child, unless the parent(s) of the other student(s) has provided consent. 20 U.S.C. § 1232g(a)(1)(A); 34 CFR § 99.12(a). Accordingly, a school district should redact the names of, or information which would be directly related to, any other students mentioned in another student's education records before providing a parent access to the student's education records. In instances where joint records cannot be easily redacted or the information segregated out, the school district may satisfy a request for access by informing the parent about the contents of the record which relate to his or her child." [FPCO Letter to Anonymous \(February 13, 2013\)](#).

"Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is required to provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records. A case in point would be a situation in which the parent does not live within commuting distance of the school." [FPCO Letter to Anonymous \(February 27, 2015\)](#).

"[W]hen an education record contains information on more than one student, the parent may inspect and review or "be informed of" only the specific information about his or her own child, unless the information about the other student or students cannot be segregated and redacted without destroying its meaning." [FPCO Letter to Wachter \(December 7, 2017\)](#).

Through the implementation of the Boerne ISD policies and procedures as outlined in the [Legal Framework](#) for the Child-Centered Special Education Process, the Boerne ISD ensures parent or eligible student access to education records as required by the FERPA, IDEA and its accompanying federal regulations, state statutes and regulations.

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**PERSONS RESPONSIBLE:** Director of Special Education

The parent has the right to review his or her child's entire education record. The school may presume that the parent has authority to inspect and review records relating to his or her child unless advised that he or she does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

- The school must keep a log of everyone (except for the parent and authorized school officials) who reviews the student's special education records.
  - the log must include the name of the person;
  - the date access was given; and
  - the purpose for which the person is authorized to use the records.
- A school official must assume responsibility for ensuring the confidentiality of any personally identifiable information.
  - All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures regarding confidentiality under the [IDEA](#) and the [FERPA](#).
  - Each school must maintain, for public inspection, a current listing of the names and positions of those employees within the school who may have access to personally identifiable information.
- Clarification, Copies, and Fees
  - If the parent requests, the school must explain and interpret the records, within reason.
  - If the parent requests, the school must provide a list of the types and locations of all of the student's records.
  - The school must make the parent copies if that is the only way the parent would be able to inspect and review the records.
  - The school may not charge a fee to search for or to retrieve any education record about the student. However, it may charge a fee for copying, if the fee does not keep the parent from being able to inspect and review the records.