

LEARNER RECORDS

A Federal law, the Family Educational Rights and Privacy Act, commonly called FERPA, requires prior written consent from a learner's parent or guardian (or learner age 18 or older) prior to any disclosure of a learner's educational records unless a specific exception is applicable such that prior written consent is not required.

A learner's educational records are those records that are:

1. Directly related to a learner; and
2. Maintained by the District or by a party acting for the District.

Learner educational records do not include:

1. 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,
2. Records of the law enforcement unit of the District, subject to certain limitations,
3. Records on a learner who is 18 years of age or older, or is attending an institution of postsecondary education, that are:
 - i. Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity,
 - ii. Made, maintained, or used only in connection with treatment of the learner, and
 - iii. Disclosed only to individuals providing the treatment. (For the purpose of this provision, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution,
4. Records created or received by an educational agency or institution after an individual is no longer a learner in attendance and that are not directly related to the individual's attendance as a learner and
5. grades on peer-graded papers before they are collected and recorded by a teacher.

FERPA permits the disclosure of Personally Identifiable Information (PII) from learners' education records, without consent of the parent or eligible learner, if the disclosure meets certain conditions. Except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the parent or eligible learner, FERPA regulations require the school to record the disclosure. Parents/guardians and eligible learners have a right to inspect and review the record of disclosures. A school may disclose PII from the education records of a learner without obtaining prior written consent of the parents/guardians or the eligible learner -

- To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that certain conditions are met.
- To officials of another school, school system, or institution of postsecondary education where the learner seeks or intends to enroll, or where the learner is already enrolled if the disclosure is for purposes related to the learner's enrollment or transfer, subject to certain requirements.
- To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the State educational agency in the parent or eligible learner's State (SEA). Disclosures under this provision may be made, subject to the requirements of §99.35, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal

requirements that relate to those programs. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf.

- **In connection with financial aid for which the learner has applied or which the learner has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions for the aid, or enforce the terms and conditions of the aid.**
- To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the learner whose records were released, subject to certain limitations.
- To organizations conducting studies for, or on behalf of, the school, in order to:
 - develop, validate, or administer predictive tests;
 - administer learner aid programs; or
 - Improve instruction.
- To accrediting organizations to carry out their accrediting functions.
- To parents/guardians of a learner if the learner is a dependent for IRS tax purposes.
- To comply with a judicial order or lawfully issued subpoena.
- To appropriate officials in connection with a health or safety emergency, subject to certain limitations.
- Information the school has designated as "directory information."

The District shall not collect information which is not necessary for the determination of learner academic progress, state and federal reporting requirements, or other duties prescribed to a school district, or for the calculation of funding for public education.

Legal References:

[ARSD 24:43:09:02](#) (Student records)
Public Law 107-110 (No Child Left Behind Act of 2001)
[SDCL 13-3-51](#) (Data reporting and record systems)
[SDCL 13-3-51.1](#) (Definitions regarding privacy of records)
[SDCL 13-3-51.2](#) (Information not subject to survey, analysis, or evaluation without consent)
[SDCL 13-3-51.3](#) (Prohibition against reporting personally identifiable information)
[SDCL 13-3-51.4](#) (Department to develop security measures to protect personally identifiable information)
[SDCL 13-3-51.5](#) (Disclosure of aggregate data otherwise allowed)
[SDCL 13-3-51.6](#) (Disclosure of aggregate data necessary for impact aid)
[CFR Title 34 Part 99](#) (Family Educational Rights and Privacy ACT (FERPA))
[CFR Title 20 §1232g](#) (Family Educational Rights and Privacy ACT (FERPA))

Cross References:

ILB - State Required Assessments
KBA - Public's Right to Know

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