

PUBLIC SCHOOL RECORDS CONSORTIUM (PSRC)

Management of Student Records in Virginia Public Schools – Hot Topics

**MARCH 28, 2017
PORTSMOUTH, VIRGINIA**

GOOD GRIEF!



GOVERNING REGULATIONS

- The Board of Education's regulations, 8 VAC 20-150-10;
- The Family Educational Rights and Privacy Act (FERPA) of 2012, 20 USC § 1232g, 34 CFR 99;
- The Individuals with Disabilities Education Improvement Act (IDEA 2004), 20 USC §1400 - 1461, 34 CFR 300;

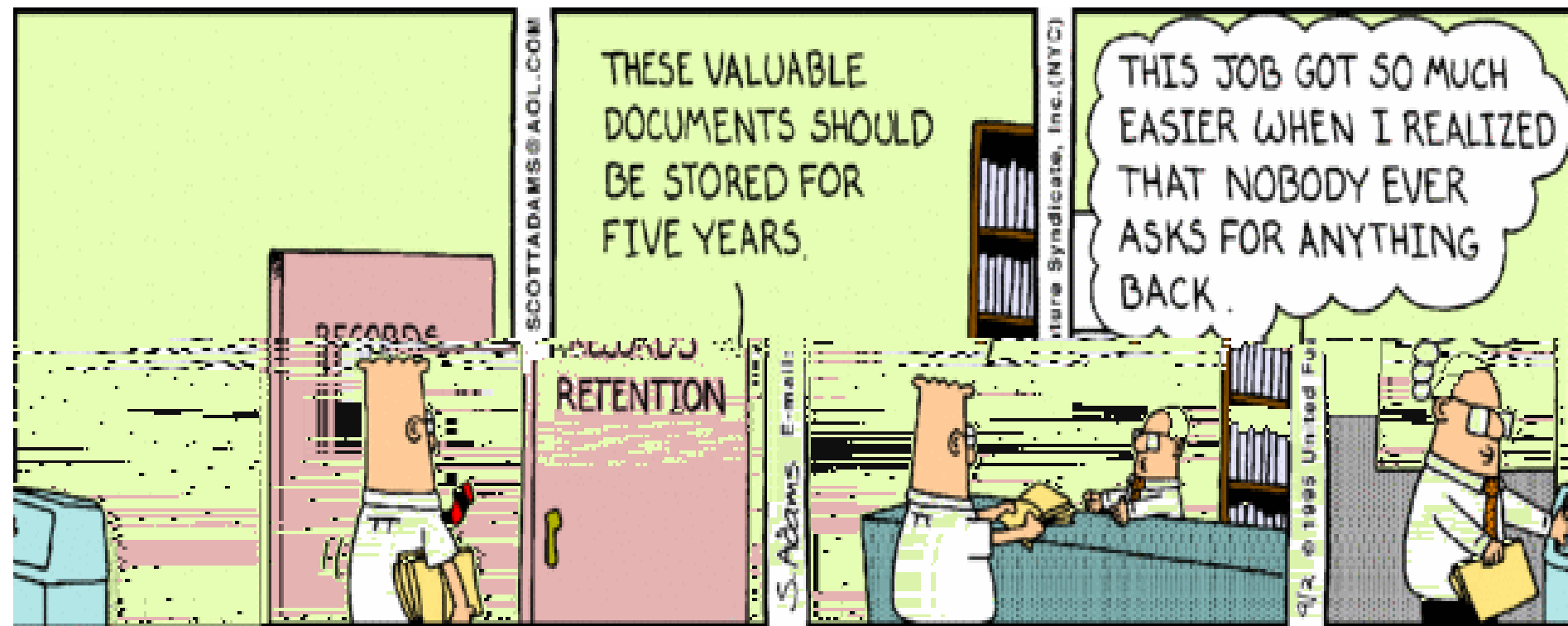
GOVERNING REGULATIONS

- The *Regulations Governing Special Education Programs for Children with Disabilities in Virginia (the Virginia Regulations)*, 8 VAC 20-81-10, et. seq.;
- The Virginia Public Records Act, §42.1-76; and

GOVERNING REGULATIONS

- **The Code of Virginia,**
 - 2.2 – 3704 and 2.2 – 3804;
 - 16.1 – 260, 16.1 – 305.1, and 16.1 – 305.2;
 - 22.1 – 3.1, 22.1 – 287 through 22.1 – 289;
 - 23 – 2.1:3;
 - 32.1 – 36.1; and
 - 42.1 – 76 through 42.1 – 91.

RECORDS MANAGEMENT MADE EASY



FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

- FERPA is a federal privacy law that:
 - affords parents the right to have access to their children's education records, have records amended, and to consent, in writing, to the disclosure of personally identifiable information (PII);
 - is designed to protect the privacy of a student's education records; and

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) - CONTINUED

- applies to any public or private educational agency or institution that receives federal funds under any programs administered by the U. S. Department of Education. All K-12 public schools are covered by FERPA, some preschool programs and private schools, and virtually all colleges and universities.




FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) - CONTINUED

- FERPA does not apply to medical records used only for treatment, (let's call those "unshared treatment records.") Once the medical records are shared outside the treatment sphere (let's call those "shared treatment records"), they become education records and are subject to FERPA.
- So, FERPA applies to education records, including shared treatment records, and does not apply to unshared treatment records.



THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT (IDEA 2004)

- IDEA 2004 is a federal law that:
 - governs the education of children with disabilities;
 - provides protection for the confidentiality of their education records;
 - establishes a parent's right to inspect and review education records;
 - requires a record of access;
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THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT (IDEA 2004) - CONTINUED

- upon request, a local educational agency (LEA) must provide a parent with a list of the types and locations of education records collected, maintained, or used by the LEA; and
- affords a parent with a right to request that an LEA amend their child's education record; and provides the opportunity for a hearing if the LEA refuses to amend the record.

REGULATIONS GOVERNING SPECIAL EDUCATION PROGRAMS FOR CHILDREN WITH DISABILITIES IN VIRGINIA (THE VIRGINIA REGULATIONS)

- The Virginia Regulations are state laws governing the education of children with disabilities, similar to that of IDEA 2004, that address Virginia specific requirements.



PARENTS AND ELIGIBLE STUDENTS' RIGHTS


- Schools must provide parents and eligible students with the following rights:
 - To inspect and review the student's education records within a reasonable time period but not to exceed calendar 45 days of the day the school receives a request for access.
 - To inspect or review education records of a child with a disability without unnecessary delay and before any meeting regarding an IEP, or any hearing as required by IDEA.

PARENTS AND ELIGIBLE STUDENTS' RIGHTS - CONTINUED


- To allow the parent to have a representative inspect and review the records.
- To provide parents with a copy of the records or make other arrangements for the parent or eligible student to inspect and review the requested records, if circumstances prevent the parent or eligible student from exercising the right to inspect and review the student's education records.



PARENTS AND ELIGIBLE STUDENTS' RIGHTS - CONTINUED

- To request the amendment of a student's education records that the parent or eligible student believes are inaccurate or misleading.
 - To consent to disclosures of personally identifiable information or PII contained in a student's education records, except to the extent that FERPA authorizes disclosure without consent.
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PARENTS AND ELIGIBLE STUDENTS' RIGHTS - CONTINUED

- To allow parents or eligible students to file a complaint with the U.S. Department of Education concerning alleged failures by the school to comply with the requirements of FERPA.
 - Similarly, parents can file complaints with the VDOE regarding alleged failures by the school to comply with the requirements as they relate to students with disabilities.
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PARENTS AND ELIGIBLE STUDENTS' RIGHTS - CONTINUED

- To notify parents and eligible students annually of their rights under FERPA.



PARENTS AND ELIGIBLE STUDENTS' RIGHTS - CONTINUED

- As specified by FERPA regulations and Section 20 - 124.6 of the *Code of Virginia*, a local educational agency or institution must give full rights to either parent, unless the agency or institution has been provided with evidence that there is a court order, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.



PARENTS AND ELIGIBLE STUDENTS' RIGHTS - CONTINUED

- Parents lose their FERPA rights when their child turns 18, or the child starts attending a postsecondary institution.



EDUCATION RECORD DEFINED

- The term “education record” means those records that are directly related to a student and maintained by an LEA or institution *or* by a party acting for the agency or institution.
- The term “education record” is used in FERPA whereas “scholastic record” is used in the *Code of Virginia*. These terms are interchangeable without changing the meaning.

EDUCATION RECORD DEFINED

- In addition to written records, this also includes electronic exchanges between school personnel and parent(s) regarding matters associated with the child's educational program (e.g., scheduling of meetings or notices).


(See the Virginia Regulations, at 8 VAC 20-81-10)

- The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail.

EDUCATION RECORD DEFINED - CONTINUED

- The term “education record” does not include the following:
 - 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;
 - records of the law enforcement unit of an educational agency or institution;
 - records relating to an individual who is employed by an educational agency or institution, that are made and maintained in the normal course of business;

EDUCATION RECORD DEFINITION - CONTINUED

- records on a student who is 18 years of age or older, or is attending an institution of postsecondary education that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his/her professional capacity and disclosed only to individuals providing the treatment;
 - records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student;
 - grades on peer-graded papers before they are collected and recorded by a teacher. (20 U.S.C. 1232g (a)(4))
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EDUCATION RECORD DEFINITION - CONTINUED

- In the definition of personally identifiable information in the revised 2008 FERPA regulations, ED added the term "biometric record" to its list of personal identifiers. 34 CFR 99.3.
- The term “biometric record” means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

EDUCATION RECORD DEFINITION - CONTINUED


- The designation of a document as an education record depends on who maintains it, not who originates it. 34 CFR 99.3.
- Documents that are maintained by a district employee or agent also qualify as education records, 34 CFR 99.3 , including those documents stored by the school's attorney, who is considered an agent of his or her client.

EDUCATION RECORD DEFINED - CONTINUED

- However, even if documents maintained by the attorney contain information directly related to the student, they may be shielded from disclosure to parents by applicable laws relating to the attorney-client privilege or to the attorney work-product doctrine.



EDUCATION RECORD DEFINED - CONTINUED

- Records include, but are not limited to, documentation pertinent to the educational growth and development of students as they progress through school, student disciplinary records, achievement and test data, cumulative health records, reports of assessments for eligibility for special education services, and Individualized Education Programs.
 - Such records may be recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche. (Code of Virginia §22.1-289)
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QUESTIONS AND ANSWERS



DISCLOSURE

- Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information (PII) contained in education records by any means, including **oral, written, or electronic means**, to any party except the party identified as the party that provided or created the record. (20 USC 1232g (b)(1) and (b)(2))

PREVENTING UNAUTHORIZED DISCLOSURE




THE RESULTS OF UNAUTHORIZED DISCLOSURE




"Somehow your medical records got faxed to a complete stranger. He has no idea what's wrong with you either."

PERSONALLY IDENTIFIABLE INFORMATION (PII)

- Personally identifiable information” includes, but is not limited to:
 - The student’s name;
 - The name of the student’s parent or other family member;
 - The address of the student or student’s family;
 - A personal identifier, such as the student’s social security number or student number, or biometric record;
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PERSONALLY IDENTIFIABLE INFORMATION (PII)

- CONTINUED

- Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
 - Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
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PERSONALLY IDENTIFIABLE INFORMATION (PII) - CONTINUED

- Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. (20 U.S.C. 1232g)



INSPECTING ELECTRONIC OR COMPUTERIZED EDUCATION RECORDS

- In 1996, the U. S. Department of Education amended the definition of the term “record” appearing in FERPA regulations to add “computer media.”
- The change was made to cover any manner of maintaining information that is stored through and retrieved by a computer, including information stored on a CD-ROM or e-mail.
- How parents may inspect electronic education records is not addressed in regulations. Although not addressed in regulation, **some type of intelligible extraction of the information from the database must be accomplished.**

BACK UP SERVERS

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www.glasbergen.com




**"We back up our data on sticky notes because
sticky notes never crash."**

VIDEO RECORDINGS

- The Family Policy and Compliance Office (FPCO) has opined, when asked in what context could a videotape be considered an "education record" subject to FERPA, requiring prior parental consent prior to release, that, "for example, this Office does not consider a videotape of routine activities by students riding a school bus to be 'directly related to' any particular student and, therefore, not an 'education record' under FERPA, even though those students may be 'personally identifiable.'"
- FPCO further opined that if "... a videotape of a school bus ride records a student involved in an assault on another student, for example, then that part of the videotape would be considered 'directly related to' and, therefore, the 'education record' of those two students."

(See Letter re: Magnolia Indep. Sch. Dist., 10 FAB 25 (FPCO 2006).)

DISCIPLINARY RECORDS

- Disciplinary records are records that are directly related to a student and any disciplinary action taken against that student for violation of school rules or policies occurring on school property or at school-sponsored events.
 - Disciplinary records must be maintained as part of a student's education record.
 - FERPA requires schools to transfer any and all education records, including disciplinary records, on a student transferring to another school.
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TRANSFERRING EDUCATION RECORDS OF INCARCERATED STUDENTS

- Section §22.1-289E of the *Code of Virginia* requires that whenever an education agency is notified by the Department of Juvenile Justice, or by a school division employee responsible for education programs in a local jail or a detention center, that a student who last attended a school within the school division is now a student at one of the facilities, the school superintendent or designee shall transfer the education record of the student to the designated facility **within five administrative days**.
- The Department of Juvenile Justice shall transfer the education record of a student who has been discharged from a juvenile correctional center to the school division the student will attend **within five administrative days** of the student's discharge.

TRANSFERRING RECORDS OF STUDENTS IN FOSTER CARE

- Whenever a student has been placed in foster care by a local social services agency and the placing social services agency is unable to produce any of the documents required for enrollment, the student shall immediately be enrolled.
- The person enrolling the student shall provide a written statement that, to the best of his knowledge, sets forth the student's age, and that the student is in good health and is free from communicable or contagious disease.

TRANSFERRING RECORDS OF STUDENTS IN FOSTER CARE - CONTINUED

- The sending and receiving school divisions shall cooperate in facilitating the enrollment of any child placed in foster care across jurisdictional lines for the purpose of enhancing continuity of instruction.
- The child shall be allowed to continue to attend the school in which he was enrolled prior to the most recent foster care placement, upon the joint determination of the placing social services agency and the local school division that such attendance is in the best interest of the child.

TRANSFERRING RECORDS OF STUDENTS IN FOSTER CARE - CONTINUED

- Upon receiving notice of a foster care placement of a student across jurisdictional lines, the sending school division and the receiving school division, shall expedite the transfer of the scholastic record of the student.
(§22.1-3.4)



UNIFORMED SERVICE-CONNECTED STUDENTS

- The 2015 Virginia General Assembly passed legislation ([HB 2373](#) and [SB 1354](#)) that requires the Department of Education to establish a process for the identification of newly enrolled uniformed services-connected students by local school divisions.
- This identification is critical to best serving our military families. Identifying military-connected students will allow schools to target unique support services to students during all stages of transition and deployment and provide localities with reliable and accurate data to seek grant funding.



UNIFORMED SERVICE-CONNECTED STUDENTS - CONTINUED

- While the legislation called for the “identification of newly enrolled uniformed services-connected students,” the Department encourages school divisions to collect this important information for *all* students on an *annual* basis, providing for more accurate and efficient data to assist our military families.
- The VDOE Student Record Collection (SRC) will provide the mechanism for identifying uniformed services-connected students. However, the methods school divisions use for the collection of this information are local decisions.

UNIFORMED SERVICE-CONNECTED STUDENTS - CONTINUED

- However, the SRC will use the following codes for the identification of uniformed services-connected students:
 - 1 = Student is not military connected
 - 2 = Active duty: Student is a dependent of a member of the Active Duty Forces (full time) Army, Navy, Air Force, Marine Corps, or Coast Guard
 - 3 = National Guard or Reserve: Student is a dependent of a member of the National Guard or Reserve Forces (Army, Navy, Air Force, Marine Corps, or Coast Guard)

UNIFORMED SERVICE-CONNECTED STUDENTS - CONTINUED


- Data collected and reported to the Department will be non-identifiable and will not be used as an “accountability subgroup.”




HEALTH OR SAFETY EMERGENCIES

- School districts can provide copies of the education records of a student with a disability to law enforcement or juvenile justice authorities without parental consent in connection with a health or safety emergency. 34 CFR 99.31 (a)(10).
- The FERPA regulations further provide that a school district may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. 34 CFR 99.36 (c).

HEALTH OR SAFETY EMERGENCIES - CONTINUED

- School officials must merely have reasonable grounds for reaching the conclusion that a health or safety emergency exists.
 - See *Letter to Anonymous*, 53 IDELR 235 (ED 2008).
 - In the ordinary course, once a student is reported to and in the hands of the authorities, there will no longer be such an emergency.
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FEE FOR COPIES OF EDUCATION RECORDS

- A local educational agency may charge a reasonable fee in providing copies of records to parents.
 - unless imposition of such a charge would prevent a parent from exercising his or her right to inspect and review the education records.
 - The fee may include costs associated with reproduction, secretarial or administrative time, and postage.
 - The LEA may not charge a fee to search for and retrieve the education records of a student.
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FEE FOR COPIES OF EDUCATION RECORDS - CONTINUED

- In case of a student with a disability, the LEA may not charge a fee for a copy of a child's newly propose individualized education program (IEP).
- Withholding education records, including report cards, because of nonpayment of fees is prohibited. Section 22.1-6 of the *Code of Virginia* states that no student's education record, report card, or diploma shall be withheld because of nonpayment of any fee or charge.

PENDING CHANGES IN THE GUIDELINES FOR THE MANAGEMENT OF THE STUDENT EDUCATION RECORDS

- Document is not in the question/answer format.
 - Additional definitions:
 - authorized personnel;
 - biometric record education program;
 - educational agency or institution;
 - financial aid;
 - IDEA;
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PENDING CHANGES IN THE GUIDELINES FOR THE MANAGEMENT OF THE STUDENT EDUCATION RECORDS - CONTINUED

- institution of postsecondary education;
 - legitimate interest;
 - personally identified information (added more to the definition);
 - Records Retention and Disposition Schedule; and
 - Uninterrupted Scholars Act of 2013.
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PENDING CHANGES IN THE GUIDELINES FOR THE MANAGEMENT OF THE STUDENT EDUCATION RECORDS - CONTINUED

- Family Education Rights and Privacy Act updated in 2012 – guidelines reflect the changes as follows:
 - Model Notification of Rights under Family Educational Rights and Privacy Act (FERPA) for Elementary and Secondary Schools
 - Model Notification for Directory Information under Family Educational Rights and Privacy Act (FERPA)

PENDING CHANGES IN THE GUIDELINES FOR THE MANAGEMENT OF THE STUDENT EDUCATION RECORDS - CONTINUED

- Section entitled, Parents and Eligible Students' Rights, added parents right to file a complaint with the U.S. Department of Education.
- Web site address updated for the Virginia Department of Education.

RESOURCES

- Code of Virginia --- <https://leg1.state.va.us>
- Family Educational Rights and Privacy Act Regulations --- <http://www2.ed.gov/policy/gen/reg/ferpa/index>

U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520

RESOURCES

- The Library of Virginia --- <http://www.lva.virginia.gov>
800 East Broad Street
Richmond, Virginia 23219
804 692-3500
- Family Policy Compliance Office ---
<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index>
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20101-4605

RESOURCES

- Protection of Pupil Rights Amendment (PPRA) Regulations --
<http://familypolicy.ed.gov/ppra?src=ferpa>
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5920
- Virginia Department of Education -- <http://doe.virginia.gov>
James Monroe Building
101 N. 14th Street
Richmond, Virginia 23219

QUESTIONS AND ANSWERS



MAY THE FORCE BE WITH YOU!



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