

TRANSFERRING STUDENT RECORDS

The privacy of students' education records is protected under both federal and state law. However, when students transfer from one school or district to another, it is often in their best interest to have their records shared as expediently as possible. The following provides legal background on common questions related to the transfer of student records.

If a district receives a request to share a former student's records with another district where the student has transferred, must the district first obtain consent from the student's parents?

No. FERPA includes a specific exception to the written consent requirement for districts transferring student records to another district or school where a student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer. *See, 34 CFR 99.31(a)(2)*. Districts do, however, have an affirmative duty to notify the student's parent either (1) by making a reasonable attempt to contact the parent at his/her last known address, or (2) by providing notice in an annual notification letter to all parents that the district forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll. *See, 34 CFR 99.34(a)*.

Similarly, the Colorado Open Records Act provides that districts may transmit data concerning standardized tests, scholastic achievement, disciplinary information, or medical, psychological or sociological information of any student to another school or school district to which a student moves, transfers, or makes application for transfer, and the written permission of such student or his or her parent shall not be required. *See, C.R.S. 24-72-204(3)(c)*.

Is a district required to share student records with another district where the student has transferred?

Yes. Districts are only permitted to withhold documents if a student fails to return or replace lost or damaged textbooks or library resources. Even then, a district can only withhold certain documents such as a diploma or transcripts. *See, C.R.S. 22-32-110(1)(jj)*. Even in these circumstances, the district has special obligations that limit the district's ability to withhold documents regarding students who cannot pay those fees and students in out-of-home placements. *See, C.R.S. 22-32-110(1)(jj) and 22-32-138(3)(c)*.

Is the district required to disclose sensitive disciplinary information to another district where a student transfers?

FERPA and state law allow, but do not require sensitive disciplinary information to be disclosed. FERPA does not prevent a district from including in education records "appropriate information concerning disciplinary action taken against the student for

conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community...or disclosing [this information] to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.” *See, 34 CFR 99.36*

May a district withhold student records pending payment of fees or fines?

Though federal and state law do not directly address whether a district may refuse a student’s request to forward copies of a student’s educational records to another educational institution when the student has outstanding fees or fines, the laws are clear that a district may not deny a student access to his records. FERPA provides that a parent or student must be given the opportunity to inspect and review the student’s education records and that the district may not charge a fee to search for or retrieve those records. *See, 34 CFR 99.10 and 99.11(b)*. While a fee may be charged for copies of educational records, the imposition of a copy fee may not be used to prevent a parent or student from exercising the right to inspect and review the student’s education record. *See, 34 CFR 99.11(a)*. Likewise, under the Colorado Open Records Act, a student record is available to each student as the person in interest. *See, C.R.S. 22-72-204(3)(a)(I)*. Because a student can access and make copies of his educational records, it would be prudent to forward copies of the records, upon request.

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