

Municipal Law

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Illinois Student Records – To Keep or Not To Keep?

State and federal law imposes stringent regulations on the maintenance and confidentiality of school records. These restrictions create significant potential for school district liability, and challenges for attorneys defending school districts in lawsuits whenever students are involved. The Illinois Student Records Act (105 ILCS 10/1 *et seq.*), and provisions of the Illinois Administrative Code (Ill. Admin. Code, Tit. 23, §275.10), provide detailed requirements about which student records to keep and for how long, and their confidentiality. The federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232, *et. seq.*) provides similar restrictions. Some records need only be kept for one year, while others must be kept for as long as 60 years. Failure to comply with the strict requirements imposed by these laws exposes school districts to a statutory cause of action for injunctive relief, monetary damages and attorney’s fees.

Permanent Student Records

Student records are classified as either “temporary” or “permanent,” which determines the length of time a school district must retain the records. Permanent records must be retained for 60 years after the student has transferred, graduated or withdrawn from the school. 105 ILCS 10/4(e). The Illinois Student Records Act sets out only a bare-bones definition of what must be kept in a student’s “permanent” record, requiring retention of “the minimum personal information necessary to a school in the education of the student.” This may include the “student’s name, birth date, address, grades and grade level, parents’ names and addresses,” and attendance records, and such other entries as the Illinois State Board of Education (ISBE) may require or authorize. 105 ILCS 10/2(e).

The ISBE requires a student’s permanent record to contain:

1. basic identifying information, including the student’s name and address, birth date and place, and gender, and the names and addresses of the student’s parents;
2. the academic transcript, including grades, class rank, graduation date, grade level achieved and scores on college entrance examinations;
3. the student’s attendance record;
4. accident reports and health records;
5. a record of release of permanent record information (as required by 105 ILCS 10/6(c)) to other school districts where the student enrolled; and
6. scores on all state assessment tests administered in high school.

23 Ill. Admin. Code, Tit. 375.10. The ISBE requirements also state that the permanent record may contain honors and awards the student received and information concerning the student’s participation in school-sponsored activities or athletics.

In sum, a school district must keep a student's basic identifying information, academic transcript, attendance record, accident reports and health reports, the record of any release of the permanent school record, and scores received on state assessment tests administered in high school, and may keep a record of a student's honors and awards and extra-curricular activities, all for a minimum of 60 years. A school district may not place any other information in a student's permanent record.

Temporary Student Records

A 2000 amendment to the Illinois Student Records Act changed the definition of a "temporary record" and the length of time the record must be retained. 105 ILCS 10/4(f). Before January 1, 2000, temporary records could be destroyed at any time if they were no longer useful, but could be kept no longer than five years after the student transferred, graduated or withdrew from the school. After the amendment the major part of the student temporary record must be retained for at least five years after the student has transferred, graduated or withdrawn from the school. 105 ILCS 10/4(f).

Under the Student Records Act, a student temporary record includes all information contained in a school student record not in the permanent record, and may include family background information, intelligence test scores, aptitude test scores, psychological and personality test results, teacher evaluations and other information of clear relevance to the education of the student. The Student Records Act also includes within the student temporary record "all information regarding serious disciplinary infractions that resulted in expulsion, suspension, or the imposition of punishment or sanction." 105 ILCS 10/2(f). The 2000 amendment confines a "serious disciplinary infraction" to one resulting from drugs, weapons or infliction of bodily harm.

As with the permanent records the ISBE has expanded what constitutes a temporary record. ISBE regulations mandate that the student temporary record include:

1. a record of release of student temporary records to other schools where a student has enrolled or intends to enroll;
2. scores received on state assessment tests administered in elementary school (kindergarten through grade 8); and
3. Certain student information released under the Abused and Neglected Child Reporting Act.

Ill. Admin. Code, Tit. 23 §375.10.

ISBE regulations also provide that a student temporary record may contain:

1. family background information;
2. intelligence test scores, group and individual;
3. aptitude test scores;
4. reports of psychological evaluations, including information on intelligence, personality and academic information obtained through test administration, observation or interviews;
5. elementary and secondary achievement level test results;
6. participation in extracurricular activities, including any offices held in school-sponsored clubs or organizations;
7. honors and awards received;
8. teacher anecdotal records;
9. other disciplinary information;
10. special education files, including reports of the multi-disciplinary staffing on which placement or nonplacement is based, and records and tapes relating to special education placement hearings and appeals;
11. verified reports or information from non-educational persons, agencies or organizations; and
12. other relevant verified information.

A student's scores on elementary school state assessment tests, a record of any release of temporary records, information regarding serious infractions and information provided under the Abused and Neglected Child Reporting Act must be kept by the school district for at least five years after the student transfers, graduates or withdraws from the school. Any other information in the temporary record may be destroyed after the end of each school year.

Confidentiality of Records

A major component of student records regulation is to protect the student's privacy and the confidentiality of the student's records. Access to student records is allowed only in the following circumstances:

1. a parent or a person designated as a representative by the parent may inspect and copy all student records, unless prohibited by an order of protection;
2. the student may inspect and copy his or her permanent record;
3. employees and officials of the school district or the ISBE may inspect and copy student records in the educational interests of the student;
4. the record custodian of another school district where the student has enrolled or intends to enroll may request and receive student records;
5. persons performing research or statistical analysis may review student records, so long as no individual could be identified from the information released and the person conducting the research agrees to comply with the confidentiality requirements of the statute;
6. pursuant to a court order, with sufficient notice to the student's parents;
7. juvenile authorities may receive records for limited purposes related to the discharge of their official duties;
8. in connection with an emergency when the information is necessary to protect the health or safety of the student or another person;
9. to a person with a dated written consent of the student's parent;
10. to various governmental or social service agencies under limited circumstances set out in the statute.

Attorneys who have defended school districts through insurance policies or self-insurance pools are likely to have come across districts who have refused, on the advice of the school board's regular counsel, to turn over student records to defense counsel without a court order, for fear of violating the statute, even where defense counsel was defending the district in a case filed on behalf of the student. That position would create the uncomfortable posture of defense counsel having to seek a court order, with notice to the plaintiff, to obtain records from his own client. Fortunately, that practice has waned as courts have recognized that this overly cautious approach is impractical and beyond what is contemplated by the Student Records Act. *See, e.g., Ibata v. Board of Education of Edwardsville Comm. Unit S.D. No. 7*, 365 Ill. App. 3d 1056, 851 N.E.2d 658 (5th Dist. 2006).

Liability Under the Act

The Student Records Act allows for injunctive relief to a person who has been aggrieved by any violation of the statute, and damages for any person injured "by a willful or negligent violation" of the Act. The statute also allows for recovery of attorney's fees by any person aggrieved by a violation of the Act. For a wrongful release of a student record or information contained in it, one could contemplate that the plaintiff might claim damages for emotional distress, embarrassment or humiliation or economic loss resulting from the wrongful release of the information. In one such case that the authors of this article defended, a plaintiff's claim for emotional distress resulting from the school district's failure to preserve school records, as required by the Student Records Act, withstood a dispositive motion and remained an issue at trial.

One area for further research is the extent to which a school district or school official enjoys tort immunity for violations of the Student Records Act. In *Albers v. Breen*, 346 Ill. App. 3d 799, 806 N.E.2d 667 (4th Dist. 2004), the court found that a school district and school principal were immune from liability under the discretionary immunity provided by the Illinois Tort Immunity Act, 745 ILCS 10/2-201, for the principal's

release of information protected under the Illinois Mental Health and Developmental Disabilities Confidentiality Act. 740 ILCS 110/1, *et seq.* Whether that immunity would apply equally to a claim for violation of the Student Records Act has not been decided.

Conclusion

Although compelling arguments can be made to extend protection under the Tort Immunity Act to violations of the Student Records Act, the safer approach is to understand and comply with the Act's requirements, both its maintenance and record preservation mandates and its limitations on release of such information.

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