

 <p>BOSTON Public Schools Focus on Children</p>	<p>Superintendent's Circular</p> <p>School Year 2019-2020</p>	<p>NUMBER: LGL-7</p> <p>DATE: Proposed</p>
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**PRIVACY OF STUDENT INFORMATION AND STUDENT RECORD PROCEDURES:
HOW TO RESPOND TO STUDENT RECORD REQUESTS IN COMPLIANCE WITH
FERPA AND STATE LAW**

I. GENERAL INFORMATION

These student record procedures pertain to all information maintained by the Boston Public Schools concerning a student in which he/she may be individually identified.

The student record consists of two parts: the transcript and the temporary record.

A. The transcript contains administrative records that constitute the minimum data necessary to reflect the student's educational progress and to operate the educational system. The transcript is limited to the name, address, and phone number of the student, the student's birth date, name, address and phone number of the custodial parent or guardian, course titles, grades (or the equivalent when grades are not applicable), course credit, grade level completed, and the year completed. The transcript must be retained for at least sixty (60) years after the student leaves the school system.

B. The temporary record is all other student record information besides the transcript. Temporary record information may include health information, disciplinary information, exemplars of student work, special education or 504 plan documents, incident reports, and any other information kept by the school which identifies the student individually. Duplicates of an original record do not need to be kept as part of the temporary record. The temporary record should be destroyed no later than **seven (7) years** after the student leaves the school system, provided proper notification is given as directed below.

**II. PARENTS (AND STUDENTS) HAVE A LEGAL RIGHT TO CONTROL
ACCESS TO STUDENT INFORMATION**

Both federal and state law provide that a parent, and any student that is 14 or older and/or in grade nine or above, have a legal right to control access to the student's educational record. The [Family Educational Rights and Privacy Act \(FERPA\)](#) and

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[Massachusetts law](#) define the parent's/student's right to access, seek to amend and exercise control over the disclosure of personally identifiable information in the student record. The Boston Public Schools is legally responsible to respect and protect the parent's/student's rights to privacy and control under FERPA and state law. **Violation of these legal rights can subject BPS to sanctions, including termination of federal funding, and can subject BPS employees to discipline, up to and including termination.**

BPS notifies all students and parents of these rights annually by means of the "Guide to BPS for Students & Families." The Guide for Students & Families identifies the limited types of information that may be released without consent (see Directory Information below). By September 30 of each year, parents and students have a right to inform the school that such information shall not be released without direct consent.

Schools receive requests for student record information in many different ways and from many different sources. By law, a school's response to a request for student records must vary depending on who is making the request and what is being requested. Below are descriptions of the main categories of requests that schools may need to address. If the information below does not directly describe a situation presented, the school should contact the Office of Legal Advisor at legal@bostonpublicschools.org for more direction.

III. REQUESTS AND CONSENT BY PARENT/STUDENT

When a parent or student seeks to access, amend or consent to sharing of student records, the following definitions will aid you in understanding and complying with applicable law.

- A **parent** is the student's natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.
- A **custodial parent** is any parent with whom a child resides, whether permanently or for periods of time, and who supervises the child.
- A **non-custodial parent** is any parent who does not have physical custody of the child and who does not reside with or supervise the child, even for short periods of time, by court order.
- An **eligible student** is a student who is at least 14 years of age and/or has entered the ninth grade.

A. Request to Inspect/Copy Records.

1. **Custodial Parents and Eligible Student.** A custodial parent, and/or an eligible student have a right to inspect all portions of the student record

upon request. The record will be made available to the custodial parent and/or eligible student **no later than ten (10) days** after the request. The custodial parent and/or eligible student have the right to receive copies of any part of the record. In addition, the custodial parent and/or eligible student may request to have parts of the record interpreted by a qualified professional of the school, or may invite anyone else of their choosing to inspect or interpret the record with them. Please see Attachment 1 for the process of fulfilling a custodial parent's or eligible student's request for the student record.

2. Non-Custodial Parents. Non-custodial parents must be given access to their children's student records, unless the school has been given written documentation that establishes either:

- a) The non-custodial parent has been denied legal custody by a court based upon a threat to the student or to the custodial parent;
- b) The non-custodial parent has been denied visitation or has supervised visitation;
- c) Access to the student or to the custodial parent has been restricted by a court-issued protective order against the non-custodial parent, provided such protective order does not specifically allow access to student record information;
- d) There is an order of a probate and family court judge which prohibits distribution of student records to the non-custodial parent.

A school that receives a request for student record information from a non-custodial parent should send a copy of the notification attached as Attachment 2, via certified and first class mail, to the custodial parent prior to providing student records to the non-custodial parent. The notification must be in English and the primary language of the custodial parent. If no documentation related to any of the four (4) scenarios above is received within 21 days, the records must be provided to the non-custodial parent. If documentation related to any of the four (4) scenarios above is received within 21 days, it must be kept in the student record and the non-custodial parent must be notified, via certified and first class mail, of the reason for denial of access.

B. Request to Amend Student Record

The custodial parent and/or eligible student have the right to add relevant comments, information, or other written materials to the student record. In addition, the custodial parent and/or eligible student have the right to make a written request that information in the record be amended or deleted, except information created by a special education team, which may not be amended or deleted until after acceptance of the individualized education plan or completion of the appeals process. The custodial parent and/or eligible student have a right to a conference with the school principal to make their objections known. Within one week after the conference, the principal must

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render a decision in writing. If the custodial parent and/or eligible student are not satisfied with the decision, it may be appealed to the operational leader.

C. **Consent to Share Student Information**

The custodial parent and/or eligible student have the legal right to consent to sharing of the student record with any person or entity they choose. A school should use Attachment 4 to document the custodial parent's and/or eligible student's specific, informed, written consent and include the signed consent in the student record.

Except as specifically noted below, no individuals or organizations other than the custodial parent, eligible student, and authorized school personnel are allowed to have access to information in the student record without the specific, informed, written consent of the custodial parent or the eligible student.

IV. **THIRD PARTY REQUESTS FOR STUDENT-IDENTIFYING INFORMATION: CONSENT NOT REQUIRED OR ASSUMED BY OPERATION OF LAW**

A. **Subpoenaed Records.** Boston Public Schools will produce documents requested in court orders or lawfully issued subpoenas. Such requests should be emailed immediately to the Office of Legal Advisor. All records sought by the court order or subpoena should be forwarded via courier mail or hand delivery as soon as possible. Attachment 3 should be completed and used to notify the parent and/or eligible student that subpoenaed information will be provided absent further court order.

B. **Authorized School Personnel.** Authorized school personnel (those providing direct services to the student, administrative staff whose duties require them to access the student record, and an evaluation team that evaluates a student) shall have access to the student's school record when such access is required in the performance of their official duties.

C. **Directory Information.** Unless the parent or eligible student has previously indicated in writing their disapproval of the release of such information, the school may release the following directory information: student's name, age, neighborhood of residence, class or grade, dates of attendance, participation in officially recognized activities and sports, degrees, honors, awards, and post-high school plans. BPS notifies students and parents annually of the types of information that will be released by means of the "Guide to BPS for Students & Families," and allows custodial parents and students until September 30 of each year to inform BPS that such information will not be released without prior consent.

D. **Military Recruiters and Higher Education Institutions.** Unless a parent or student has previously objected in writing in response to notification through the publication of the "Guide to BPS for Students & Families," military recruiters and institutions of higher education must be provided, upon written request, with the names,

addresses and telephone numbers of secondary school students. All requests by military recruiters for such information must be forwarded to the Office of Legal Advisor for centralized processing.

D. Specified State Agencies and Local Authorities. A school may release student record information without prior written consent to the following agencies when acting in their official capacities: Department of Children and Families, Department of Youth Services, a probation officer, or a justice of the court. Attachment 3 should be used to notify parents of such requests.

E. Transfer Schools. When a student seeks or intends to transfer to another school, the student record can be sent to the receiving school.

F. School Nurses and State Health Department. School nurses and local and state health department officials may have access to student health record information when such access is required in the performance of their official duties. For further information related to student health information, please consult Superintendent's Circular LGL-16, Student Health Information.

G. Health or Safety Emergency. Without the consent of the parent or eligible student, a school may disclose information regarding a student to appropriate parties in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or individuals and if the appropriate procedure has been followed. That does not mean that anyone who asks, and who thinks something is amiss or might happen, has a right to access personally identifiable student information.

(1) **Required Criteria.** The regulations implementing FERPA ([34 CFR § 99.36](#)) requires that each of the following criteria be met:

- a. The request is made "in connection with an emergency."
 - i. "Emergency" means the request must be related to an **actual, impending, or imminent emergency**
 - ii. BPS requires that a school consider the following criteria to determine whether the request is made in connection with an emergency:
 - The seriousness of the threat to the health or safety of the student or others
 - The need for the information to meet the threat
 - Whether the requestor is in a position to deal with the emergency; and

- o The extent to which time is of the essence in dealing with the emergency.
- iii. Any release of records is **limited to the period of the emergency**; if the emergency is over no further release of student information is allowed.
- b. There is an **articulable and significant threat** to the health or safety of the student or other individuals.
- c. The requestor (usually law enforcement, public health officials, and medical professionals) **needs the information in order to protect** the health or safety of the student or other individuals.
- d. No blanket release of personally identifiable information is allowed. Any release of information must be **narrowly tailored considering the immediacy, magnitude and specificity of the threat**.
- e. The determination is made on a **case-by-case basis taking into account the totality of the circumstances** pertaining to the threat to the health or safety of the student or others.
- f. Within a reasonable time after making the disclosure, **the school must record in the student's record** the articulable and significant threat that formed the basis for the disclosure, and to whom the information was disclosed.

V. THIRD PARTY REQUESTS FOR PUBLIC RECORDS CONTAINING ONLY REDACTED AND/OR NON-STUDENT-IDENTIFYING INFORMATION

Upon receipt of a third-party request for public records, the school should immediately send a copy of the request via email to the Office of Legal Advisor for review and direction. All public records requests must be reduced to writing, dated, and signed by the requestor, and must contain the return address information of the requestor. For more information see Superintendent's Circular LGL-3, Public Records Requests.

VI. DESTRUCTION OF STUDENT RECORDS

The law sets forth different time periods for the retention and destruction of different portions of student records. These different time periods are set forth below:

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A. Transcripts - A student's transcript must be maintained by the school department for sixty (60) years following the student's graduation, transfer, or withdrawal from the school system.

B. Periodic Review of the Temporary Record - While a student is enrolled in a school, the principal/headmaster or his/her designee shall periodically review all students' temporary records and identify for destruction any misleading, outdated or irrelevant information. This may include, particularly, exemplars of student work or other impertinent information. Prior to destroying any such information, however, the student and his/her parent must be given written notification of the school's intent to destroy such information and must be given the opportunity to receive the information or a copy of the information prior to its destruction.

C. Temporary Record Destruction - The temporary record of any student may be destroyed no later than seven (7) years after the student transfers, graduates or withdraws from the school district, if the student and his/her parent/guardian have been given written notification that includes the approximate date of destruction of the temporary record and indicating their right to receive the information in whole or in part at the time of the student's graduation, transfer or withdrawal from the school system or prior to its destruction. Such notice must be in addition to the annual notice issued by Boston Public Schools in the "Guide to BPS For Students & Families."

For more information about this circular, contact:

Name:	Catherine Lizotte
Department:	Office of Legal Advisor
Mailing Address:	
Phone:	617-635-9320
Fax:	617-635-9327
E-mail:	clizotte@bostonpublicschools.org