



### The Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) of 1974 was designed to ensure parent access to their children's educational records and to protect the privacy of such records.

- FERPA applies to all educational agencies and institutions that receive funds by any program administered by the US Department of Education.
- FERPA protects most "education records" by classifying them as "confidential" and limiting their disclosure.
  - Educational records are:
    - Records that directly relate to a student
    - Were created by a school district for a student
    - Are maintained by the educational agency
  - *Education records are not:*
    - sole possession records such as privately created case notes
    - Records of a law enforcement unit of a school district
    - Records relating to an employee
- FERPA generally prohibits school districts from disclosing education records without the written consent from parents or the student if age 18
  - Written consent must be obtained to share information with:
    - Private providers
    - Medical personnel
    - Community agencies (e.g., DHS caseworkers, Advocates)
  - Written consent does not need to be obtained to share information with:
    - Educational institutions who have a legitimate educational interest in the information, such as a school to which the student is transferring.
    - A judicial order or lawfully issued subpoena
    - An appropriate official in cases of health and safety emergencies
    - State and local authorities within a juvenile justice system
- Parent/student rights granted by FERPA include:
  - The right to inspect and review their own education records
  - The right to seek and amend education records
  - The right to have some control over the disclosure of the information from educational records
- Additionally
  - Districts must provide parents/guardians /adult students annual notice of their rights to inspect and review educational records, amend education records and file a complaint

- with the US Department of Education.
- A school district must make a reasonable attempt to notify the parent or student of a records request unless it states in its annual notification that it intends to forward records on request.

**Record Retention:** The Colorado Department of Education records retention guidelines require that Special education records are maintained in a secure and locked location for 5 years after the student is no longer eligible for services.

**Email:** E-mails are public records, even on your home computer or personal device. Generally speaking, emails are not considered education records because they are not maintained by an educational agency however an email could be considered an education record if it contains information directly related to a student. An email might also be considered a Special Education Record if it contains personally identifiable information collected, maintained, or used for a student with a disability. Remember:

- Put only student initials in the subject line of an email informing/coordinating with staff
- You may include the students full name in the body of the email
- You may send IEP related documents electronically by scan or fax if you are communicating with someone who has written consent or who does not require consent
- Keep email correspondence factual
- All emails from a PPBOCES email account must have the following statement:

#### CONFIDENTIALITY NOTICE

This electronic transmission and any attached documents or other writings are confidential and for the sole use of the intended recipient(s) identified above. This message may contain information that is privileged, confidential or otherwise protected from disclosure under applicable law. If the receiver of this information is not the intended recipient, or the employee, or agent responsible for delivering the information to the intended recipient, you are hereby notified that any use, reading, dissemination, distribution, copying or storage of this information is strictly prohibited. If you have received this information in error, please notify the sender by return email and delete the electronic transmission, including all attachments from your system.

#### Electronic records:

- State Open Records Laws: Within FERPA there are “discovery rules” which mean parents can request a copy of all “electronically stored information,” including e-mails, that contain references or information about their student
- Preservation of electronic information: When a district knows that a legal proceeding is pending or likely to occur, the district must make every attempt to preserve any electronic information which may be relevant to the proceeding. This includes e-mails,

text messages, and all other electronically stored information.

- Pressing the delete key does not eliminate the document. A request for a discovery of electronic information which has been deleted may merely lead to a retrieval of the information from the hard drive, a time consuming and expensive procedure than locating saved information.

***Next Steps:***

- *Understand and follow FERPA as it applies to records and communication*
- *Find, review, and comply with your school's e-mail retention policy*
- *Keep relevant special education e-mails in hard copy*
- *Think about other methods of digital communication that may be considered education records; Text messages Social media (Facebook, Twitter, Instagram) Ever-note, Notability*