

Lindale ISD

# **SECTION 504**

STUDENT RECORDS

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## Student Records

### What is Required

The District must provide the parent of a student with a disability the opportunity to examine all records relating to the student as described in the *Section 504 Parent Rights*, unless the District has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as guardianship, divorce, separation, or custody that specifically revoked these rights. See [PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS]. In addition, the District shall comply with the parent's or adult student's rights under the Family Educational Rights and Privacy Act (FERPA), including the parent's right to inspect and review the student's education records maintained by the school, the right to request that a school correct records that are inaccurate or misleading, and rights related to the disclosure of records.

The parent may inspect and review any education records of the student that are collected, maintained, or used by the District, including:

- Attendance records;
- Student questionnaires;
- Copies of correspondence with parents and others concerned with the student;
- Test scores;
- Grades;
- Disciplinary records;
- Counseling records;
- Psychological records;
- Applications for admission;
- Records transferred from other districts in which the student was enrolled;
- Records pertaining to participation in extracurricular activities;
- Health and immunization information;
- Teacher and school counselor evaluations;
- Reports of behavioral patterns;
- Records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the student;
- Records required to be maintained in the Student Support Team folder;
- Records required to be maintained in the Section 504 eligibility folder; and
- Any other records that may contribute to an understanding of the student.

### Exceptions

However, the District does not have to allow a parent to review every single record that it has that relates to a particular student. For example, as such information is not generally directed to an individual student, and therefore does not meet the definition of an educational record, the District does not generally need to provide the parent with access to school calendars or general notices, including announcements of parent-teacher meetings or extra-curricular activities. Likewise, email correspondence that briefly references the student or is clearly not maintained as part of the student's education record may not need to be provided.

The District also is not required to provide information that is not maintained or to create education records in response to a parent's request. Additionally, while communication with the parent as to a student's progress is both necessary and appropriate under other state and federal laws, FERPA does not require the District to provide a parent with updates on the student's progress in school unless such information already exists in the form of an education record. The District shall provide the parent, on request, a list of the types and locations of education records, collected, maintained, or used by the District.

### **Timelines for Review**

Upon request to review the records, the Campus shall make them available to the parent without unnecessary delay and before any Section 504 meeting or any Section 504 hearing, and in no case more than 45 calendar days after the request. The parent also has the right to request copies of any education records or to have a representative of the parent inspect and review the records. Further, the parent may have a physician or other appropriate professional of the parent's choice review the treatment records of the student.

### **Opportunities to Review Records**

Records may be reviewed during regular school hours upon written request to the record custodian. The record custodian or designee shall be present to explain the record and answer questions. The confidential nature of the student's records shall be maintained at all times, and the review of the records shall be restricted to only the Superintendent's, Principal's, or Counselor's office, or other restricted area designated by the record custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school.

If circumstances effectively prevent the parent from being able to inspect and review the student's education records, the District must provide the parent with a copy of the records requested or make other arrangements for the parent to inspect and review the requested records. A long-term school closure due to public health emergencies likely qualifies as a circumstance that effectively prevents a parent from reviewing and inspecting the student's education records on school grounds. Should that situation arise, the District may need to comply with a parent's access request with FERPA's 45-day deadline by sending the parent the requested educational records via email or U.S. mail, or by

allowing the parent the opportunity to inspect records through an online platform. Should the District provide the records through one of these means, it must take significant precautions to securely send the records to the correct location/recipient.

The District must preserve education records if there is an outstanding request by the parent to inspect and review the records. If a student's education records also include information about other students, the parent may only inspect and review or be informed of the specific information about their own student.

### **Fee for Copies of Records**

Unless doing so effectively prevents the parent from being able to inspect and review the student's education records, the District may charge a reasonable fee for a copy of an education record that is made for the parent. However, the District cannot charge a fee to search for or to retrieve the records of a student.

### **Complaint Process**

If a parent believes that the school has violated its procedural safeguards by failing to comply with a request for access to the student's education records, the parent should complete a parent complaint form, which includes the following information:

- The date of the request for access to the student's education records;
- The name of the school official to whom the request was made, including a dated copy of any written request to the school where possible;
- The response of the school official, if any; and
- The specific nature of the information requested.

The parent shall follow the District's parent grievance process relating to accessing student records.

### **Custodian of Records**

The principal is the custodian of all records for currently enrolled students at the assigned school. The Superintendent of Schools or designee is the custodian of records for students who have withdrawn or graduated. The official responsible for ensuring the confidentiality of any personally identifiable information in records of students served under Section 504 shall be the principal or the District records management officer.

### **Record of Access**

The District must maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student. The record

of access should include a listing of authorities, officials, and agencies that may make further disclosures of the student's education records in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements that relate to those programs.

For each request or disclosure, the record of access must include:

- The name of the person or agency accessing the records;
- The purpose for which the party is authorized to use the records; and
- The date access was given.

If the District discloses personally identifiable information from an education record as permitted for redisclosure of information, the record of access must include the names of the additional parties to which the receiving party may disclose the information on behalf of the District. Likewise, it must include the legitimate interests that each of the additional parties has in requesting or obtaining the information. This does not apply when a record of access is maintained by a state or local educational authority or federal official or agency who has access to records for auditing purposes.

When the District discloses personally identifiable information from education records under the health or safety emergency exception, it must record the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure, as well as the parties to whom the District disclosed the information.

If a state or local educational authority or federal official or agency that has access to education records in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements that relate to those programs, makes further disclosures of information from education records, the auditing authority, official, or agency must record the names of the additional parties to which it discloses information on behalf of the District. The auditing authority, official, or agency must also record the parties' legitimate interest in the information if the information was received from the District that has not recorded the further disclosures as part of its record of access entries or from another state or local educational authority or federal official or agency for audit purposes.

The auditing authority, official, or agency may maintain the record of access by the student's class, school, District, or other appropriate grouping, rather than by the student's name. Upon request by the District, the auditing authority, official, or agency that maintains the record of access of further disclosures must provide a copy of the record of access of further disclosures to the District within a reasonable period of time—not to exceed 30 days.

Upon request from a parent to review the student's record of disclosure, the District must obtain a copy of the record of further disclosures to be maintained by the state or local educational authority or federal official or agency and make it available in response to a parent's request to review the student's record of disclosures.

The following parties requesting or obtaining access to the student's education record do not have to be entered on the record of access:

- The parent;
- A school official whom the agency or institution has determined to have a legitimate educational interest;
- A party with written consent from the parent;
- A party seeking directory information (unless the parent has requested that the student's directory information not be released); or
- A party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

The District is required to maintain the record of access with the education records of the student for as long as the records are maintained by the District. A record of access for disclosure of personally identifiable information to a juvenile service provider must be maintained for seven (7) years from the date of disclosure.

Additionally, the following parties may inspect the record of access:

- The parent;
- Campus Administration or Personnel who are responsible for the custody of the records; and
- For the purposes of auditing the recordkeeping procedures of the District, Campus Administration and Personnel, including teachers whom the District has determined have legitimate educational interests, and authorized representatives from the Comptroller General of the United States, the Attorney General of the United States, the United States Security of Education, or state and local educational authorities.

## **Annual Notice**

At least once annually, the District must notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under FERPA. The annual notification must inform parents of their right to:

- Inspect and review the student's education records;
- Seek amendment of the student's education records that the parent believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
- Consent to disclosures of personally identifiable information contained in the student's education records, unless consent is not required to disclose information; and
- File a complaint concerning alleged failures of the District to comply with the requirements of FERPA with the Family Policy Compliance Office.

The notice must also include all of the following:

- The procedures for exercising the parent's opportunity to examine all records relating to the student;
- The procedures for amending education records; and
- The criteria for determining who constitutes a school official and what constitutes a legitimate educational interest, if the District has a policy of disclosing education records without parental consent to school officials, including teachers, within the District whom the District has determined to have legitimate educational interests.

FERPA does not provide any specific requirements for the means in which the District must inform parents of their rights. Thus, the annual notification may be published by various means, including, but not limited to: a student handbook; separate written notice sent to parents; in the calendar of events; on the school's website (although this should not be the only means in which it is published); in the local newspaper; or posted in a central location at the school or various locations throughout the school.

District Administration will determine the manner in which the notice is provided to parents and develop the written notification to be provided. District Administration will review this notification annually to ensure compliance with applicable state and federal guidelines.

### **Amending Student Records**

A parent who believes that information in the student's education records collected, maintained, or used by the District is inaccurate, misleading or violates the privacy or other rights of the student may request that the District amend the information. Within a reasonable period of time after the District receives the parent or adult student's request to amend a record, District Administration must decide whether to amend the record as requested. If the District decides not to amend the record as requested, District Administration must inform the parent of the decision and advise the parent of the right to a records hearing.



Upon request, the District must give the parent an opportunity for a hearing to challenge the content of the student's education record on the grounds that the information contained in the education record is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

The hearing on the amendment of records must be held within a reasonable time after the District receives the request for the hearing from the parent. The District must give the parent notice of the date, time, and place of the hearing within a reasonable amount of time prior to the hearing.

The hearing may be conducted by any individual, including a District official, who does not have a direct interest in the outcome of the hearing. During the hearing, the parent must have a full and fair opportunity to present evidence related to the issue(s). The parent may, at their own expense, be assisted or represented by one or more individuals of the parent's own choice, including an attorney.

Following the hearing, the District must make its decision within a reasonable period of time. The decision must be in writing and based solely on the evidence presented at the hearing. The decision must also include a summary of the evidence and the reasons for the decision.

If, following the hearing, the District decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the District must amend the record accordingly and inform the parent of the amendment in writing.

On the other hand, if, following the hearing, the District decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must inform the parent of the right to place a statement in the record commenting on the contested information in the record or setting forth the reasons for disagreeing with the District's decision—or both. The District must maintain any statement placed in the student's records as part of the student's records for as long as the record is maintained by the District. Further, the statement must be disclosed whenever the District discloses the portion of the record to which the statement relates.

The law limits a parent's right to seek to amend a record by allowing them to only challenge information that is inaccurate, misleading, or otherwise violates a student's privacy. Examples of information that could be amendable under the law include, but are not limited to, the following:

- Substantive decisions that are inaccurately recorded, such as grades being wrongly entered into the student information system—but only if the parent can provide compelling evidence to show that the decision is inaccurate;
- Attendance information;
- Noncustodial parent contact information, such as when a court order explicitly

states that a parent should no longer have access to the student's records;

- Unnecessary or derogatory opinions, such as those using a racial or ethnic slur, that are not substantive decisions; and
- Items that a student shared with a school official in confidence that may violate their privacy if shared with others, such as information relating to a student's sexuality.

The laws related to record amendment were only intended to require schools to conform to fair recordkeeping practices and not to override accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. Therefore, the right to amend a student's record is not unlimited. The law does not require the District to provide a parent the right to seek to change substantive decisions made by school officials, such as grades, disciplinary decisions, other evaluations of the student, or disability placement or services.

If the amendment procedures are not applicable to the parent's request for amendment, the District does not need to hold a hearing on the matter. Note that, although not required to do so, the District may still choose to fulfill a parent's request to amend information that is not required to be amended under the law.

The District is required to provide annual notice explaining how a parent can seek an amendment to the student's education record. The notice must specify the individual or department whom the parent should contact regarding the request, as well as the information that should be included in the request.

If the parent revokes consent in writing for the student's receipt of Section 504 services after the student is initially provided with Section 504 services, the District does not need to amend the student's education records to remove any references to the student's receipt of Section 504 services.

If a parent believes that the District has failed to provide the opportunity to seek amendment of inaccurate information in the student's education records or failed to offer an opportunity for a hearing on the matter, the parent may complete a parent complaint form. The complaint should include the following information: the date of the request for amendment of the student's education records; the name of the school official to whom the request was made, including a dated copy of any written request to the school, if possible; the response of the school official, if any; the specific nature of the information for which amendment was requested; and the evidence provided to the school to support the assertion that the information is inaccurate.

Should the parent file a complaint with the U.S. Department of Education, the District will have to demonstrate that it followed fair processes in compliance with FERPA. Therefore,

to demonstrate compliance, it is critical that the District maintain a record of every communication and each step that was taken in making the decision.

### **Retention of Records**

District Administration is solely responsible for retaining and destroying District records in accordance with state and federal requirements. Therefore, District and Campus Personnel must maintain the records in their care and work to preserve records in accordance with District policies and procedures to ensure that the records are appropriately retained and are not inadvertently destroyed.

The director and librarian of the Texas State Library and Archives Commission prepares and distributes the records retention schedules for the District. The records retention schedule will list the various types of District records; state the retention period prescribed by a federal or state law, rule of court, or regulation for records for which a period is prescribed; and prescribe retention periods for all other records. Prescribed retention periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the Texas State Library and Archives Commission. All District Personnel must maintain District records in accordance with the records retention schedules issued by the Texas State Library and Archives Commission and District policy.

Local Schedule SD sets mandatory minimum retention periods for records commonly found in the District. It is commonly used for districts of all types, regional educational service centers, educational cooperatives for special education and other purposes, rehabilitation districts, county industrial training school districts, county vocational districts, and active offices of county superintendents of schools and county departments of education.

The District must comply with the applicable parts and sections of Local Schedule SD when determining retention rate of records, including:

- Academic records;
- Family Educational Rights and Privacy Act ("FERPA") records;
- Records of special populations and services, including special education program records, bilingual and special language program records, Gifted/Talented program records, Section 504 program records, dyslexia program records, Migrant Student Transfer System records, or other special population records;
- Attendance records;
- Health records;
- Instruction and grade reporting records;
- Discipline and counseling records;
- Adult and vocational education records;

- Drivers' education records;
- Accreditation records;
- Food service records;
- Textbook records;
- Transportation records;
- School safety records;
- Financial records;
- Personnel and staffing records, including individual employee records;
- Miscellaneous reports and surveys;
- Miscellaneous records; and
- Library records.

Local Schedule SD requires the District to retain the records of each student referred to or receiving services under Section 504 for at least five (5) years following the cessation of Section 504 services. Specifically, this includes records referral, preplacement, and reevaluation reports; parental notices; group and impartial hearing deliberations; and other records of services required under Section 504 regulations.

The District will also maintain many records includable among the general administrative, financial, and personnel record series in Local Schedule GR, especially those relating to grant allocations, funding, and reporting. As a grantee, the District will keep records that fully show:

- The amount of funds under the grant;
- How the District uses the funds;
- The total cost of the project;
- The share of that cost provided from other sources;
- Other records to facilitate an effective audit;
- Records to show its compliance with program requirements; and
- Records of significant project experiences and results.

### **Destruction of Records**

The District may not destroy any District record if:

- The subject matter of the record is known by the custodian of the record to be in litigation,
- There is a pending request for disclosure under the Public Information Act ("PIA");
- There is an outstanding request to inspect and review the record under FERPA;
- The record is subject to a pending audit by a federal or state grantor or subgrantor

agency or, if questions remain unresolved from a conducted audit, until audit finds are resolved; or

- There is a pending claim, administrative review, or other action involving the record.

The District may destroy a District record for the following reasons:

- The record is listed on a valid records control schedule and its retention period has expired, or it has been microfilmed or stored electronically;
- The record appears on a list of obsolete records approved by the director and librarian;
- The record is not listed on a records retention schedule issued by the Texas State Library and Archives Commission, and the District provides notice to the Texas State Library and Archives Commission at least ten (10) days before destroying the record;
- An expunction order issued by a court pursuant to state law directs the destruction of the record; or
- The record is defined or listed as exempt from scheduling or filing requirements by Texas State Library and Archives Commission rules.

Subject to any policies developed in the District regarding destruction, the custodian or creator of the document may exercise discretion in disposing of material that is not included in the definition of a local government record and that is not described as:

- Extra identical copies of documents created for convenience of reference or research by officers or employees of the District;
- Notes, journals, diaries, and similar documents created by an officer or employee of the District for the officer's or employee's personal convenience; and
- Blank forms.

If public access is restricted to District records, including extra identical copies, under the PIA or other state law, the District should only destroy such records by burning, pulping, or shredding. If public access is not restricted to District records under the PIA or other state law, the District may destroy the records by burning, pulping, shredding, burial in a landfill, or sale or donation for recycling purposes.

If the District sells or donates records for recycling purposes, the District must establish procedures for ensuring that the records are rendered unrecognizable as District records by the recycler. Through its records management program, the District will establish policies and procedures for the systematic disposal of copies of records. The director and

librarian of the Texas State Library and Archives Commission may approve other methods of destruction that render the records unrecognizable as District records.

If the minimum retention period of a record has not yet expired and is less than permanent, the District may dispose of the record if it has been so badly damaged by fire, water, or insect or rodent infestation as to render it unreadable. The District may also dispose of a record whose minimum retention period of a record has not yet expired and is less than permanent if portions of the information in the record have been so thoroughly destroyed that remaining portions are unintelligible.

However, if the retention period for the record is permanent, the District must obtain authority to dispose the damaged record from the director and librarian of the Texas State Library and Archives Commission. The Request for Authority to Destroy Unscheduled Records (Form SLR 501) should be used to seek such authority.

A custodian of District records, records management officer, or other District officer or employee may not be held personally liable for the destruction of a District record if the destruction is in compliance with the Local Government Code and rules adopted under it. A District officer or employee commits a Class A misdemeanor if the officer or employee knowingly or intentionally violates the Local Government Code or rules adopted under it by destroying or alienating a District record in violation of the Local Government Code or intentionally failing to deliver records to a successor in office.

**Evidence of Implementation**

- *Section 504 Parent Rights*
- Consent to Disclose Student Records
- Copies of Student Records
- Alternative Arrangements to Review Student Records
- Record of Access Maintained by District
- Record of Access Maintained by Other Party
- Access to Inspect Record of Access
- Annual Notification Provided in Parent's Native Language
- Yearly Review of Annual Notification
- Notice of Right to Amend
- Request to Amend
- Amendment of Record
- Parent Statement in Record
- Parent Complaint Form

## **Resources**

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Notice of Procedural Safeguards - Texas Education Agency \(Last Updated Sept. 2022\)](#)

[A Parent Guide to FERPA - U.S. Department of Education](#)

[FERPA for School Officials Guidance and Notices - U.S. Department of Education](#)

[Model Notification of Rights under FERPA for Elementary and Secondary Schools - U.S. Department of Education](#)

[Model Notification of Rights under FERPA for Postsecondary Institutions - U.S. Department of Education](#)

[Local Schedule SD: Retention Schedule for Records of Public School Districts - Texas State Library and Archives Commission](#)

[Updates to Retention Schedules for Texas State Agencies and Public Universities- Texas State Library and Archives Commission](#)

[Annual Notification and Rights of Parents - National Center for Education Statistics](#)

[Transparency Best Practices for Schools and Districts \(Sept. 2014\) - U.S. Department of Education](#)

[FCPO Letter to Parent re: Amendment of Special Education Records \(Aug. 13, 2004\) - U.S. Department of Education](#)

[Questions and Answers about Education Records - U.S. Department of Education](#)

[FERPA: Guidance for School Officials on Student Health Records - U.S. Department of Education](#)

[Know Your Rights: FERPA Protections for Student Health Records - U.S. Department of Education](#)



## **CITATIONS**

Board Policy FB and Board Policy FL; 29 USC 794; 2 CFR 200.333(a)–(f); 34 CFR 75.730–75.732, 99.3, 99.4, 99.7–99.8, 99.10–99.12, 99.20–99.22, 99.30–99.34, 99.63–99.64; Tex. Educ. Code 26.004(a)–(b), 26.011–26.012; Tex. Gov. Code 201.003, 201.006(a), 202.001–202.004, 202.006–202.008, 203.041, 203.044, 204.007, 205.008; Tex. Fam. Code 58.0051(c); Local Schedule SD