

Many shades of gray: School records issues

by Richard J. Dickinson
general counsel

Ohio law requires all public entities, including school districts, to maintain the records that document the organization, policies, decisions and transactions of the agency.

Each public entity has two major responsibilities with regard to public access to these records. Ohio Revised Code Section (RC) 149.43 provides that "... all public records shall be *promptly* prepared and made available for inspection to any person at all reasonable times during regular business hours" (emphasis added). The second responsibility of public offices is to "... make copies available at cost, within a *reasonable* period of time" (emphasis added).

These statutory responsibilities seem easy to understand, but have proven to raise many difficult questions of implementation. The following are some of the most common questions school officials ask about public records. They are excerpted from the OSBA booklet *Ohio School Records Guide*. The book is available from OSBA.

Personnel records

1. Are an employee's personnel files exempt from the public records disclosure requirement?

No. Virtually all personnel files are public records, with the exception of those portions of such files that are specifically exempt, such as medical records, psychological records and Social Security numbers.

2. Is something as personal as an employment performance evaluation a public record?

Yes. Employment evaluations document the official functions of district employees, and as such must be open for inspection.

3. May an employee have poor evaluations removed from the personnel file?

No. Records may be disposed of only in accordance with actions of the district's records disposal commission. An employee may request the employer/custodian to verify the accuracy of information on his or her evaluation. Since much of an evaluation is subjective, only a small portion of an evaluation would be subject to such a request.

4. Should the district keep letters complaining about an employee in that employee's file?

It depends. If the correspondence is the basis of employee discipline, then retention of the letter is appropriate. Subjective derogatory information received by the district can probably be disposed of without inclusion in the employee's personnel file, unless such information is part of the evaluation process, in which case the information should be retained.

5. If a document contains some information that is not public, does that prevent disclosure of the entire document?

No. The public portions of the document should be made available for inspection and copying, but the portions that are not public should be redacted (removed or blacked out). An illustrative example would be a payroll record with Social Security numbers. The Social Security number should be removed as required by federal law, but the remainder of the record is open to public inspection.

6. Can an individual school employee maintain records for his or her personal use that do not become public?

Yes. If such files are used by that individual only and are not shared with any other person other than a substitute, they are not records of the school district, but of the individual, and are not subject to the public record requirements.

7. Are our school district's employees' salaries public?

Yes, except that Social Security numbers may not be released without the individual's consent.

8. Our board members each evaluate the superintendent. A composite evaluation is then prepared and presented to the superintendent. Are the board members' individual evaluations of the superintendent public records?

It depends. If the board members retain possession of their individual evaluations at all times, they probably never become public records and are therefore not subject to inspection or copying. If the individual evaluations are maintained by the school district, they become public records.

9. Can our school district refuse to release information about job applicants based on confidentiality?

No. Job applications are public records. (see *Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311)



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10. Are administrator job applications in the custody of board-hired search consultants public records?

Yes. Even if off premises, these are public records. An unresolved issue is what process is required to make such records not currently in the possession of the school district available to the public.

Student records

11. What constitutes directory information?

RC 3319.321 provides Ohio's definition of directory information as including the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, date of graduation and awards received. Although the federal definition is broader, and includes such items as a student's electronic mail address and photograph, it is recommended that the more restrictive Ohio law be observed as a limitation of the federal law.

12. What happens if our school district fails to give annual notice to parents of the items it considers to be directory information?

Then the school district has no directory information and no information regarding students can be released without the consent of the student's parent or the adult student.

13. Can our district release directory information to companies who wish to sell products to students?

No. Ohio law prohibits the release of directory information if it is for a profit-making purpose.

14. Is there a problem in releasing a record to student A if that record also contains information regarding student B?

Yes. Information about all students other than the one requesting the information must be redacted before the record can be released.

15. Are there some persons to whom student records can be released without prior consent?


Yes. Student records may be released without consent to the following:


- school officials with legitimate educational interests,
- other schools where a student seeks or intends to enroll,
- the parents of a student over 18 if the student is still a dependent,
- certain government officials under specific circumstances,
- sponsors of financial aid to a student,
- organizations doing certain studies for the school,
- individuals who have obtained court orders or subpoenas,
- persons who have a need to know in cases of health and safety emergencies,
- accrediting organizations that need the information in order to carry out their accrediting functions.


Note: There are several additional entities to which student records may be released under the federal regulations.

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16. Do minor students have a right of access to their own records?

Yes.

17. Do noncustodial parents have any rights with regard to records of children?

Yes. Noncustodial parents have the same rights of access as custodial parents, unless there is a specific court order to the contrary.

18. Can a custodial parent block access of the noncustodial parent to the records of their child?

No. Only a court order may limit or prevent access by the noncustodial parent to the student's records.

19. Must a school district provide notices of school activities to the noncustodial parent of a child?

No, but you may provide this information as a courtesy.

20. Must a school district keep a record of those requesting or needing access to a student's records?

Yes. Unless the request is by a school district official with a legitimate educational interest, the request is by the parent or an eligible student, consent has been obtained or the information is directory information.

21. Can parents request removal of items from their child's file?

No, unless they believe the information is inaccurate or misleading. Otherwise, all records in the file can be disposed of only in accordance with the schedule of records retention adopted by the records commission.

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Miscellaneous records

22. If the press requests a copy of the superintendent's letter to board members, can the request be denied based on confidentiality?

No. The letter is a public record that the press is entitled to view and receive a copy of.

23. Is a letter from the board's attorney regarding ongoing litigation involving the board a public record?

No. This is confidential under the doctrine of attorney-client privilege.

Since the board as a whole is the "client," the board can vote to make attorney correspondence public, as long as no other basis for confidentiality applies. An individual board member cannot waive the board's privilege.

24. Is the treasurer's draft of the board minutes a public record?

Yes. The draft minutes are a record kept by the school district and do not meet any of the exceptions.

25. Are electronic mail messages public records?

Yes. If they document the "essential transactions" of the school district. In other words, if the message would be a public record if printed on paper, it will also be a public record as e-mail.

It should be noted that significant changes to the public records law have been introduced in the Ohio General Assembly in House Bill 9, whose main sponsor is Rep. **Scott Oelslager** (R-North Canton). The bill was drafted primarily at the request of, and with input from, the Ohio Newspaper Association. OSBA believes some of its proposed changes in the law would be harmful to school districts and so continues with lobbying efforts to eliminate those objectionable provisions. □

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