

OADDP ANNUAL CONFERENCE 2018
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LEGAL UPDATE
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I. RIGHTS TO EMPLOYEE WORK PRODUCT

- A. Behavior Plans, teaching materials, teacher-made assessments, music, adaptive devices.
- B. Who holds the rights to these types of materials – the board or the employees.
- C. The law is clear, when an employee creates something in the scope of his or her employment, that work is owned by the employer.
- D. The employee does not retain any copyright or intellectual property rights in the materials.

*** The development of materials to support instruction, including behavior plans, teaching materials, teacher-made assessments, and other similar tools and materials is not only within the scope of teachers' employment but expected of all the board's employees.

II. TECHNOLOGY AND DOCUMENTS

- A. Works Made for Hire (See, Attached)
- B. Copyright Controversy (See, Attached)
- C. Storage on Computer

1. Public Records
2. Education Records

III. RECORDS – PUBLIC OR PRIVATE

- A. ORC §149.43 – Ohio Public Records Act
Defines Public Records broadly and gives general public access
- B. ORC §1347.01 – Ohio Privacy Act
Regulates the collection, maintenance, and use of records containing personal information concerning any person.
- C. ORC §3319.321 - Student Records Privacy Act.
Restricts access to student records.
- D. ODE – PUBLIC RECORD POLICY (Attached)

IV. DEFINITION OF PUBLIC RECORDS

- A. Any records kept at a school or board facility, any document, device, or item, regardless of physical form or characteristic, including electronic records which serves to document the organization, functions, policies, decisions, procedures, operations or other activities of the district.
- B. Boards are prohibited from removing or transferring, mutilating or destroying records which document the district's organization, functions, policies, decisions, procedures, operations, or other activities.
- C. Privacy Act directs that a board collect, maintain, and use only personal information that is necessary and relevant to functions the district is required or authorized to perform.

D. CONSUMER RECORDS –

Are generally not public records because both state and federal law prohibit disclosure.

V. FEDERAL LAW

A. Family Education Rights and Privacy Act (FERPA) 20.U.S.C 1232 (g)

B. Educational Records – Records, files, documents, and other materials that:

1. Contain information directly related to a student; and
2. are maintained by an educational agency or institution or by a person acting for such agency or institution;
3. Any information recorded in any way including handwriting, print, computer media, video or audiotape, film, microfilm, and microfiche.

C. “Educational Record” does not include:

1. Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

D. Prohibits the release of personally identifiable information other than directory information without the written consent of the parents or the adult student.

1. “Directory Information” means:

- a. The student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, height and weight of

members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency/institution attended by the student. 20.U.S.C. §1232g (a)(5)(A).

E. Personally identifiable information can be provided to the following persons without parental consent:

1. Other program officials including teachers, who have been determined by such agency or institution to have legitimate educational interests – need to know.

F. Release of Records

1. Written consent from parents or student if 18 or older specifying records to be released, reasons for release, and to whom.

VI. OHIO STUDENT RECORDS O.R.C. §3319.321

- A. Limits the provisions of Ohio's Public Records statute.
- B. No person may release or permit access to personally identifiable information, other than directory information without written consent of the parent, guardian or student 18 years or older.
- C. Directory Information same as FERPA and constitutes public records. Photographs are not public records.
- D. Parents or adult students may inform the Board that directory information should not be released without prior written consent. O.R.C. §3319.321 (B)(2). – no longer public records.

- E. Student information may be disclosed without consent for educational need to know.

VII. FERPA AND INTERNET USE/EMAIL

- A. Many computers that manage Internet access automatically store information about users' online activities. Such information may be included in the definition of educational data and could thus constitute personally identifiable information about the student user. As such, parents could request access to such information. It is therefore important for the district to understand what data their computers are automatically gathering about students and their use of the Internet, how such information is being stored, and whether backups of the information are being made.
- B. Student information (i.e. names, photographs) placed on the district's website is also subject to FERPA – such information may only be disclosed with prior student and parent approval. Specific vs. general authorization/release.

Possible alternatives: require students to use pseudonyms while using Internet – e-mail and account names; avoid using pictures of students – use pictures of favorite toy or pet or a picture of them in costume; focus on curriculum and school work produced by student (display anonymously).

- C. Website operators can gather personal information about students' users through cookies. Cookies are files planted on a hard drive that are retrieved every time a site is accessed. Cookies can track websites a user has visited; what pages the user looked at; how long the user spent on each page; how often certain pages are accessed; what links the user followed to go to other sites; etc. Such information allows a website operator to create a database on a specific user and then sell such information to advertisers and other interested parties, with or without the user's permission. Software can limit the setting of cookies and should be employed to prevent the unauthorized gathering of student personally identifiable information. In addition, districts should instruct students not to access websites where they are required to input their name, address, e-mail address, etc. in order to gain access.
- D. You need to store e-mail by staff that contains student personally identifiable information in a manner that allows it to be readily available to a parent who requests it.

- E. Use of email by school staff to transmit student information, such as reports or evaluations, is not by itself a FERPA violation but it has the potential to lower the security of the documents being transmitted. Generally, most district email systems are secure enough to prevent unauthorized access, however, districts should establish effective email-use policies that incorporate FERPA and include confidential taglines and other safeguards in the event a message is sent to the wrong place.

VIII. WHAT IS NOT A PUBLIC RECORD

Social Security Number

Medical Information

Home address, phone number, faculty members