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Reminding Staff about Public Records Laws

The start of a new school year is a good time for a refresher on legal requirements for public schools. Staff members need to know that there are specific rules and requirements that apply to public agencies and public resources — like public records law.

The employee handbook and new staff orientation usually inform staff that email is considered a public record and is therefore not private. A periodic reminder about this may be helpful to avoid potential problems or embarrassment.

But email is only one public record. Most public school district documents are subject to public records laws. All 50 states have public records laws to ensure transparency and access to government documents. The laws are set by each state. This overview includes general guidelines. Check your state's public records requirements for details on your state laws.

What is a public record?

Almost everything your district produces is a public record. Public records are not just meeting notes and reports. Public documents are emails, written documents, audio and video recordings, and other computer files such as Excel, PowerPoint, and information in databases. Draft documents are also public.

However, state and federal laws have provided exemptions to protect confidential information or personal privacy. Most personnel records are protected. Health records for students and staff and all student academic records, including discipline records, are protected. Other exemptions may include information related to contracting and real estate transactions.

The tricky part is sorting the public information from the protected information if those types of records are mixed, as in the case of staff emails. If someone requests all of the emails from a certain teacher for a year, those emails would need to be reviewed to ensure they do not contain information related to a student's academic performance, discipline records and health information. However, all of the emails that do not contain legally exempt records must be released to the media/public upon request.

Student information and FERPA

Student information is specifically protected by the Family Educational Rights and Privacy Act (FERPA). Except in very limited cases, written parental permission to release information from a student's educational record is required for personally identifiable information. The entire record is not protected; the district must redact student information to maintain student privacy while meeting the requirements of the records request. The protected information includes student ID numbers, test results, special education status, free- and reduced-lunch status and grades.

For subscription information, contact WSSDA at (800) 562-8927 or (360) 493-9231.

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Under FERPA, schools and districts may disclose what is referred to as “directory” information on their students. Directory information includes things such as a student’s name, address, telephone number, honors and awards, etc. However, you must allow parents the opportunity to opt-out of having this information released.

For more on federal privacy rules, go to:

www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html.

Review or revise your public records policy

Creating and sharing your public records policy will help you streamline your response when faced with a request for public information. Follow the laws and respond in a timely manner. The goal is to protect student and staff privacy while operating transparently to build trust.

Does your district have a policy?

Creating a public records policy is the first step. State school board associations should have sample policies to help you get started or revise existing policies.

Policies should include:

How to make a public records request. Whether you use an electronic system or a hard-copy form, the request should be in writing.

Do you charge fees? State law specifies what allowable fees are. They may include charges for making copies or for staff time. Some requests are for vast amounts or records or require arduous, time-consuming redaction to maintain confidentiality. Reasonable fees to cover the workload may be allowed. And fees for some records that benefit the public good, such as for research or news stories, may fall under allowable fee waiver provisions. This option should be mentioned in policy.

To help minimize excessive records processing, be sure to clarify exactly what the requestor is seeking. Narrowing down what they are looking for may save a significant amount of time fulfilling the request.

What is your response time? Your policy should include an estimate for response time. Immediate fulfillment is not required, but specifying a reasonable, timely response is. If there is a delay, be sure to share that with the requestor. If the response is unreasonably slow, the requestor may seek to file a formal legal complaint. The primary business of schools is not to handle public records requests; it is to educate children. But it is part of school district business and should be a priority.

Who handles public records requests? District legal counsel can guide districts on the requirements they need to fulfill, and having a legal review of the request is a good idea, but the response will need to come from district staff. It is more efficient to have a designated staff member who coordinates and directs or fulfills public records requests. It will ensure consistency and minimize mistakes to have this person become your records expert. They can also create a record of the request and any follow-up questions.

Post your policy

All district policies should be easily searchable and accessible. Be sure to share this policy through your regular channels and in your indexed policy database on your website.

Remind staff about the policy in your start-of-school staff information. Public employees are serving the public. Transparent operations that follow clear policy will make their jobs easier and build trust with the public.

Contributed by Jay Remy, communications consultant