Pupil Records Maintenance and Disclosure FAQ

1. What are pupil records?

Wisconsin statutes define pupil records as “all records relating to individual pupils maintained by a school.” That definition does not include teachers’ or other staff members’ personal notes, law enforcement records or records necessary for, and available only to persons involved in, the psychological treatment of a pupil. A record may be in any format, such as a paper document, email, electronic record (for example IC) or video/audio recording.

If District staff have questions regarding whether a particular document or record is a pupil record, please contact Legal Services.

2. In what circumstances may the District disclose pupil records?

The District may disclose pupil records if any of the following conditions are met:

1) the District has received written consent from a parent, guardian or adult pupil to disclose the records
2) the District has received a court order for the records
3) a statute requires/allows the disclosure
4) a health or safety emergency exists that requires disclosure of pupil records

If staff receive a court order for records, such as a subpoena, staff should contact Legal Services. The Family Educational Rights and Privacy Act (FERPA) may require that the parent/guardian or adult pupil be notified before the disclosure takes place.

Any time you release pupil records to a third party (not directly to the parent or adult student) the following statement must be included: ALL OF THESE RECORDS ARE CONFIDENTIAL AND MAY NOT BE RELEASED TO ANY OTHER PERSON OR AGENCY WITHOUT THE WRITTEN CONSENT OF THE PARENT OR ELIGIBLE STUDENT.

1 It is recommended that staff who regularly handle pupil record issues review DPI’s more comprehensive FAQ, Student Records and Confidentiality, and Board Policies 4150, 4151, 4156, 4157, 4158, 4160, and 4161.
2 In order for notes to be considered “personal notes,” they must be kept in a manner that only the author has access to them. Notes that are shared with teacher teams, administrators, parents or anyone else, will likely be considered pupil records.
3 Written parental consent must include: 1) the student’s name, 2) the student’s birth date, 3) a description of the specific records or type of records to be released, 4) the name and address of the person(s) or organization to whom the records are to be released, 5) the date of the consent, 6) the length of the consent and 7) the signature of the parent or adult/eligible student.
3. **Can I release records to another school district in which a student is enrolling without parent consent?**

As noted above, one way that the District can disclose records without parent consent is by statute. Both Wisconsin statutes and FERPA allow for the transfer of pupil records, without parent consent, to another school district in which the pupil has enrolled or intends to enroll. Wisconsin statutes require such a transfer of records if the District has received written notice from the pupil that he/she intends to enroll in the other district or written notice from the other district that the pupil has enrolled.

4. **When sending records to another school district in which a student is enrolling must we send behavioral records?**

The Wisconsin statute that mandates the transfer of records upon written notification of intent to enroll in another district or actual enrollment in another district states that “all pupil records relating to a specific pupil” shall be transferred to the new district “within 5 working days.” Because the definition of pupil records encompasses behavioral records, progress records and pupil physical health records, the District should transfer all of a student’s records to the receiving District.

Parents may contact school staff and request that certain pupil records be withheld or not sent to the receiving District. Complying with such a request likely violates the requirement that “all pupil records” be transferred. Please feel free to consult with Legal Services in dealing with these requests.

5. **When sending pupil records to another school district, should I send copies or originals?**

Board Policy 4160 addresses the issue of record retention. While Policy 4160 allows for the transfer of original pupil records, we do not believe doing so is best practice. Often a student leaves the District only to return a few months later. If original records were sent to the new school, we may be left with only limited information about the student upon his/her return. Best practice is to send copies. Retained originals shall be maintained pursuant to the District’s record retention timeline.

6. **What must a “release/disclosure of records” form from an outside agency contain?**

The District has its own form that, if completed correctly, allows the District to disclose pupil records. However, it is fairly common for the District to receive “Release” or “Consent” forms from outside entities (ex. law offices, advocacy agencies, doctors’ offices) seeking disclosure of pupil records. If the District receives such a form, it must contain the following information:

- the name of the student whose records are being disclosed,
- specifically identify the records that may be disclosed (ex. IEPs, report cards, transcripts, behavioral records, etc.).
- the purpose of the disclosure,
- the party/entity to whom the disclosure will be made,
- the parent/guardian/adult student’s signature,
- the date the form was signed by the parent/guardian/adult student, and
- the time period during which the consent is effective.

If the release or consent form does not contain the above information, the District cannot disclose pupil records. If the release or consent is incomplete, staff should inform the parent/guardian that the release or consent form is not sufficient and the District cannot disclose the records. Staff should also inform the parent/guardian/adult student that they must either add the missing information to the form or complete the District’s form in order for the District to disclose the records.

If staff are having difficulty determining whether a particular consent form contains the necessary information, please do not hesitate to consult with Legal Services and request a review of the form.

7. **When disclosing records must the District keep a record of that disclosure?**

The District must keep a record of each request for access to pupil records and each disclosure of pupil records. The record of each request or disclosure must include the name of the party requesting the records, the date the disclosure was made and the purpose for which the party is authorized to use the record. The record of each request or disclosure must be kept with the student’s pupil records (i.e. either in the cumulative file or behavioral file). Unless the record sought or disclosed is a patient health care record, the District does not need to keep a record of disclosures of pupil records that are made to parents/guardians/adult students or to District employees.

8. **What rights do students have in regard to their records once they turn 18?**

Once a student turns 18, the rights previously held by the parent/guardian are transferred to the adult student. However, the parents of an adult student who continues to be financially dependent upon the parents may continue to have access to their child’s pupil records, unless the adult student notifies the school in writing that his/her pupil records may not be shared with the parent.

9. **In cases of separation or divorce, do both parents still have the right to access pupil records?**

Generally the answer is yes. Both parents retain the right to full access to pupil records unless a court has explicitly withheld that right. A parent who has been denied physical placement with a child does not have parental rights regarding student records. If there is any question regarding whether a parent has the right to access pupil records, request a copy of the signed court order or
other legal document that allegedly limits one parent's rights. If you are unsure whether a parent has the right to access pupil records, contact Legal Services.

If both parents retain the right to access pupil records, they will both, generally, retain the right to consent to the release of such records to a third-party (i.e. a new significant other).

Generally, disputes regarding access to records and/or the intent/meaning of a court order or other legal document should be resolved by the Family Court.

10. **Can I release records to a foster parent?**

No. Records should not be shared with foster parents or human/social services agencies unless the biological parent or legal guardian has given written permission or there is a court order.

11. **Can I release records to law enforcement?**

Generally, no. However, the District does have a form that if completed by either a law enforcement officer or district attorney may allow a school to disclose personally identifiable information to either one of those people. That form is attached. As you will note, the form requires that the law enforcement officer or district attorney certify that the requested records 1) concern the juvenile justice system and the system’s ability to serve the student, 2) relate to an ongoing investigation or pending delinquency petition, and 3) will not be disclosed to any other person except as otherwise authorized by law without the prior written consent of the parent of the student.

If a law enforcement officer or district attorney requests records but they are unwilling to certify the above by completing the form, schools should not provide records to that individual. If you are unsure whether a law enforcement officer or district attorney is entitled to pupil records, contact Legal Services.

12. **What if I am asked to testify in court regarding a student?**

Staff are discouraged from appearing in court (criminal or civil) on a matter related to their employment unless they are served with a subpoena. Even with a subpoena, providing testimony regarding a student or students may violate state and federal pupil records laws. Consequently, any employee who receives a subpoena should contact Legal Services immediately.

If you have any questions related to pupil records, please feel free to contact the Legal Services office at 663-1868.

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4 You should only rely on complete copies of documents. If a parent is only willing to provide part of or excerpts from a court order or other legal document, contact Legal Services for assistance.