

**Parent Rights to Access a Student’s Education Records**

Parents often are understandably confused about their rights when it comes to obtaining access to their child’s school records. Access rights vary depending upon the types of documents and the manner in which the records are sought. Here is a summary addressing the three of the most common methods to obtain your child’s records.

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**Family Educational Rights and Privacy Act (“FERPA”)**

FERPA is a federal law that protects student rights regarding “education records.” This includes protecting privacy, providing access to the student or the student’s parents, and providing a means to challenge the accuracy of records.

<b>Types of Records</b>	FERPA generally defines an Education Record to be “records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.” <b>•Emails:</b> FERPA does not automatically include emails as part of the student’s Education Record.
<b>How to Request</b>	Submit a written request to the school.
<b>Time to Respond</b>	The school must comply “within a reasonable period of time, but not more than 45 days after receipt of a request.”
<b>Means of Access</b>	The school must provide a parent with an opportunity to inspect and review their child’s education records.  The school is not required to provide copies (paper or electronic) unless circumstances effectively prevent the parent from exercising the right to inspect and review the education records.
<b>Access Rights</b>	Parent (child under age eighteen) Student (age eighteen or older)
<b>Ability to Charge</b>	The school may charge a reasonable fee to provide copies (except for the current IEP) unless doing so “effectively prevents a parent or eligible student from exercising the right to inspect and review the student’s education records”.  The school may not charge a fee to search for or to retrieve the records.
<b>Enforcement Rights</b>	File a Complaint with U.S. Department of Education. <a href="https://studentprivacy.ed.gov/file-a-complaint">https://studentprivacy.ed.gov/file-a-complaint</a>

**Individuals with Disabilities Education Act (“IDEA”)**

The IDEA is a federal law that ensures the right of each child with a disability to receive “a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” Virginia and federal regulations direct how the IDEA’s rights and protections are implemented.

<b>Types of Records</b>	<p>Virginia’s IDEA regulations define as Education Record as:</p> <p>“those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term also has the same meaning as ‘scholastic record.’ In addition to written records, this also includes electronic exchanges between school personnel and parent regarding matters associated with the child's educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of “education record” in the regulations implementing the Family Education Rights and Privacy Act.”</p> <p><b>Emails:</b> Virginia’s IDEA deems any email “regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery” to be an Education Record.</p>
<b>How to Request</b>	Submit a written request to the school.
<b>Time to Respond</b>	The school must comply “without unnecessary delay and before any meeting regarding an IEP.”
<b>Means of Access</b>	<p>The school must allow a parent to “Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child.”</p> <p>The school is only required to provide copies if the “failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records</p>
<b>Access Rights</b>	Parent (child under age eighteen) Student (age eighteen or older) A representative of the parent or student
<b>Ability to Charge</b>	<p>The school may charge a reasonable fee to provide copies (except for the current IEP) unless doing so would “effectively prevent the parent from exercising their right to inspect and review those records.”</p> <p>The school may not charge a fee to search for or to retrieve information.</p>
<b>Enforcement Rights</b>	File a state complaint or request a due process hearing with the Virginia Department of Education.

**Virginia Freedom of Information Act (“VFOIA”)**

VFOIA is a Virginia law that ensures open access of public records to Virginia citizens.

<b>Types of Records</b>	<p>Scholastic Records as “those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.” Thus, the term “scholastic records” encompasses Education Records that the school division is required to maintain pursuant to the IDEA and FERPA.</p> <p>VFOIA applies to all public records, not just Scholastic Records.</p>
<b>How to Request</b>	<p>Send a written request to the school’s FOIA Officer that identifies the requested records with reasonable specificity.</p> <p>The request does not need to specifically VFOIA to be deemed a valid request made pursuant to VFOIA.</p>
<b>Time to Respond</b>	<p>The school division “shall promptly, but in all cases within five working days of receiving a request” must:</p> <ul style="list-style-type: none"> <li>a) Provide the requested records;</li> <li>b) Identify that the requested records are being withheld either entirely or in part;</li> <li>c) State that the requested records “could not be found or do not exist”; or</li> <li>d) State that “it is not practically possible to provide the requested records or to determine whether they are available within the five-workday period.”</li> </ul> <p>If the school timely identifies option (d), it must “specify the conditions that make a response impossible. The school then will have a “seven work days” extension to comply.</p>
<b>Means of Access</b>	<p>The school must provide the requested records to the parent in the format the parent requested (e.g., hard copy, electronic, etc.).</p>
<b>Access Rights</b>	<p>Parent (child under age eighteen)          Student (age eighteen or older)          Parent’s or student’s attorney</p>
<b>Ability to Charge</b>	<p>The school may not charge a parent to provide his/her child’s Scholastic Records.</p> <p>A school may charge for non-Scholastic Records.</p>
<b>Enforcement Rights</b>	<p>File a Petition seeking issuance of a Writ of Mandamus with the Circuit Court.</p>

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