

LEGISLATION BRIEF

Student Data Privacy Laws

*Schools are legally required to keep student data secure and safe.
Here are the laws to know.*

LAWS YOU MUST KNOW

Family Educational Rights and Privacy Act (FERPA)

governs information in a student's education record, restricting access and use of student information.

- Generally prohibits districts from disclosing students' education records without written parent or eligible student consent.
- "Education records" are broadly defined to include any records, files, or documents maintained by a school district that contain personally identifiable information on students.
- Grants parents and guardians the right to inspect and review education records; request that a school amend the student's records; consent in writing to the disclosure of personally identifiable information from the student's records, subject to certain enumerated exceptions.

(20 U.S.C. § 1232g; 34 C.F.R. Part 99.)

Children's Online Privacy Protection Act (COPPA)

restricts the collection of personal information from children under 13 by companies operating websites, games, mobile applications, and digital services that are directed to children or that collect personal information from individuals known to be children.

- COPPA requires companies to have a clear privacy policy, provide direct notice to parents, and obtain parental consent before collecting information from children under 13.

(P.L. 105-277; 15 U.S.C. § 6501 et seq.; 16 C.F.R. part 312.)

Illinois School Student Records Act (ISSRA) is similar to FERPA and ensure parent/guardian access to their child's records and the confidentiality of student records and the information in those records.

(105 ILCS 10/1 et seq.; 23 Ill Admin. Code Part 375.)

Student Online Personal Protection Act (SOPPA)

protects the privacy and security of student data when collected by companies operating websites, online services, or online/mobile applications primarily used for K-12 school purposes.

- Prohibits the use of student data for targeted advertising, the sale of student information gathered during the students' use of the educational technology, and the use of data collected to amass a profile about a student.
- Effective July 1, 2021, school districts will be required (among other things) to post a list of operators with which the district has written agreements, copies of those written agreements, and other information about such operators on the school's website; as well as to notify students and parents of any breach of student data by an operator of the school.

(105 ILCS 85/1 et seq.)

Children's Internet Protection Act (CIPA) imposes certain requirements on schools that utilize the federal E-Rate program to receive discounts for internet access and other technology services, or that receive federal grants for other technology expenses.

- Requires that districts adopt an internet safety policy that includes protection measures to block or filter internet access to visual depictions that are obscene, child pornography, or harmful to minors.
- School districts must monitor the online activities of children and educate children about appropriate online behavior, including interacting with other individuals on social networking websites and cyber bullying awareness and response.

(47 U.S.C. §254(h); 47 C.F.R. §54.520.)

LAWS YOU SHOULD KNOW

The Protection of Pupil Rights Amendment (PPRA)

restricts the administration of surveys, analyses, or evaluations to students that concern specified protected topics, and requires notification to parents and parental consent when information is collected related to those topics.

(20 U.S.C. § 1232h; 34 C.F.R. part 98.)

Children's Privacy Protection and Parental

Empowerment Act prohibits the sale or purchase of personal information of a child under age 16 without parent/guardian consent, unless an exception applies.

(325 ILCS 17/1 et seq.)

Illinois Mental Health and Developmental

Disabilities Confidentiality Act (MHDDCA) governs the confidentiality of communications and records concerning mental health or developmental disability services provided to a student by school personnel who meet the definition of a "therapist".

- "Therapist" includes school psychologist, social worker, or nurse.
- Parents/guardians (and students age 12 or older) have the right to access records and provide written consent prior to disclosure of records or communications, except under specific circumstances.

(740 ILCS 110/1 et seq.)

General Data Protection Regulation (GDPR)

is a European Union (EU) regulation that broadly provides data privacy and security protection to residents of EU member states. EU residents living outside of the EU are still granted the same protections.

- GDPR generally does not apply to K-12 schools in the United States. Exceptions include anytime an educator communicates with someone living in a EU member country, like a high school exchange student.

((EU) 2016/679)

Right to Privacy in the School Setting Act requires elementary and secondary schools to provide notification to the student and his or her parent or guardian that:

- The school may not request or require a student to provide a password or other account information to gain access to the student's account or profile on a social networking website.
- The school MAY require the student to cooperate in an investigation if there is specific information about activity on the student's social media account that violates a school disciplinary rule or policy, including requiring the student to share the content of the social media site.

(105 ILCS 75/1 et seq.)

Health Insurance Portability and Accountability Act

(HIPAA) protects the privacy and security of individually identifiable health information. HIPAA and subsequent rules like the HIPAA Privacy rule established national standards to protect individual's medical records and other personal health information.

- The HIPAA Privacy Rule specifically excludes from its coverage records that are protected by FERPA, making it so that HIPAA does not generally apply to K-12 schools. Schools are also excluded from HIPAA's reach because they very rarely would constitute "covered entities" as that term is defined by the law.

(Pub. L. 104-191; 45 CFR Parts 160, 164.)

Local Records Act provides requirements for how school districts maintain day-to-day recordkeeping.

- School districts must obtain written approval of the appropriate local records commission before destroying or deleting digital or physical student records and other public records in control of the school district.

(50 ILCS 205/1 et seq.; 44 Ill. Admin. Code Part 4500.)